The ICCA Consortium

ICCA Consortium Submission for Strategic review and analysis of the current PoWPA in the context of the KMGBF

This submission is made on behalf of the ICCA Consortium, with a focus on ways that the CBD *Programme of work on protected areas (PowPA)* can be reviewed and updated to align with Kunming-Montreal Global Biodiversity Framework (KMGBF) to advance recognition and support for Indigenous and Traditional Territories (ITTs) and territories and areas conserved by Indigenous Peoples and local communities -ICCAs - Territories of Life[1] and their custodians.

This submission aims to complement, and is in full support of the submission made by International Indigenous Forum on Biodiversity (IIFB) and it also aims to reinforce and build on the submission by the Human Rights in Biodiversity Working Group (HRBWG).

At the outset, ICCA Consortium welcomes the much-needed revision to the PoWPA, and the opportunity to make a summission. We wish to highlight and address, in particular, the twin realities of advances in international policy on Protected and Conserved Areas (PCAs), together with a lack of implementation at the national and local levels in many contexts, and in some cases a regression related to recognition of rights of Indigenous Peoples and local communities and their ITTs and ICCAs-territories of life. These different policy and practice realities exist in relation to the establishment, expansion, governance, and management of PAs, OECMs, and other forms of area-based conservation.

Consistent with the ICCA Consortium's Manifesto and IUCN Motion 138, this submission is grounded in the understanding that Indigenous Peoples and local communities are custodians and rights holders (customary or statutory) —not stakeholders or mere beneficiaries—who hold inherent relationships, responsibilities, and governance authority in their ITTs and ICCAs-territories of life. Any conservation policy must therefore uphold their collective capacities, rights, responsibilities, customary governance systems, Free Prior Informed Consent, and self-determined priorities, including their community self-

[1] 'Territories of life' has evolved from the concept of territories and areas conserved by Indigenous Peoples and local communities (ICCAs), to emphasize collective rights, traditional knowledge, governance systems, and lived relationships with territories and nature. The term reflects a broader understanding of conservation as embedded in social, cultural, and territorial systems, rights and custodianship of Indigenous peoples and local communities. More recently it has been acknowledged in international conservation policy through IUCN motion 138.

strengthening processes. Additionally, conservation policies, including PoWPA, must ensure enabling conditions for meaningful exercise of such rights and responsibilities.

This submission acknowledges and appreciates the findings in the Rapid analysis of programmes of work established under the Convention with respect to the targets of the Kunming-Montreal Global Biodiversity Framework, *CBD/SBSTTA/25/INF/1*, particularly in relation to PoWPA. However, this submission would also like to emphasise gaps and areas for improved clarity and alignment with KMGBF that are not reflected in the rapid analysis. These include those in relation to Targets 3, 14, 19, 21, 22, 23, among others; Section C (including a human rights-based approach - HRBA); and other CBD decisions pertaining to and relevant for the recognition and support of ITTs and ICCAs - territories of life.

This emphasis is especially important given that Element 2 on governance, participation, equity, and benefit sharing remains one of the least implemented components of PoWPA. Over the decades since PoWPA was adopted, Indigenous Peoples and local communities have continued to be evicted and displaced for PAs, their rights have remained unrecognised or unrecorded, and they have continued to face intimidation and criminalisation while seeking recognition of those rights or seeking acknowledgement for their conservation and climate contributions. This includes lack of recognition and criminalization of efforts to defend their territories from destructive development projects within existing PCAs. In many contexts, processes of establishment, expansion, governance and management of PAs, and more recently OECMs, remain non-inclusive of Indigenous Peoples and local communities. Similarly, ICCAs-territories of life remain unrecognised and unsupported both in the situations where they overlap with PAs and OECMs as well as outside of PAs and OECMs. There is, therefore, an urgent need to address the implementation gap of various goals and targets of PoWPA and equally urgent is to identify and address the gap in related national and international grievance and redress mechanisms.

In this context, this submission makes following specific suggestion:

Guiding question 1: Aspects to incorporate or reinforce in the review to improve alignment with KMGBF

We respectfully suggest that the review and resulting revisions to PoWPA:

1. **Clarify the scope of (revised/ updated) PoW**
   Clarify whether the revised PoW applies solely to PAs, or more broadly to conserved areas. The current PoW refers exclusively to PAs[2]. Since 2004, several CBD decisions and guidance have recognized protected and conserved areas (PCAs). This submission proposes that this scope is clarified clearly reflecting, acknowledging and recognising governance diversity, including ICCAs

[2] With a few key exceptions, such action 2.1.3., that can be understood as pertaining to recognition of territories and areas conserved by Indigenous Peoples and by local communities more broadly, as noted below.

- territories of life within PAs and OECMs, while explicitly also acknowledging and providing mechanism and action points for recognition of ICCAs - territories of life outside of the PA system. Any recognition option and pathways the Indigenous Peoples and local communities exercise must be voluntary, based on self-identification, and must not alter their own self-determined governance systems or impose PA/OECM classifications without custodians' explicit FPIC.

Such clarification of scope for PoWPA must be done through wider consultations including with IIFB and ICCA Consortium. ICCA Consortium extends full support for and willingness in participating in any further discussions toward this.

2. **Strengthen the recognition of the collective capacities, rights and responsibilities of Indigenous Peoples and Local Communities**
   The current PoW refers to "beneficiaries" rather than **holders** of relevant capacities, rights and responsibilities and is silent on essential elements of an HRBA, such as:
   - Full, equitable, gender-responsive and effective participation
   - Rights to lands, waters, and territories
   - Legal recognition of customary governance and tenure
   - Protection of Environmental Human Rights Defenders

   In line with IUCN's Guidelines No.11, Guidelines No. 20, and IUCN WCPA guidance on recognising territories and areas conserved by indigenous people and local communities in (ICCAs) overlapped by PAs. The revised PoWPA should explicitly affirm the collective capacities, rights and responsibilities of custodians in their territories of life, which can take on a variety of governing roles.

3. **Strengthen governance diversity and equitable governance**
   In line with Target 3, Decision 14/8, IUCN Motion 138 add, incorporate and reinforce guidance that:
   - ITTs and ICCAs - territories of life within and beyond PAs may be governed by Indigenous Peoples and local communities.
   - Laws and policies must respect customary law, traditional knowledge and governance systems
   - Governance assessments must reflect multidimensional equity (recognition, procedure, distribution)
   - Equity must include intergenerational justice, gender, disability inclusion, and cultural integrity
   - Include explicit safeguards against "fortress conservation" and all forms of exclusionary conservation that violate custodians' rights.

4. **Ensure consistency with other CBD processes including SB8j and PoW8j**

Take account of and enhance alignment with:

- CBD PoWs & decisions and sources of guidance adopted since 2004, and related global commitments, such as CBD Technical Series No 64 on Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities; IUCN WCPA guidance on recognising territories and areas conserved by indigenous people and local communities in (ICCAs) overlapped by protected areas.
- Decisions of and PoW of SB-8j, particularly element 1.1, 1.2 - related to guidelines on ITTs, and elements 2, 6, 7, 8.
- Other provisions of the CBD related to Indigenous Peoples and local communities such as Decision 14/8, and others mentioned in sections below.

5. **Alignment with KMGBF Monitoring Framework**
   PoWPA needs to take into account and speak to the KMGBF monitoring framework especially for Target 3, 22 and 23, ensuring that:
   - The extent of overlap between ITTs and ICCAs-territories of life with PAs and OECMs;
   - Extent of recognition of ITTs and ICCAs-territories of life within and outside or PAs and OECMs as a primary pathway towards achieving Target 3;
   - Land use and land tenure changes within ITTs and ICCAs-territories of life;
     are recorded, disclosed, monitored and reported in the national reports with transparency.

Guiding Questions 2 & 3: Revised approaches to implementing PoW to better contribute to achieving Target 3 & PoW goals, targets, or activities to prioritise to support national implementation

We recommend that revised PoWPA include:

1. **A new Element or Goal on Human Rights-Based Approach (HRBA) under Element 2**
   PoWPA needs to add an explicit element addressing:
   - respect, protect and fulfil of human rights,
   - respect collective and individual rights of Indigenous Peoples and Local Communities to lands, waters and territories of life,
   - Legal recognition of custodian governance systems,
   - FPIC in all decisions affecting custodians,
   - Full protection of Environmental Human Rights Defenders.[3]

2. **Strengthen Element 2 (Governance, Participation, Equity)**
   Within Element 2 and Goals 1.1 & 3.1 emphasise and include: [4]
   a. Appropriate recognition and support for the rights and contributions of Indigenous Peoples and of local communities, including through all pathways in Target 3, taking into account the PoWPA scope.

[3] In alignment with, among others, Section C, Target 3, Target 22, and PoW8j
[4] In alignment with, among others, Target 3, Targets 19, 21 - 23, and Section C, as well as PoW8j

b. Appropriate recognition and support for governance diversity - e.g.
    - Clarify that conserved areas both within and beyond PAs can be, and are, governed by a diversity of actors and arrangements, including territories and areas governed by Indigenous Peoples and local communities - ICCAs-territories of life.
    - Retain and prioritize action "2.1.3. Establish policies and institutional mechanisms with full participation of indigenous and local communities, to facilitate the legal recognition and effective management of indigenous and local community conserved areas in a manner consistent with the goals of conserving both biodiversity and the knowledge, innovations and practices of indigenous and local communities", noting that such policies, institutional mechanisms are not limited to be within the national PA systems and legislations.
    - Add/refer to guidance encouraging systems level assessment and other steps outlined in Decision 14/8 (Annex II).
    - Add/refer to "IUCN WCPA guidance on recognising territories and areas conserved by indigenous people and local communities in (ICCAs) overlapped by protected areas".
    - Add ensuring self-identification, and full respect for rights to FPIC in any external recognition or designation, of ITTs and ICCAs-territories of life, together with appropriate legal, policy, financial and other consistent and timely support.
    - Add, explicit reference to community self-strengthening processes as a custodian-led foundation for governance strengthening.

c. Improving equity of PCA sites, including through application of guidance and governance assessments - together with meaningful action plans / responsive actions - that reflect multi-dimensional understanding of equity in Decision 14/8 (Annex II); CBD Decision IX/18, Bonn, 2008, Para 6 (a) (b); CBD Decision X/31, Nagoya, 2010, Para 31 (b), 32 (a), 32 (b); CBD Decision XIII/2, Cancún, 2016, Para 5 (b) (vii); as inclusive of recognition (including of rights), procedure, and distribution.

d. Ensuring full, equitable, inclusive, effective and gender-responsive representation and participation of Indigenous Peoples and local communities in decision-making at all levels, including related to laws and policies relevant to PCAs, and a gender-responsive approach overall in line with Target 14 and 23.

e. Retain and emphasise the reference in 2.2.5 to "ensure that any resettlement of Indigenous Peoples as a consequence of the establishment or management of protected areas will only take place as a last resort and only with their prior informed consent that may be given according to national legislation and applicable international obligations". In this, further emphasise that relocation can only take place as a last resort and FPIC cannot be forced, coerced or instigated through intimidating means, in alignment with Section C and Target 22 and 23 of KMGBF.

3. **Strengthen the recognition of and appropriate safeguards for traditional knowledge, value systems and data sources of Indigenous Peoples and local communities**

a. Add in alignment with Target 21, recognition and respect for traditional knowledge, innovations, and practice of Indigenous Peoples and of local communities, upholding rights to free, prior and informed consent and in adherence to CARE Principles for Indigenous Data Governance (Collective Benefit, Authority to Control, Responsibility, Ethics).

b. Add in alignment with Target 19 (f), support for diverse value systems (including relational, spiritual and biocultural) and collective actions by Indigenous Peoples and local communities, Mother Earth centric actions, and non-market-based approaches. This can include actions to recognize and support the processes and outcomes of relevant custodian led processes and collective actions, such as territory of life self-strengthening processes, biocultural community protocols, planes de vida, and examples shared via Local Biodiversity Outlooks.

c. Add/ enhance actions to advance access to justice in relation to PCAs and the full protection of environmental human rights defenders in line with Target 22. This would include, instituting at national and international levels mechanisms for Grievance Prevention and Redress.

d. Within Element 3 update and add language / actions to:

- Focus on multi-directional / reciprocal capacity strengthening, including that of policy-makers, staff of PCAs, and all other relevant actors. Such capacity strengthening must include use, conservation, management and governance rights, specific rights, Human Rights Based Approaches (HRBA); conservation and climate contributions of Indigenous Peoples and local communities; governance and governance types of protected and conserved areas; and different pathways to achieve Target 3, among others (see Goal 3.2), aligning with Target 20.
- Seek insights and recommendations of Indigenous Peoples and local communities on approaches and good practices in relation to Article 8(j) and its PoW (see Action 3.3.3 under Goal 3.3)
- Enhance action towards adequate and accessible financing, particularly direct access to Indigenous People and Local communities, as well as safeguards ensuring that conservation funding advances / aligns with an HRBA (Goal 3.4), aligning with Target 19
- Enhance access to information related to biodiversity by, inter alia, Indigenous Peoples, local communities, women, youth, and persons with disabilities (see Goal 3.5), aligning with target 21

e. Within Element 4 and Goal 1.5, update and add language / actions to:

- Enhance access to guidance on rights, equity, and governance in the context of PCAs, including for implementation of HRBAs, and identify and address gaps / needs for updates in such guidance (See 4.1)
- Amend / expand title and scope of Goals 4.2 - 4.4 and Goal 1.5 to include consideration and monitoring of impacts related to human rights, equitable governance,

governance diversity and type (including the extent and accuracy of related reporting), contributions under all pathways in Target 3 (as appropriate to the PoWPA scope), and full and effective participation of rights holders and custodians in policy- and decision-making. This implies the use of both quantitative and qualitative indicators and carefully adjusted to local and national socio-economic and historical circumstances. Among others:

- Appropriately recognize and support national and global registries and sources of information, including the National ICCA Registries where they exist, WCMC ICCA Registry, Indigenous Navigator and Landmark to be used as potential data sources for equity and justice in establishment, governance management and conservation contributions of PAs/PCAs, including territories and areas conserved by Indigenous People and Local Communities- ICCAs-territories of life - within and beyond PAs/PCAs. Among decisions and guidance related to these sources of information, the CBD invited Parties to consider the ICCA Registry in their voluntary in-depth reporting in Decision X/31.B, para 33(c).
- Incorporate and emphasize Indigenous- and community-led monitoring and reporting, including as reflected in the Territories of Life report, Local Biodiversity Outlooks, and other relevant sources, while ensuring equitable distribution in the costs and benefits of monitoring.
- Respect FPIC and data sovereignty