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## **Biocultural Rights in the Biodiversity Regime: Relationality and the Limits of Instrumentalism**

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# Biocultural Rights in the Biodiversity Regime: Relationality and the Limits of Instrumentalism

By Nate Palmer\*

## ABSTRACT

The biodiversity regime has attempted to navigate conflicting conceptualisations of human–nature relations, straddling instrumental, intrinsic and relational valuations of Nature. Yet, from the inception of the Convention on Biological Diversity, instrumental value has been given primacy, shaping not only the goals of the regime but also the tools it uses for implementation. Against this backdrop, this article traces the doctrinal emergence of biocultural rights within the Convention on Biological Diversity’s traditional knowledge architecture, focusing on Article 8(j) and the ‘family’ of related decisions as governance conditions. The article then examines the regime’s instrumentalist hegemonic valuation of Nature in practice. Access and Benefit Sharing act as one of the Convention on Biological Diversity’s main goals, while translating biodiversity governance into transactions organised around access, consent and benefit flows. Ecosystem services underpin the science–policy interface of the regime, and turn entire ecosystems into market mechanisms while rendering biodiversity governable through measurements and indicators. The result is a pattern in which relational commitments are repeatedly acknowledged while being filtered through economic and technocratic logics, risking performative pluralism. Finally, reading the Kunming–Montreal Global Biodiversity Framework as a critical moment, the article argues that its implementation considerations must operate as a cross-cutting constraint on targets, indicators and finance, and that community protocols and mutually agreed terms can function as interfaces for legal and value pluralism. The key point is that resolving the regime’s tensions is less about choosing between diverse value systems, and more about clarifying how these value systems are meant to interact in practice.

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## Introduction

The biodiversity regime has attempted to navigate conflicting conceptualisations of human-nature relations that underpin conservation.<sup>1</sup> Over the course of decades, the regime has attempted to straddle the idea that Nature has an intrinsic value, a relational value, and an instrumental value.<sup>2</sup> This value pluralism is central to the article, which is defined as the co-emergence and coexistence of multiple, diverse, and sometimes competing ways of valuing Nature in the regime.<sup>3</sup> From the inception of the Convention on Biodiversity, the instrumental value for Nature has been given primacy and dominated not only the goals of the regime, but also the tools that the regime utilises for implementation.<sup>4</sup> Concurrently, the idea of the intrinsic value and relational value of Nature has been slowly gaining momentum and recognition both within the biodiversity regime and in environmental governance more generally. This shift can be seen in the Montreal-Kunming Global Biodiversity Framework (GBF), where rights of Nature and biocultural rights are given direct reference, representing value pluralism. In order for this regime to shift, and eventually succeed, this turn towards

these pluralist values of Nature need to become concretised and conceptually clarified. This tension is reflective of the wider discourse around biodiversity and of the diverse conceptualisations of human-nature relations of the Parties to the convention. In order to dismantle the hegemonic framing and provide a way forward, the regime needs to reflect this recent development further.

This article adopts the following definitions of the plural values of instrumental, intrinsic, and relational value. Instrumental value is when Nature is valued for its use to humans and often linked to economic discourses, while intrinsic value is value inherent to Nature, independent of human judgement or usefulness.<sup>5</sup> Relational value moves away from the economic framework of instrumentalism and is focused on the principles, virtues, and ethics emerging from human-nature relationships.<sup>6</sup> This value is often linked to ethics of care, reciprocity, and conceptualised as being rooted in local communities. For the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), relational values contribute to 'desirable relationships' and are articulated through the notion of 'harmony with Nature'.<sup>7</sup> The recognition of value pluralism is visible in several parts of

<sup>1</sup> Unai Pascual and others, Summary for Policymakers of the Methodological Assessment of the Diverse Values and Valuation of Nature (IPBES 2022).

<sup>2</sup> Mattia Fosci and Tom West, 'In Whose Interest? Instrumental and Intrinsic Value in Biodiversity Law' in Michael Bowman, Peter Davies, and Edward Goodwin (eds), *Research Handbook on Biodiversity and Law* (Edward Elgar Publishing 2016) 63, 55.

<sup>3</sup> Nature is capitalised throughout this article to reflect its treatment as a subject (rather than an object) of legal and ethical concern.

<sup>4</sup> Pascual and others (n 1).

<sup>5</sup> Sandra Díaz and others, 'The IPBES Conceptual Framework—Connecting Nature and People' (2015) 14 *Current Opinion in Environmental Sustainability* 1.

<sup>6</sup> Gonzalo Cortés-Capano and others, 'Ethics in Biodiversity Conservation: The Meaning and Importance of Pluralism' (2022) 275 *Biological Conservation* 109759.

<sup>7</sup> Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) Plenary, 'Decision IPBES-2/4: Conceptual Framework for the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services' (Decision IPBES-2/4, annex: 'Conceptual Framework for IPBES').

the regime. The GBF explicitly recognises ‘diverse value systems’ as being integral to its successful implementation, with a direct reference to the rights of Nature and an implicit recognition of biocultural rights. Similarly, the Convention on Biodiversity (CBD) makes references to biocultural rights in Article 8(j) and its associated decisions, alongside the Nagoya Protocol. Despite this recognition of value pluralism, the regime’s dominant implementation pathways continue to translate biodiversity governance into instrumental terms, particularly through ABS and ecosystem-services framing. The result is not simply conceptual inconsistency, but an institutional pattern in which relational commitments are repeatedly acknowledged while being filtered through economic and technocratic logics that set the parameters of what counts as implementation and ‘success’.

The article proceeds in four steps. Section 1 situates biocultural rights and rights of Nature as legal expressions of relational and intrinsic value, and clarifies why these matter for biodiversity governance. Section 2 then traces how the CBD institutionalises this pluralism doctrinally through traditional knowledge, focusing on Article 8(j) and the ‘family’ of related decisions as governance conditions concerning stewardship, community authority, and place-based knowledge. Section 3 turns to the regime’s dominant operational infrastructures—ABS and ecosystem services—to show how instrumentalism is embedded in the legal and policy pathways that structure implementation. Section 4 then reads the GBF as a critical moment that makes the tension explicit, and questions whether its implementation language can realistically constrain instrumental pathways rather than merely supplement them rhetorically.

The contribution of the article is threefold. First, it provides a doctrinal account of

how biocultural rights emerge within the CBD’s traditional knowledge architecture, showing that Article 8(j) and related decisions already articulate concrete governance conditions rather than merely aspirational commitments. Second, it demonstrates how instrumentalism is operationalised through the regime’s dominant implementation infrastructures, particularly ABS and ecosystem services, demonstrating why relational and intrinsic value remain marginal in practice even when acknowledged in principle. Third, it identifies pathways for conceptual coherence from within the regime, including how community protocols and mutually agreed terms can function as interfaces for legal pluralism, and how the GBF’s implementation language can be read to constrain, rather than simply accompany, hegemonic instrumentalist perspectives.

## **1. Integrating Relational and Intrinsic Value: Biocultural Rights and the Rights of Nature**

Both rights of Nature and Biocultural Rights are working towards reframing human-nature relations and the values that underpin them. They rest upon different legal reasonings and backgrounds, but find similarity in their shared turn away from anthropocentrism and instrumentalism. This section will first interact with relationality and biocultural ethics, with some comparisons to rights of Nature. Following this, the section will discuss the legal that underpins biocultural rights, establishing their presence, possibilities, and challenges. This will provide the theoretical basis for the remaining sections, arguing that

relationality and intrinsic value already appear in the CBD, but are in need of more attention and development.

For the rights of Nature, the inherent value put forward is the intrinsic value of Nature.<sup>8</sup> This is where the rights are derived from the idea that Nature has inherent rights based on its own existence, not in connection to humans. Rights of Nature is a growing international movement granting rights to Nature through various legal pathways, including legislations and constitutional amendments.<sup>9</sup> These rights have been afforded to all of Nature or a particular ecosystem, and represent the 'voice' of Nature in varied ways. Some tensions remain, but the fact remains that this is a verified movement with more than 600 initiatives in over fifty countries as of early 2026.<sup>10</sup> This is an extremely brief overview of rights of Nature, as the article is more closely focused on biocultural rights in the CBD, for more on rights of Nature.<sup>11</sup>

Biocultural rights, on the other hand, rely upon a relational approach, where the rights of Indigenous peoples or local communities provide a bridge towards

environmental protection.<sup>12</sup> For scholarship on biocultural ethics, which are articulated similarly to relational ethics, biocultural ethics are framed as an attempt to acknowledge the links between 'dynamic, reciprocal interrelationships between the well-being and identity of the inhabitants, their habits, and the habitats they inhabit'.<sup>13</sup> This nexus of inhabitants, habits, and habitats are inextricably linked and often defined by indigeneity. In this way, the critical questions of what biocultural rights 'produce' or what they 'are' become momentarily put to the side in order to consider how 'we' should 'be'.<sup>14</sup> Similarly, relational ontology begins from the premise that, 'entities do not pre-exist their relations but are constituted through them'.<sup>15</sup> Obligations of reciprocity, care, and stewardship are embedded in relational values.<sup>16</sup> As articulated by West and others, 'care captures the more explicitly normative, subjective aspects considered

<sup>8</sup> Lael K Weis and Robert Mullins, 'Does Nature Need Rights?' (2025) 45(4) *Oxford Journal of Legal Studies* 839.

<sup>9</sup> Craig M Kauffman and Pamela L Martin, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (MIT Press 2021).

<sup>10</sup> Jérémie Gilbert, 'The Rights of Nature, Indigenous Peoples & International Human Rights Law: From Dichotomies to Synergies' (2022) 13(2) *Journal of Human Rights and the Environment* 399.

<sup>11</sup> For more on rights of Nature see Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (transcript Verlag 2022) or Craig M Kauffman and Pamela L Martin, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (MIT Press 2021).

<sup>12</sup> Giulia Sajeve, *When Rights Embrace Responsibilities: Biocultural Rights and the Conservation of the Environment* (OUP 2018) 95; Kelly Bannister, 'A Biocultural Ethics Approach to Biocultural Rights: Exploring Rights, Responsibilities and Relationships through Ethics Initiatives in Canada' in Fabien Girard, Ingrid Hall and Christine Frison (eds), *Biocultural Rights, Indigenous Peoples and Local Communities: Protecting Culture and the Environment* (Routledge 2022) 58.

<sup>13</sup> Ricardo Rozzi, 'Biocultural Ethics: Recovering the Vital Links between the Inhabitants, Their Habits, and Habitats' (2012), cited in Bannister (n 12) 58. Díaz and others (n 5) 1.

<sup>14</sup> Bannister (n 12) 59.

<sup>15</sup> Kimberley Moon and others, 'Relational Commons: An Ontological and Governance Framework Beyond Protected Areas and the Boundaries of Conservation' (2025) 18 *Conservation Letters* e13137, p. 4.

<sup>16</sup> Simon West and others, 'Stewardship, Care and Relational Values' (2018) 35 *Current Opinion in Environmental Sustainability*, 30.

to influence stewardship action — the desire to ‘look after’ something’. This desire can be informed by many situated realities that extend beyond the instrumentalist foundation that underpins the biodiversity regime at the international level. It also provides another way to judge ‘nature’s contribution to people’, that moves beyond the neutralised, market-based perspective of ecosystem services, as demonstrated by the IPBES relational values conceptual framework.<sup>17</sup>

As the global effort to address the biodiversity crisis continues, and as it becomes increasingly clear that a unique co-production of knowledge is required to better understand and chart the path forward, biocultural ethics rooted in relationality invites the global community to consider their ability to cultivate a deeper understanding, awareness, and consideration for the ethical processes and value systems that are inherent to the cross pollination of different worldviews and cultural norms.<sup>18</sup> This relational approach provides an avenue for the conceptually challenging or contradictory elements of this cross pollination to find a suitable home. Further, rights of Nature and biocultural rights have come forward in cases together, showing that their efforts can be mutually reinforcing, such as in New Zealand.<sup>19</sup> This is articulated perfectly in the Colombian Special Jurisdiction for Peace (JEP), with the Katsu Sa case.<sup>20</sup> The court has stated that the territory itself is a victim of the conflict, ‘in accordance with the Indigenous ontologies, ‘territory’ denotes no separation between the material, the cultural, and the spiritual

spheres, and human and nonhuman are interrelated and interdependent’. This is an excellent example of how intrinsic and relational value systems can overlap and coexist to create stronger frameworks. Finally, this is reflective of a potential strength of biocultural rights and rights of Nature to reinforce each other, as the relationship of the particular communities in the area are being placed alongside the rights of the territory.

This framework raises several hesitations and potential drawbacks. For biocultural rights, ‘certain’ humans are better placed to care for the environment in a holistic non-anthropocentric manner. This may be problematic.<sup>21</sup> As the concept puts forward, Indigenous people have a ‘duty’ to be stewards of a sustainable environmental relationship. If this fails to be true, communities change their approaches to the environment or if communities partake in activities that can be deemed as counterproductive to environmental sustainability and conservation, is this reflective of the right of self-determination or against the core idea of biocultural rights?<sup>22</sup> In other words, it is unclear if the recognition of these rights are fundamentally concerned with the Indigenous perspectives or environmental protection. Further, when imposing these duties, the biocultural rights framework risks imposing a particular way of being on local communities or Indigenous peoples that has conceptualised their relationship to Nature in a static way.<sup>23</sup> This also presents challenges for biocultural rights as ‘rights’ because human rights are meant to be balanced only alongside other human

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<sup>17</sup> Díaz and others (n 5) 1.

<sup>18</sup> *ibid.*

<sup>19</sup> Sajeva (n 12) 92.

<sup>20</sup> Special Jurisdiction for Peace (Colombia), Auto 186 of 2021 (23 August 2021).

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<sup>21</sup> Sajeva (n 12) chapters 4–5.

<sup>22</sup> Giulia Sajeva, *Rights for Ecosystem Services: Local Communities and the Rights of Nature* (Taylor & Francis Group 2024).

<sup>23</sup> *ibid.*

rights and limited in very rare cases, not predicated on or limited by a requirement of environmental protection.<sup>24</sup>

From a legal framework perspective, the concept of biocultural rights presents an interesting development to the discourse. Biocultural rights strive to conflate many rights established at the international, national, and local level to ensure the fulfilment of the rights of Indigenous peoples and local communities in relation to their land, self-determination, and conservation of their culture.<sup>25</sup> In this sense, biocultural rights, 'affirm the bond between Indigenous, tribal and other communities with their land, together with the floral, faunal and other resources in and on the land... through a relation of stewardship'.<sup>26</sup> Alongside this general human rights framing, is the implications of environmental protection through a non-anthropocentric lens. As argued above, this is clearly the foundation of a relational value of human-nature relations. However, this is both problematic and noteworthy. Further, it begs us to relate it to other, and concurrently developing, non-anthropocentric perspectives, such as the rights of Nature as their relationship is both distinct and intertwined.<sup>27</sup> Through this, the article will set the foundation for the later interaction with the biodiversity regime and the place of

non-anthropocentric approaches, such as biocultural rights, within it.

In relation to other non-anthropocentric approaches, such as rights of Nature, biocultural rights present a reliable and replicable legal foundation due to the fact that biocultural rights are reliant upon rights, whether for Indigenous peoples or local communities, that have already been adopted widely. Although they have neither been fully implemented nor respected, Indigenous rights are present in legal documents across all levels of governance across the globe. These rights are, mostly, collective human rights that are both related to their own self-determination as well as a wider consideration for their historical and contemporary relationship to land. For the purposes of this article, and the context of the CBD, the fact that their cultural identity is linked to land and natural resources, and is therefore protected under international law, is essential. In short, Indigenous communities have a right to self-determination that allows them to determine strategies and priorities for their land, territories, and the related resources. This is powerful due to the fact that a lot of the 'heavy lifting' of having these rights formally recognised or integrated has already been under construction for decades.

Moreover, there is conceptual clarity in the connection with many of the interrelated human rights associated with biocultural rights. At their core, these rights relate to Indigenous peoples, local communities, and the protection of the environment.<sup>28</sup> Moreover, these rights are largely fragmented; recognized at various levels, implemented in diverse contexts, and treated differently by distinct courts.<sup>29</sup> This stark reality creates some

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<sup>24</sup> Sajeva (n 12) 21.

<sup>25</sup> Giulia Sajeva, 'The Legal Framework behind Biocultural Rights' in Fabien Girard, Ingrid Hall and Christine Frison (eds), *Biocultural Rights, Indigenous Peoples and Local Communities: Protecting Culture and the Environment* (Routledge 2022) 165.

<sup>26</sup> Kabir Sanjay Bavikatte and Tom Bennett, 'Community Stewardship: The Foundation of Biocultural Rights' (2015) 6(1) *Journal of Human Rights and the Environment* 7.

<sup>27</sup> Sajeva (n 22) 110.

<sup>28</sup> Sajeva (n 25) 165.

<sup>29</sup> *ibid.*

difficulty in streamlining the recognition of biocultural rights. One difficulty is that the distinction between Indigenous and local communities is complex, but the key takeaway is that Indigenous peoples and local communities are different subjects under international law.<sup>30</sup> The second challenge in streamlining biocultural rights occurs at the national and local level, where the recognition and integration of these rights remains complex, contested, and diverse. For this reason, this article largely focuses on the international level and the implications there.

In closing, biocultural rights exist as a bridge between human rights and environmental protection through various rights recognised across various levels of the law, from the international, national, and local. Through this, scholars have argued for biocultural rights as a way for Indigenous communities and local communities to ensure their self-determination in relation to culturally significant ecosystems and biospheres. These rights are often informed by an ethical foundation that stresses the interconnected and interdependence of Nature, with humans acting as stewards for environment protection. These rights have been celebrated as a victory for Indigenous communities, and problematised as a potential 'duty' placed on Indigenous communities to act a certain way, placing the burden of protecting the environment not only on communities but on the cultural foundations of the community. This risks essentialising communities, while undercutting their ability to actually be self-determinative. Finally, this concept is often interrelated with rights of Nature, both conceptually and legally. Although these concepts and legal tools have distinct differences, they also have many interrelations, providing an avenue for integration. This can be

<sup>30</sup> Sajeva (n 25) 166.

seen in the Global Biodiversity Framework and in developing case law, particularly in Latin America. All in all, questions remain about its foundations and ability to create the change intended, but there is no doubt that it is not only developing, but also being integrated into major international environmental regimes, such as a biodiversity regime. This will be covered in the following section.

## 2. Institutionalising Relationality in the Convention on Biological Diversity: Article 8(j) and the Architecture of Biocultural Governance

Building on the conceptual and legal framework set out above, this section shows that although relational and intrinsic value are increasingly recognised within the biodiversity regime (including through biocultural rights and rights of Nature), they are in need of more integration and development. For the biodiversity regime, the Convention on Biodiversity represents the most important international effort to conserve the biological diversity of life on the planet. However, the CBD is not just a conservation or environmental treaty, it has important implications for trade, intellectual property rights, and culture.<sup>31</sup> This is to say that environmental protection sits alongside various interrelated concepts, such as access and benefit sharing, ecosystem

<sup>31</sup> Philippe G Le Prestre, 'Introduction' in Philippe G Le Prestre (ed), *Governing Global Biodiversity: The Evolution and Implementation of the Convention on Biological Diversity* (Routledge 2017) 1.

services, traditional knowledge, and biocultural rights throughout. This effort is rooted in the recognition that humanity's current practices are threatening the very existence of life on earth through ecosystem destruction and species extinction.<sup>32</sup> Since 1992, there has been an increasing recognition that a core component of this conservation effort towards biological diversity is related to fundamental conceptualisations of human-nature relations, despite the fact that pluralist world-views were marginalised and disregarded in the initial document. This tension is due to the fact that, 'type and level of protection accorded to biodiversity in legal instruments is connected to the value-systems that underpin them'.<sup>33</sup>

This section examines how the CBD regime has incorporated traditional knowledge in ways that underscore biocultural rights and value pluralism, with particular emphasis on Article 8(j) as the convention's primary doctrinal foothold for this incorporation. It will first briefly underscore the shift from in the convention, where the anthropocentric and instrumentalist framing of the convention's 1992 introduction is eventually contrasted by and developed into by the Global Biodiversity framework in 2022. The articulation of value pluralism and its engagement with biocultural rights and rights of Nature is particularly noteworthy. Then, the section traces how the Article 8(j) 'family' of decisions and related instruments has operationalised these commitments by articulating governance

conditions concerning stewardship, community authority, and place-based knowledge. These developments demonstrate that biocultural rights have been integrated across the CBD's institutional development. However, they also reveal a persistent tension: relational and intrinsic framings are repeatedly advanced, yet remain constrained by the regime's hegemonic instrumentalist logics, which Section 3 examines directly.

The biodiversity regime, and the CBD in particular, makes several pointed references to the relationship between traditional knowledge and the successful conservation of biodiversity, underscoring and integrating the concept of biocultural rights and value pluralism. Traditional Knowledge (TK) is a wide-ranging term typically referencing Indigenous communities practices, management, knowledge, and conservation techniques. These range from stories, songs, ways of life, and language.<sup>34</sup> In the biodiversity regime, TK is generally understood as the knowledge, innovations and practices of Indigenous peoples and local communities that are relevant to biological diversity.<sup>35</sup> Yet, while TK is referenced in the core text, these references remain undercut by the convention's fundamental anthropocentric and instrumentalist framing.

In the CBD's introductory framing, this anthropocentric orientation is made clear. The opening states, 'The Earth's biological resources are vital to humanity's economic and social development'. and that biological

<sup>32</sup> IPBES, *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (Eduardo S Brondízio and others eds, IPBES Secretariat 2019).

<sup>33</sup> Fosci and West (n 2) 57; Díaz and others (n 5) 1.

<sup>34</sup> Nurit Bensusan, 'Access to Traditional Knowledge in the Age of Biotechnology: The Brazilian Case' in P N Krishnan and Others (eds), *Perspectives on Biodiversity of India* (Centre for Innovation in Science and Social Action 2018) 306.

<sup>35</sup> *Convention on Biological Diversity* (opened for signature 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 art 8(j).

diversity is considered to be a ‘global asset of tremendous value’.<sup>36</sup> This opening has set the tone for what could undoubtedly be considered a failure to meet the goals of preserving the Earth’s biological diversity over the next thirty years, which were rooted in the overt primacy given to economic development and the instrumental value of Nature.<sup>37</sup> It is also a clear indication that the various passing references to traditional knowledge in the initial document was reflective of the marginalisation of traditional knowledge in the wider discourse. Interestingly, the intrinsic value of Nature is given a passing reference in the preamble, demonstrating how these tensions related to value were there from the start.<sup>38</sup>

Importantly, the inclusion of traditional knowledge did create an avenue for change that later enabled fundamentally different conceptualisations of human-nature relations to surface in future developments. This shift is evidenced in the introduction to the Global Biodiversity Framework (GBF) in 2022, which sets the goals and vision for the convention for 2050. The GBF opens by stating that, ‘Biodiversity is fundamental to human well-being, a healthy planet, and economic prosperity for all people, including for living well in balance and in harmony with Mother Earth... it supports all systems of life on Earth’.<sup>39</sup> This shift is not only radical

but reflective of a movement towards greater inclusion, recognition, and respect for traditional knowledge in the wider regime. The future of the CBD has set a pathway towards a future where the intrinsic and relational value of Nature is recognised and respected alongside diverse conceptualisations of human-nature relationships.<sup>40</sup> To understand how the CBD could move from the 1992 instrumental baseline to a framework that speaks in these terms, the most important doctrinal foothold is Article 8(j).

Article 8(j), titled *Indigenous Knowledge, Innovations, and Practices*, provides the convention’s most direct articulation of TK and, with it, competing conceptualisations of human-nature relations. Article 8(j) first states that, ‘each contracting Party shall...respect, preserve and maintain knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity’.<sup>41</sup> This is the most direct reference to traditional knowledge, and competing conceptualisations of the human-nature relations in the treaty. This formulation introduces a set of distinct commitments, which are to respect, preserve, and maintain, that signal an approach grounded in continuity, relationality, and enduring practices rather than solely in resource management, further articulating biocultural rights

<sup>36</sup> Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79, art 1.

<sup>37</sup> Prestre (n 31) 325; Joanna Miller Smallwood, ‘The 1992 UN Convention on Biological Diversity and common challenges to implementation’ in Joanna Miller Smallwood, *Implementing International Environmental Law and Policy: An Interactive Approach to Environmental Regulation* (1st edn, Routledge 2024) ch 2.

<sup>38</sup> Convention on Biological Diversity (opened for signature 5 June 1992, entered into force 29 December 1993) preamble.

<sup>39</sup> Convention on Biological Diversity, Kunming-Montreal Global Biodiversity Framework (adopted 19 December 2022) CBD/COP/15/L.25, 4.

<sup>40</sup> *ibid.*

<sup>41</sup> Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79, 8.

and governance.<sup>42</sup> These commitments also inspired later developments across the regime, in which each component came to carry more concrete duties and expectations for states in relation to Indigenous peoples and local communities. These ‘family’ of decisions led to various instruments that directly relate to biocultural rights and biocultural community protocols and are set out in the following instruments.<sup>43</sup> Taken together, the ‘family’ of Article 8j decisions puts forward an infrastructure for biocultural governance rooted in relational and intrinsic values. They set the conditions for legitimate engagement with knowledge, territory, and community authority within the wider pursuit of environmental protection.

First, the 8(j) family establishes an ethical orientation, stewardship and responsibilities of conduct, through which Nature and culture are treated as co-constituted rather than separable inputs

into conservation policy. Decision X/42 provides the code of ethical conduct, as well as conceptual foundation for the decisions that would come in the future years.<sup>44</sup> As shown in the name *Tkarihwaí:ri*, which translates to ‘the proper way’. Several fundamental principles, which also inform later decisions, are described. These include, Free, Prior, and Informed Consent, Fair and Equitable Sharing of Benefits, Intellectual Property (including cultural property), Respect for Existing Settlements, as well as several others. These principles are central to many principles in international environmental law in relation to Indigenous peoples. Moreover, under ‘Specific Considerations’ there is a reference to ‘Traditional Guardianship/Custodianship’. This is a clear articulation of biocultural rights. Further, this treats biodiversity governance as an ethic of relationship of care/responsibility, not simply extraction or information capture.<sup>45</sup>

Second, community authority and value-system articulation is operationalised through community protocols. Decision XIII/8, the ‘*Mo’otz Kuxtal Voluntary Guidelines*’ (meaning the ‘roots of life’), are primarily interested in access and benefit sharing.<sup>46</sup> In short, this decision makes the

<sup>42</sup> Harry Jonas, Kabir Bavikatte and Holly Shrumm, ‘Community Protocols and Access and Benefit Sharing’ (2010) 12(3) *Asian Bio-technology and Development Review* 62.

<sup>43</sup> ‘Decision X/42: The *Tkarihwaí:ri* Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities’ (29 October 2010) UN Doc UNEP/CBD/COP/DEC/X/42; Conference of the Parties to the Convention on Biological Diversity, ‘Decision XIII/18: Article 8(j) and related provisions’ (17 December 2016) UN Doc CBD/COP/DEC/XIII/18 annex (‘*Mo’otz Kuxtal Voluntary Guidelines*’); Conference of the Parties to the Convention on Biological Diversity, ‘Decision 14/12: The *Rutzolijirisax-ik* Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity’ (30 November 2018) UN Doc CBD/COP/DEC/14/12; Conference of the Parties to the Convention on Biological Diversity, ‘Decision 15/22: Nature and Culture’ (19 December 2022) UN Doc CBD/COP/DEC/15/22.

<sup>44</sup> Convention on Biological Diversity Conference of the Parties, *Tkarihwaí:ri* Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities (Decision X/42, 29 October 2010) 2.

<sup>45</sup> Conference of the Parties to the Convention on Biological Diversity, Decision X/42 ‘The *Tkarihwaí:ri* Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities’ (29 October 2010) CBD/COP/DEC/X/42, annex, 11.

<sup>46</sup> Conference of the Parties to the Convention on Biological Diversity, Decision XIII/18 ‘Article 8(j) and Related Provisions’ (17 December 2016) CBD/COP/DEC/XIII/18, annex (‘*Mo’otz Kuxtal Voluntary Guidelines*’).

clear link between developing community protocols in relation to the equitable sharing of benefits of and access to resources related to Traditional Knowledge. This is an interesting development and perspective, as the underlying value of Nature within access and benefit sharing is primarily understood as instrumentalist.<sup>47</sup> This creates an inherent tension between the core concepts of this decision. Community protocols are also put forward in Decision 14/12, the ‘Rutzolijirisaxik Voluntary Guidelines’, which is primarily focused on repatriation; the phrase translates to ‘returning to one’s place of origin’.<sup>48</sup> In the context of the document, repatriation refers to ‘the return of knowledge, innovations and practices of Indigenous peoples and local communities to where it originated or was obtained for the recovery, revitalization, and protection of knowledge on biological diversity’.<sup>49</sup> By implicating territory, identity, and enduring relations, the 8(j) family treats knowledge as situated and place-based, furthering the tension that arises when the regime’s broader implementation tools reframe these relations in transactional and instrumental terms.

Finally, Decision 15/22 on ‘Nature and Culture’ reinforces the relational orientation of the Article 8(j) architecture by making

clear that the link between cultural and biological diversity is essential to the goals of the CBD, while stressing the effective inclusion of Indigenous peoples and local communities.<sup>50</sup> The decision is primarily an action plan for the ‘Joint Programme of Work’ linking Nature and cultural diversity, and it is therefore oriented toward the procedural and tangible work that could go into recognising and promoting this connection. For the purposes of this article, this document also provides an interpretive anchor and a way forward through its connection to the Kunming-Montreal Global Biodiversity Framework, which will be covered in the final section. Further, the links between cultural and biological diversity are found to be key elements in the goal of living in harmony with Nature by 2050. In this sense, the decision supports a fundamental shift towards a relational approach, while also connecting directly to the GBF’s articulation of value pluralism and implementation priorities.<sup>51</sup>

Overall, these decisions indicate that the biodiversity regime, particularly between 2010–2022, created significant space for traditional knowledge, biocultural rights, and the language of intrinsic and relational value within the biodiversity regime. In principle, value pluralism in a treaty of this scope is not problematic and is preferable to a single, hegemonic value system. The issue is that the regime

<sup>47</sup> Abdul Haseeb Ansari and Lekha Laxman, ‘A Review of the International Framework for Access and Benefit Sharing of Genetic Resources with Special Reference to the Nagoya Protocol’ (2013) 16(1) *Asia Pacific Journal of Environmental Law* 139.

<sup>48</sup> Conference of the Parties to the Convention on Biological Diversity, Decision XIV/12 ‘Article 8(j) and Related Provisions’ (29 November 2018) CBD/COP/DEC/XIV/12, annex (‘Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity’).

<sup>49</sup> *ibid.*

<sup>50</sup> Conference of the Parties to the Convention on Biological Diversity, Decision 15/22 ‘Nature and Culture’ (19 December 2022) CBD/COP/DEC/15/22.

<sup>51</sup> For more on Article 8(j) and Nature/Culture, see Ingrid Hall, ‘Unmaking the Nature/Culture Divide: The Ontological Diplomacy of Indigenous Peoples and Local Communities at the CBD’ in Fabien Girard, Ingrid Hall and Christine Frison (eds), *Biocultural Rights, Indigenous Peoples and Local Communities: Protecting Culture and the Environment* (Routledge 2022) chapter 4.

simultaneously advances value pluralism while its dominant implementation pathways continue to be organised around instrumentalist logics, particularly through access and benefit sharing (ABS) and ecosystem services.<sup>52</sup> Through this, relational commitments remain neglected or sidelined in practice. In this sense, the regime risks ‘speaking out of both sides of its mouth’, undercutting the diverse value systems it contends are central to the treaty, particularly given the power imbalances that shape how these value systems are mobilised globally. As the analysis turns to the hegemony of instrumentalism, the central concern is that the regime’s embrace of ‘different value systems’ has not been matched by a corresponding interrogation of the instrumentalist structures that continue to underpin implementation.

### **3. Hegemonic Valuation of Nature in the Biodiversity Regime: Operationalising Instrumentalism through Access and Benefit Sharing and Ecosystem Services**

Section 2 demonstrated that the architectures provided by the ‘family’ of Article 8(j) related decisions, and the CBD more generally, have created normative space for traditional knowledge, biocultural rights, and value pluralism central to diverse human-nature relations.

<sup>52</sup> For other arising issues see Sajeva (n 12) 108.

Section 3 builds on this by examining why these commitments remain marginalised, structurally constrained and rarely implemented. The argument recognises that the regime contains a multitude of instruments and conceptual foundations that create space for this value pluralism, but contends that the regime remains hegemonically reliant on instrumentalist logic of biodiversity governance. The primacy given to this logic has undercut the ability of the regime to successfully meet its fundamental goal of biodiversity conservation.

Access and Benefit Sharing (ABS) translates biodiversity governance into transactions organised around access, consent, and benefit flows.<sup>53</sup> While ABS has been a route for traditional knowledge holders to be recognised as rights holders and stakeholders in the development of resources in their territory, it also neglects relational commitments and diverse worldviews and reframes them within an economic conceptualisation. Similarly, ecosystem services have embedded itself as the conceptual foundation of biodiversity governance, demonstrating a perspective of Nature that misconstrues its contribution to the global community, which goes beyond a mere service. Moreover, it neglects Nature’s intrinsic value and the intangible value it has to many peoples. Taken together, this section demonstrates the ‘limits of instrumentalism’ at the heart of this article: the regime continues to acknowledge value pluralism and biocultural rights while still operationalising implementation through dominant instrumental valuation logics that subordinate relational and intrinsic framings. The following analysis

<sup>53</sup> Elisa Morgera, Elsa Tsioumani and Matthias Buck, *Unraveling the Nagoya Protocol: A Commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity* (Brill Nijhoff 2014).

develops this argument through ABS and ecosystem services in turn, before Section 4 returns to the implications of this tension for contemporary regime developments.

Access and Benefit Sharing is an essential component of the CBD and to the overall goal of conserving biological resources and diversity, representing one of its three central goals.<sup>54</sup> This creates deep tensions with the intrinsic and relational value of Nature due to its primarily instrumentalist and economic foundations. At the same time, ABS has functioned as a key legal mechanism through which Indigenous and local communities are recognised as rights-holders, supporting the emergence of biocultural rights grounded in stewardship, customary law, and collective responsibility. Therefore, the ABS regime has generally treated Nature as a transactional object, while still remaining as a central tool to recognise biocultural rights and justice for traditional knowledge holders. This tension matters because it entrenches problematic and hegemonic value-systems, while diminishing the space for the regime to become more effective at the components it is successful at, justice and equity.<sup>55</sup>

ABS is a concept that is directly concerned with social and economic development. In this relationship the goal is to provide access to resources and ensure that the benefits from consequent research and development, such as commercialisation, are properly shared. This is a genuine attempt at justice.<sup>56</sup> Balancing the need

for research and development of particular resources, needs to be considered alongside the fact that these resources are often within territories, and alongside populations, that have been historically disadvantaged and left out of the benefits from the resource development. Article 1 of the CBD makes a direct reference to ABS, 'The objectives of this convention... are the conservation of biological diversity... and the fair and equitable use sharing of the benefits arising out of the utilisation of genetic resources'.<sup>57</sup> Further, ABS has implications for state sovereignty, scientific development, transfers of technology, and most importantly for this paper, Indigenous communities and traditional knowledge. ABS is therefore considered a main objective of the CBD, operationalising instrumentalist value through access, exchange, and benefit flows.

For the CBD, Articles 15-19 provide the overall framing of ABS within the document. The legal core of these articles arises from Article 15, which establishes sovereignty over access to resources, PIC and Mutually Agreed Terms (MAT), and benefit sharing conditional on access.<sup>58</sup> The language here is important. For one, Article 15 is framed as state centric gatekeeping and legal authority, rather than the community authority established in the Article 8(j) family of decisions. Likewise, access as the central framing and legal pathway positions biodiversity and TK as instrumentalist inputs. Finally, Article 16 deals with Access to and Transfer of technology, with a particular focus

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<sup>54</sup> Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD) art 1.

<sup>55</sup> Philippe Cullet, 'Environmental Justice in the Use, Knowledge and Exploitation of Genetic Resources' in Jonas Ebbesson and Phoebe N Okowa (eds), *Environmental Law and Justice in Context* (CUP 2009) 371.

<sup>56</sup> Morgera, Tsioumani and Buck (n 54) 1.

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<sup>57</sup> Convention on Biological Diversity (n 42) art 1.

<sup>58</sup> Emilie Cloatre, 'Biodiversity, Knowledge and the Making of Rights: Reviewing the Debates on Bioprospecting and Ownership' in Michael Bowman, Peter Davies and Edward Goodwin (eds), *Research Handbook on Biodiversity and Law* (Edward Elgar 2016) 371.

on intellectual property rights, further reinforcing the economic framing.

The Nagoya Protocol provides an example of how these mutually agreed terms can be based on biocultural rights and community protocols.<sup>59</sup> The bundle of biocultural rights established here are as follows: the right over their genetic resources; the right over their traditional knowledge; the right to self-governance through respect for their customary laws and community protocols; and the right to benefit from the utilisation of their traditional knowledge and genetic resources by third parties. The first two rights can be found in Article 5.<sup>60</sup> First, there is a general recognition of PIC, further establishing its relevance in the convention. Later in Article 5, there is the requirement to uphold 'established rights' of Indigenous and local communities. This is the introduction of a 'new' biocultural right under the CBD.<sup>61</sup> Article 12 provides the comprehensive establishment and introduction of biocultural community protocols.

This is not only an acceptance of legal pluralism into the CBD, but also a positive commitment centered around the intention to provide support for the development of these protocols by Indigenous and local communities. Further, Article 12(3) subpoint A and B make a clear link between mutually agreed terms and biocultural community protocols.<sup>62</sup> Where point A establishes the development of

biocultural community protocols and point B establishes minimum requirements for mutually agreed terms. Taking these various elements together, there is a clear establishment for the prospect for future mutually agreed terms to be underpinned and informed by protocols specifically developed by local communities. For value pluralism, these protocols can embed relational and intrinsic values through the process expressed within MATs.

Thus, ABS as introduced in the 1992 CBD has been carried further towards relationality and community empowerment with the development of the Nagoya Protocol. This is most evident through the development of MATs and community protocols, acting as an interface for legal and value pluralism. However, the pursuit of equity and justice that underpin ABS cannot be achieved through the dominant implementation logic based on instrumentalist benefit sharing. Section Two provided evidence that the regime has considered the role of ABS in this context and that legal pathways exist towards justice through respecting diverse value systems. ABS is a fundamental component of the biodiversity regime and should not be treated as dispensable, but the valuation of Nature through contracts with Indigenous and local communities has a long way to go. Next, the section will turn towards ecosystem services, the parallel instrumentalist track central to the regime.

Ecosystem services is a concept that 'expresses the "usefulness" of Nature in terms of providing for basic human needs, like food, fuel and medicines, clean water, flood control and climate regulation'.<sup>63</sup> In general, the concept began to have staying

<sup>59</sup> Jonas, Bavikatte and Shrumm (n 43) 49.

<sup>60</sup> Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (adopted 29 October 2010, entered into force 12 October 2014) 3008 UNTS 3 (Nagoya Protocol) art 5.

<sup>61</sup> Jonas, Bavikatte and Shrumm (n 43) 52.

<sup>62</sup> Nagoya Protocol (n 62) art 12(3).

<sup>63</sup> Christian Prip, 'The Convention on Biological Diversity as a Legal Framework for Safeguarding Ecosystem Services' (2018) 29 *Ecosystem Services* 199.

power with its inclusion in the UN initiative the Millennium Ecosystem Assessment published in 2005.<sup>64</sup> Ecosystem services have since become a central tenet of the way that the international, regional and national level bodies conceptualise the role of nature in our lives,<sup>65</sup> which is evidenced through the naming of the regime's bridge between science and policymakers, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES). In other words, the central science-policy interface for the biodiversity regime fundamentally positions itself within the conceptual framework of ecosystem services, and therefore a particular conceptualisation of human-nature relations and the value of Nature. This article therefore contends ecosystem services are treated not as a neutral description of human dependence on Nature, but as a valuation infrastructure that renders biodiversity governable through service provision, measurement, and policy legibility, thereby reinforcing instrumentalist human-nature relations.

This is a continued entrenchment of the idea that Nature has purely an instrumental value based human use. This is not only neglecting the relational and intrinsic value, but Nature as a 'useful service' misses the elemental role it plays in the sustenance of life, livelihoods, and society. As stated by McAfee, ecosystem services represent 'the most ambitious iteration yet of the strategy of "selling nature to save it"'.<sup>66</sup> This concept entails

a commodification and objectification of Nature, reinforcing colonial legacies, practices, and thinking around the world. The implementation of this concept, through various programmes rooted in payments for ecosystem services, often come at the expense of local communities in the global south, who are once again tasked with shouldering the load of the global extractive system.<sup>67</sup> This has come through most prominently in the management of Forests, which provide services through carbon sequestration, but expands to conceptually nearly all ecosystems.<sup>68</sup> Further, it is not just an environmental or social issue, but an issue of thinking and culture as it pushes communities with pluralist value systems to engage in this instrumentalisation through the global market.

The Aichi Biodiversity Targets were introduced at COP10 in 2010 with the overall goal to 'take effective and urgent action to halt the loss of biodiversity in order to ensure that by 2020 ecosystems are resilient and continue to provide essential services'.<sup>69</sup> The targets provide the mandate for actioning the global community to address biodiversity loss, while also creating flexibility for national or regional level implementation. The first target is 'by 2020, at the latest, people are aware of the *values* of biodiversity and the steps they can take to conserve

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<sup>64</sup> *ibid.*

<sup>65</sup> See the European Union's European Environmental Agency's 'Mapping and Assessment of Ecosystems and their Services' and the 'Integrated Natural Capital Accounting', a joint project between the United Nations and the European Commission.

<sup>66</sup> Kathleen McAfee, 'The Contradictory Logic of Global Ecosystem Service Markets' (2012) 43(1) *Development and Change* 106.

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<sup>67</sup> *ibid.*

<sup>68</sup> Tone Smith, 'Financialisation of Nature' (2021) WU Vienna University of Economics and Business, Discussion Paper No 08/2021.

<sup>69</sup> Convention on Biological Diversity Conference of the Parties, Decision X/2: The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets (29 October 2010) UNEP/CBD/COP/DEC/X/2.

and use it sustainably'.<sup>70</sup> This indicates that there are multiple 'values' that the regime recognises. However, this is never articulated clearly, and the later goals reinforce the hegemonic instrumentalist framing, without mentioning relational or intrinsic value.<sup>71</sup>

This preeminence of the instrumental value, and in this case ecosystem services, is also reflected in the 'rationale' for the Aichi Biodiversity Targets. Here, the opening statement confirms 'Biological diversity underpins ecosystem functioning and the provision of ecosystem services essential for human well-being'.<sup>72</sup> This is not then couched in a framing of traditional knowledge or different values for Nature. Instead, many of the issues related to biodiversity conservation are found to be scientific or technological challenges, rather than the cultural process of consumption and production that truly underpin the issue. Unsurprisingly, these targets largely failed.<sup>73</sup> The fundamental failure of the targets, and of ecosystem services as a concept, is found in its

inability to challenge the inherent value of Nature that underpins the processes of consumption and production that define the global system, and therefore, the global issue of biodiversity loss. Finally, and possibly most notably, they attempt to define harmony with Nature and describe its relevance to the wider biodiversity project. In this case, living in harmony with Nature is defined as 'by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people'.<sup>74</sup> This reflects the definition in the GBF, and seems to fundamentally miss the idea of competing values of Nature and the wider goals of the UN Harmony with Nature Programme, fighting for an increased recognition of the intrinsic and relational value of Nature.<sup>75</sup>

Interestingly, the term ecosystem services has also begun to fall out of favor with the IPBES, which, as of 2015, started using the language of 'Nature's Contribution to People', which is meant to reflect a more intrinsic and relational perspective of human-nature relations.<sup>76</sup> This indicates that the concept of ecosystem services, even from the perspective of the biodiversity regime, is not inclusive of the worldviews and perspectives that it is attempting to include. Despite this shift, the IPBES remains the key namesake of the scientific-policy body, and ecosystem

<sup>70</sup> Conference of the Parties to the Convention on Biological Diversity, Decision X/2, 'The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets' (29 October 2010) UNEP/CBD/COP/DEC/X/2, annex, Target 1.

<sup>71</sup> See CBD Strategic Plan for Biodiversity 2011-2020 (Aichi Biodiversity Targets), Strategic Goal D ('Enhance the benefits to all from biodiversity and ecosystem services') and Strategic Goal E ('Enhance implementation through participatory planning, knowledge management and capacity building'). While the targets acknowledge 'values of biodiversity', references to traditional knowledge are comparatively limited.

<sup>72</sup> Convention on Biological Diversity Conference of the Parties (n 71) 7.

<sup>73</sup> Shannon M Hagerman and Ricardo Pelai, "As Far as Possible and as Appropriate": Implementing the Aichi Biodiversity Targets' (2016) 9(6) Conservation Letters 469.

<sup>74</sup> Conference of the Parties to the Convention on Biological Diversity (n 72) annex, para 11 (II 'Vision').

<sup>75</sup> Helen Dancer, 'Harmony with Nature: Towards a New Deep Legal Pluralism' (2021) 53(1) The Journal of Legal Pluralism and Unofficial Law 21.

<sup>76</sup> IPBES, Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (Version 1, 2019) Foreword.

services remain central to the Global Biodiversity Framework. Thus, the value of Nature portrayed through ecosystem services is not reflective of traditional knowledge, relational ontologies, or the concepts that underpin the future implementation of the regime, such as rights of Nature and biocultural rights as articulated in the GBF, which the next section will cover.

## 4. Implementing Value Pluralism in the Global Biodiversity Framework: From Recognition to Operationalisation

Against this backdrop, the Global Biodiversity Framework provides an insight to assess how the regime now frames, and seeks to implement, diverse value systems in biodiversity governance.<sup>77</sup> The 2022 Global Biodiversity Framework (GBF) aims to ‘catalyse, enable and galvanise urgent and transformative action by Governments, and subnational and local authorities.[to implement] the three objectives of the Convention’.<sup>78</sup> It represents an action plan, with the backdrop being that, since the inception of the CBD, biodiversity loss has continued largely unabated. It establishes

many outlooks and ways forward to achieve these goals. Through this, it has reintroduced and reconfirmed several key points towards ‘transformative action’. The first of these is found in the overall goal now being to achieve ‘harmony with nature’ by 2050. This is a continued goal of the regime, dating back to Principle 1 of the Rio Declaration. However, since 1992, this term (harmony with Nature), particularly within the UN system, has changed significantly from its meaning in the Rio Declaration.<sup>79</sup> Both in terms of its connotation and denotation. The GBF, and wider biodiversity regime, reflects that harmony with Nature is a concept that indicates the pursuit of non-anthropocentric approaches to governance through value pluralism, often informed by and linked to traditional knowledge. Considering this, the central claim advanced in this section is that, while the GBF elevates harmony with Nature and value pluralism as organising commitments, its implementation architecture remains structurally exposed to the instrumentalist valuation logics that continue to dominate biodiversity governance.

The GBF makes a clear link between transformative action and the increased relevance of traditional knowledge, while continuing to reference the instrumentalist valuation. More than any other major framework in the biodiversity regime, the GBF reveals the tension this article has been considering, forcing the contradiction into the open. Still, the GBF remains structurally linked to the hegemonic framings of Section 3, potentially producing ‘performative pluralism’, whereby diverse values are merely recognised and not central to retooling and reframing the

<sup>77</sup> Earth Law Center, *Rights of Nature/Mother Earth, Mother Earth Centric Actions, and the Intrinsic Value of Nature in the Global Biodiversity Framework and NBSAPs: Ecocentrism in the Global Biodiversity Framework* (Advisory White Paper, October 2024).

<sup>78</sup> Conference of the Parties to the Convention on Biological Diversity, Decision 15/4, ‘Kunming-Montreal Global Biodiversity Framework’ (19 December 2022) CBD/COP/DEC/15/4, annex, para 4.

<sup>79</sup> For more see development of UN Harmony with Nature Programme Dialogues; UNGA Res 79/210, ‘Harmony with Nature’, UN Doc A/RES/79/210 (19 December 2024).

architecture of biodiversity governance. Parties must operationalise the strong language of implementation section to avoid this. For the purposes of this paper, the link value pluralism can be seen most evidently in ‘Section C: *Considerations for the implementation of the Kunming-Montreal Global Biodiversity Framework*’.

Section C(a) is a pointed reference to rights biocultural rights and community protocols, ‘..implementation must ensure that...traditional knowledge... [are] respected... and preserved with their free, prior and informed consent, including through their full and effective participation in decision-making...’<sup>80</sup> This establishes a clear conceptual link between the GBF and biocultural rights. Further, the text reads, ‘Nature embodies different concepts for different people. Both nature and nature’s contributions to people are vital for human existence and good quality of life, including human well-being, living in harmony with nature, and living well in balance and harmony with Mother Earth’.<sup>81</sup> This is a pointed reference to different value systems that underpin the biodiversity regime, particularly relational and intrinsic value systems. It continues, ‘The Framework recognizes and considers these diverse value systems and concepts, including... rights of Nature and rights of Mother Earth, as being an integral part of its successful implementation’.<sup>82</sup>

Taken further, within Section C(b) there are several things to unpack. For one, there is the dismantling of the supremacy of knowledge that has defined the

biodiversity regime thus far. It also makes the contradictions clear, such as referring to ecosystem ‘services’ and Nature’s ‘gifts’ in the same sentence.<sup>83</sup> Further, it puts forward a particular worldview with ‘Nature embodies different concepts for different people’, with the distinct reference to ‘Mother Earth’. This is a worldview represented in Indigenous communities, particularly in Latin America with the concept of Pachamama. Finally, there is the reference to the rights of Nature, where it is framed as being ‘an integral part of (the GBFs) implementation’. Taken alongside point C(a), the GBF does more than acknowledge Indigenous peoples and local communities: it positions their ‘rights, knowledge, innovations, values and practices’ as implementation-relevant, effectively translating biocultural rights into the regime’s operational vocabulary. It similarly recognises rights of Nature and rights of Mother Earth as part of the diverse value systems that condition implementation. This framing provides a potential route for extending the Article 8(j) architecture into ABS practice, where relational commitments have often been channelled into transactional terms.

Quite simply, these statements make the inclusion of the intrinsic and relational value of Nature, especially in relation to Indigenous worldviews, as an integral part of the implementation for member states. Effectively, this is telling Parties *how* to implement the GBF, that plural value systems are now meant to be operational frameworks, not just thematic or conceptual exercises. This section presents intrinsic and relational value as cross-cutting conditions to apply across the regime. For example, if diverse value

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<sup>80</sup> Conference of the Parties to the Convention on Biological Diversity (n 80) annex, s C (‘Considerations for the implementation of the Kunming-Montreal Global Biodiversity Framework’).

<sup>81</sup> *ibid.*

<sup>82</sup> *ibid.*

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<sup>83</sup> Conference of the Parties to the Convention on Biological Diversity (n 80) annex, s C(b) (‘Considerations for the implementation of the Kunming-Montreal Global Biodiversity Framework’).

systems are integral, then progress cannot be exclusively driven by instrumentalist market perspectives, as seen with the Aichi Targets. Instead, Parties may design indicators that work to develop community authority through biocultural community protocols or protect customary governance. In short, they should better reflect and be built upon diverse human-nature relationships. This is taken further by the inclusion of rights of Nature and biocultural rights, whereby future implementation efforts must be rooted in the bundle of rights for Indigenous peoples and local communities alongside the ecosystem that are recognised as right bearers, acting as a conceptual bridge between the intrinsic and relational value of Nature.

In conclusion, the GBF opens an important doctrinal pathway for value pluralism, but it will remain largely rhetorical unless Section C is treated as a cross-cutting constraint on the regime's dominant implementation architecture. Absent this, the instrumental valuation framing that continues to underpin the regime, particularly concepts like ABS and ecosystem services that are embedded in goals, targets, indicators and finance, will absorb value pluralism. Further, the GBF does not fully articulate the operational meaning of the concepts it invokes, especially the rights of Nature, rights of Mother Earth, and relational value, leaving significant discretion for Parties to revert to established instrumentalist perspectives. In this sense, the biodiversity regime continues to operate as an instrumentalist project in practice, even as it increasingly implicates biocultural rights and rights of Nature. Therefore, the significance of the GBF lies less in recognising plural values in the abstract and more in whether its implementation language is used to reshape the conditions of governance. This can be achieved by moving beyond consultation towards meaningful authority

and participation, developing indicators that can reflect relational commitments, and putting in place safeguards so that market-oriented implementation does not displace the communities and value systems the Framework claims to centre.

## 5. Towards Clarifying Value Pluralism in the Biodiversity Regime

This article set out to provide evidence that the biodiversity regime hinges on several value systems for Nature that are inadequately defined, contextualised, and implemented. Through this, the instrumentalist value of Nature, where Nature is considered for its use to humanity, is overrepresented in the regime. Concurrently, key pluralist value systems, such as relational value and intrinsic value remain marginalised. In short, the biodiversity regime recognises plural values, while remaining fundamentally instrumentalist particularly in terms of implementation. The contribution of this article has been to show *where* relationality and intrinsic value have been institutionalised, and *how* instrumentalism has been operationalised. Through concepts such as biocultural rights and community protocols and rights of Nature, the biodiversity regime has created some of the architecture for this legal pluralism, evidenced through the 'family' Article 8(j) decisions and the GBF. Meanwhile, ABS and ecosystem services, largely instrumentalist concepts, have become elemental to the regime. This is reflected in ABS as one of the three main goals of the CBD and the IPBES as the scientific body informing law, policy, and action. The conclusion is thus predicated on establishing this interaction and indicating that further coherence between the regime's plural values and its

implementation pathways is required.

First, the paper covered relational and intrinsic values related to biocultural rights and rights of Nature generally. This section then established that biocultural rights are recognised in many jurisdictions across scales of governance, from local to national and international. These rights are not uniform, but often relate to land, self-determination, and culture. Biocultural rights solidifies the nexus of inhabitants, habits, and habitats. The article then turns towards the Convention on Biological Diversity and Article 8(j), with its associated decisions in Section 2. This provides the doctrinal foundation for the articulation of relational values. These related decisions show specific conditions of biodiversity governance that reflect this value pluralism, such as stewardship, place-based knowledge or community authority.

Following this, the article engages with ABS and ecosystem services. These implementation infrastructures present a fundamental contradiction to the build-up of biocultural rights and value pluralism within the CBD. ABS is largely an economic device, representing a conceptualisation of the human-nature relationship that is predicated on use, extraction, and objectification. Ecosystem services further complicate this, with a primarily instrumentalist value for Nature operationalised through the Aichi Biodiversity Targets. These targets were widely assessed as not being met, underscoring the inability of the Convention to meet its goals. Importantly, the Article 8(j) decisions largely occurred after 2010, highlighting continued tension between the Aichi Targets (2010–2020) and Article 8(j) decisions (2010–2022). By failing to articulate these competing conceptualisations in a consistent or transparent way, the biodiversity regime both depoliticises and delegitimises this

issue.

The analysis above suggests that resolving the regime's tensions is less about *choosing* between diverse value systems, and more about clarifying how these value systems are meant to interact in practice. This incoherence is evident in the GBF, which elevates relationality, intrinsic value, biocultural rights, and rights of Nature, while remaining instrumentalist in practice. This risks performative pluralism and continued challenges for biodiversity governance. The GBF provides doctrinal language to recalibrate implementation, but whether it succeeds depends on whether Parties treat Section C as a constraint to the instruments, indicators, and financial mechanisms that currently define 'success'. The regime does not need to abandon instrumentalist concepts like ABS or ecosystem services, but can constrain them with the tools described throughout this article.

In terms of next steps, first, the CBD must treat the Article 8(j) 'family' of decisions and voluntary guidelines as interpretive infrastructure for implementation, rather than as parallel soft-law streams. The Article 8(j) family of decisions already articulate procedural and ethical conditions (including FPIC, repatriation, and custodianship) through which traditional knowledge and biocultural relations are to be respected and maintained. Second, intrinsic and relational value can be concretised through the Nagoya Protocol's recognition of community protocols and mutually agreed terms, which provide a practical bridge between legal pluralism and the ABS architecture, ensuring that 'benefit-sharing' is not reduced to market logic where knowledge, culture and biodiversity are inseparable. Third, the GBF's implementation language, which explicitly acknowledges rights of Nature and diverse value systems, can be read as requiring conceptual coherence

across the regime, rather than merely adding new rhetorical commitments alongside ecosystem-services framing. Finally, harmony with Nature needs to be defined clearly and then understood as an operational commitment to hold these various value systems in one coherent interpretative framework providing conceptual clarity, cohesion, and moving beyond a mere slogan. Without this coherence, the regime will continue to recognise plural values while operationalising biodiversity governance through instrumentalist infrastructures.

### Bicultural Rights in the Biodiversity Regime

LEAD Journal is a peer-reviewed journal which publishes - on [lead-journal.org](http://lead-journal.org) - articles, case notes and documents of interest to professionals, practitioners, researchers, students and policy-makers in the field of international and regional environmental law and domestic environmental laws of developing countries. It emphasises a comparative approach to the study of environmental law and is the only journal in the field to carry a North-South focus. It is unique in providing perspectives from both developed and developing countries. Bearing in mind the principles of "sustainable development", LEAD Journal also solicits writings which incorporate related concerns, such as human rights and trade, in the study of environmental management, thus adopting a contextual approach to the examination of environmental issues. LEAD Journal encourages scholarship which combine theoretical and practical approaches to the study of environmental law and practice.

