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**Discourses shaping biodiversity concepts in practice: Local and regional conceptualisation of the Convention on Biological Diversity**  
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# Discourses shaping biodiversity concepts in practice

Local and regional conceptualisation of the Convention on Biological Diversity

MSc International Relations & Diplomacy Thesis

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## Abstract

Biodiversity is a transboundary issue that is subject to conceptualisation at different levels of environmental governance. The implementation of the Convention on Biological Diversity (CBD) is dependent on such conceptualisations, especially on national and regional levels. This thesis analyses national and regional dynamics that influence the interpretation and implementation of internationally determined CBD concepts.

In order to study this, the research follows a critical discourse analysis methodology in addition to a stakeholder analysis. It included the effect of regional and national power relations on the conceptualisation of CBD concepts. Four court cases taking place in different countries across the globe were selected to include differentiating national and regional contexts. The findings of the analysis show that power relations among the involved stakeholders affect the way CBD concepts are framed and interpreted. The findings reveal that community stakeholders emphasised discourses that were the most oriented towards biodiversity conservation. This thesis stresses the importance of understanding where the discrepancies lie between nationally determined concepts and national and regional interpretations of them. This is of importance to the effective implementation of the CBD.

## 1. Introduction

International environmental law has undergone rapid changes and expansion ever since its foundations were laid during the 1972 Stockholm Conference on the Human Environment.<sup>1</sup> Increasing scientific understanding has outlined the gravity of climate change and environmental degradation, pushing environmental law to develop into international regulatory response mechanisms such as the UN climate change regime. Biodiversity and climate action are broadly viewed as separate agendas. They are even addressed through two different international conventions, ie., the Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCCC). Consequently, the link between biodiversity and its pivotal role in carbon absorption is often undervalued within international action. Yet, biodiversity loss and climate change are inherently interlinked.<sup>2</sup>

The importance of biodiversity is overlooked in many ways. This is evidenced by the relatively low priority and commitment allocated to the CBD agenda compared to the UNFCCC agenda. Yet, yearly more than 25% of global carbon dioxide emissions from industries are absorbed by natural ecosystems. Apart from this indispensable role in reducing the impact of climate change, biodiversity provides many vital ecosystem services for humanity such as clean water, food and clean air.<sup>3</sup> The low priority that has been given to biodiversity partly relates to the innate complexity of biodiversity and the related international targets are therefore often ambiguous and unquantifiable. Contrastingly, humanity's effect on climate change has been pinpointed to one major source of greenhouse gas emissions, which has been advantageous to the relatively outspoken commitment to the UNFCCC so far. It is easier to address issues that are less complex and less suspect to ambiguity which is why biodiversity is given such a low priority.<sup>4</sup>

The implementation of the CBD, as the legal instrument for ensuring the conservation of biological diversity, is crucial for the worldwide protection of biodiversity. With broad

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<sup>1</sup> Anders Henriksen, "International environmental law," in *International Law*, third edition. (Oxford University Press, 2021), 189.

<sup>2</sup> Nathalie Pettorelli et al., "Time to Integrate Global Climate Change and Biodiversity Science-policy Agendas," *Journal of Applied Ecology* 58, no. 11 (September 21, 2021): 2384–93, <https://doi.org/10.1111/1365-2664.13985>.

<sup>3</sup> The Economist. "Why climate change is intimately tied to biodiversity", December 20, 2022, <https://www.economist.com/leaders/2022/12/20/why-climate-change-is-intimately-tied-to-biodiversity>

<sup>4</sup> Alice C. Hughes et al., "Challenges and Possible Solutions to Creating an Achievable and Effective Post-2020 Global Biodiversity Framework," *Ecosystem Health and Sustainability* 8, no. 1 (September 16, 2022): 1-6, <https://doi.org/10.1080/20964129.2022.2124196>.

support of 196 parties that have ratified the CBD, this regime has the potential to stimulate national efforts in the pursuit of biodiversity conservation.<sup>5</sup> However, most parties to the CBD inadequately transpose the global targets into national legislation and plans of action. This is common within international environmental law, where rules are usually ambiguous and can point in different directions, the application of the rules is dependent on interpretation within concrete cases.<sup>6</sup> One might anticipate that local and regional stakeholders with varying interests can strategically utilise such ambiguities to their advantage. Studies show that ineffective interpretation of CBD concepts can result in legislation that does not reach the intended objectives and can even negatively affect the safeguarding of biodiversity.<sup>7</sup> Thus the process of national implementation and interpretation of CBD concepts is fundamental to the Convention's success.

Environmental governance deals with transnational problems and thus requires multilevel governance for the implementation of the parties' commitments. Multilevel governance is dependent on coordination on multiple institutional levels. It is important to understand the influence of local dynamics on the interpretation and implementation of CBD concepts. However, these dynamics vary significantly across different geographical regions which makes this a difficult task to fulfil. Research on the implementation of internationally determined concepts is meaningful not only for analysing the gap between international rulemaking and national action but also for uncovering the interaction between these two levels of governance.<sup>8</sup>

This thesis therefore addresses the material content of relevant CBD concepts and their implementation. As well as environmental governance scholarship that until now has not sufficiently engaged in a comparative analysis of governance mechanisms on different vertical planes, such as the interaction of international and national governance. It does so by contributing to a more in depth understanding of how specific concepts stemming from the CBD are adopted and modified in different local contexts. Furthermore, drawing on this

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<sup>5</sup> Lyle Glowka, Françoise Burhenne-Guilmin, and Hugh Synge, *A Guide to the Convention on Biological Diversity*, 1994, <https://portals.iucn.org/library/efiles/documents/EPLP-no.030.pdf>.

<sup>6</sup> Daniel Bodansky, *The Art and Craft of International Environmental Law*. (Harvard University Press, 2010), 7.

<sup>7</sup> Daniel Heydebreck et al., "Global Biodiversity Research Tied up by Juridical Interpretations of Access and Benefit Sharing," *Organisms Diversity & Evolution* 18, no. 1 (March 1, 2018): 1–12, <https://doi.org/10.1007/s13127-017-0347-1>.

<sup>8</sup> C. Michael Hall, "Archetypal Approaches to Implementation and Their Implications for Tourism Policy," *Tourism Recreation Research* 34, no. 3 (January 1, 2009): 242, <https://doi.org/10.1080/02508281.2009.11081599>.

comparative analysis, the research aims to increase understanding of the contribution of national and regional courts to the development of international regimes.

In order to establish a greater understanding of national interpretation of internationally determined concepts and the national and regional discourses surrounding environmental concepts, this thesis aims to answer the following research question: “How do national and regional dynamics influence the interpretation and implementation of internationally determined CBD concepts?”. Additionally, the following subquestions guide the research towards a broader international application:

- “How do regional and national power relations affect the conceptualisation of CBD concepts?”
- “How is scientific knowledge deployed within the discourses, and in what ways are relevant uncertainties and ambiguities interpreted within the court cases?”
- “Are there discrepancies between the international concepts and their intended outcomes and the conceptualisation and actual outcomes at the national and regional levels?”

To answer these questions, this thesis carries out discourse analyses of national and regional court cases related to biodiversity that concern different parties to the Convention. The comparative analysis of the discourses surrounding the selected court cases allows different contexts to be considered. These questions combined address the importance of local dynamics and how they influence the interpretation and implementation of international environmental law. Furthermore, they outline crucial factors that shape the CBD.

## 2. Literature Review

This thesis incorporates arguments found in diverse literature on international relations, policy governance and international law. The following chapter provides a comprehensive review of the key ideas presented in the literature on international environmental governance that form the basis for this research. In addition, the relevant CBD concepts that underpin the research are outlined. In this outline, primary CBD sources are covered as well as subsequent critical literature that expands upon the implications of the concepts.

### 2.1 Levels of environmental governance

As mentioned in the introduction, effective environmental governance requires aligned international cooperation as well as national and local action. Centralisation of



environmental rule-making through multilateral environmental agreements (MEAs) such as the CBD is relevant to addressing transnational issues. Matters such as pollution or shared resources demand international agreements. As biological diversity is inherently transnational, the argument in favour of international governance through CBD as an MEA is strong. Furthermore, shifting the mode of governance from individual states to a more coordinated mechanism allows for the enhancement of information sharing, the setting of reliable objectives, and decreased transaction costs related to widespread monitoring. Centralisation is thus uniquely able to accomplish interstate mutual benefits. However, at the international level policy-makers encounter many problems in governing related issues that are both politically significant and scientifically complex. Furthermore, environmental governance at the international level deals with worries about the efficacy of policies, the emergence of hybrid public-private organisations and transnational actors, which present competing forms of governance, and increasing narratives rejecting global regimes and modes of global governance driven by populist movements.<sup>9</sup> The pursuit of this thesis is to gain a better understanding of the local dynamics that influence the implementation of internationally determined concepts. The findings of this research can provide insight relevant to the pursuit of better alignment within international environmental governance.

Correspondingly, an argument in favour of a more decentralised approach underlines the fact that within national and local contexts aspects such as policy priorities, stakeholders, resource levels, risk tolerance, and capacities deviate considerably. Implementation of environmental governance is significantly influenced by regional as well as local level modes of governance. Gaining a better grasp of how local contexts influence the implementation of environmental concepts is crucial to being able to improve their effectiveness.<sup>10</sup>

Within the literature on the levels of governance and their interaction, many terms are used to describe the concept of coordination amongst these levels including inter alia polycentric governance, integrated management, landscape governance, environmental policy integration, institutional interaction, and metagovernance.<sup>11</sup> Although they broadly relate to the same concept, each term tends to focus on a specific idea or aspect for this coordination.

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<sup>9</sup> Dunoff Jeffrey L, “Multilevel and Polycentric Governance,” in *The Oxford Handbook of International Environmental Law*, (Oxford University Press, 2021), 67–84, <https://doi.org/10.1093/law/9780198849155.003.0004>.

<sup>10</sup> Dunoff, “Multilevel and Polycentric Governance.”, 70.

<sup>11</sup> Ingrid J. Visseren-Hamakers, “Integrative Environmental Governance: Enhancing Governance in the Era of Synergies,” *Current Opinion in Environmental Sustainability* 14 (June 1, 2015): 136, <https://doi.org/10.1016/j.cosust.2015.05.008>.

Interestingly, the problem of fragmentation within governance is also existent within the literature that attempts to tackle this exact issue. Even though the varying approaches all have a common goal of finding issues and opportunities related to the need for cooperation across different levels of governance, the fragmentation and complexity lead to gaps within the literature. Too little research has analysed the relationships between governance systems, focused on the material content of international concepts. Additionally, the literature overlooks the aspect of power within these interactions which detracts from a deeper understanding of local dynamics that influence environmental governance. The literature gap identified in this context is thus twofold and concerns the content related ambiguity surrounding concepts, and the hidden power relations operating within national and regional levels.

This thesis addresses the content-related gap within the literature by specifically focusing on conceptual and operational interactions which includes the framing, implementation and enforcement of CBD concepts. These interactions lead to the modification of legal norms and concepts and offer new ways of meaning making.<sup>12</sup> There is a great deal to be learned about the way material content takes shape inter alia through the analysis of differences within the conceptual perspectives of stakeholders with varying interests. The gap relating to power relations within the research field of multilevel governance is additionally addressed through a specific focus on court cases. The legal setting facilitates competing interpretations that are highlighted within discourses and illustrate framing power through the inclusion or omission of specific arguments or concepts.<sup>13</sup> Within the legal context power not only pertains to authoritative government hierarchies but also includes the power of framing which is also attributed to lobbyists, non-governmental organisations and the media who are active in both national and international governance.<sup>14</sup> Therefore, interactions between stakeholders and their networks relating to court cases provide a sound source of expressions of framing power.

By addressing this multifaceted gap, this thesis provides critical new insights about the conceptualisation of CBD terms and the expression of power in the context of court cases. This thesis uses the method of critical discourse analysis (CDA), which takes power relations

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<sup>12</sup> Dunoff, "Multilevel and Polycentric Governance.", 76.

<sup>13</sup> Joshua C. Gellers, "GREENING CRITICAL DISCOURSE ANALYSIS," *Critical Discourse Studies* 12, no. 4 (March 16, 2015): 484, <https://doi.org/10.1080/17405904.2015.1023326>.

<sup>14</sup> Tiffany H. Morrison et al., "The Black Box of Power in Polycentric Environmental Governance," *Global Environmental Change* 57 (July 1, 2019): 2-3, <https://doi.org/10.1016/j.gloenvcha.2019.101934>.

into account, to link discourse and power relevant to conceptualisation of CBD concept. The outline of the CDA is elaborated upon in the theoretical framework of this thesis.

## 2.2 Parties' perspectives of the CBD

The CBD stands out among all environmental conventions by having the highest rate of ratification with 196 ratified parties. However, this extensive rate of agreement did not come without a cost. The final text of the Convention had to be modified significantly to attract agreement. It excluded various substantive provisions over which agreement could not be reached such as responsibility for damage to biodiversity, and an assemblage of global lists of protected species and designated areas.<sup>15</sup> Yet, the Convention has significantly contributed to the progress of the ecosystem approach to conservation due to its unique all-encompassing take on biodiversity and successive actions taken by the parties.<sup>16</sup> The ecosystem approach provides the primary framework of the CBD and recognises humans as a vital component of ecosystems. Thereby the framework aims to integrate socio-economic development and nature conservation activities.<sup>17</sup> The CBD encompasses objectives ranging from the protection of ecosystems and genetic resources to justice, while also including commerce and scientific knowledge, all of which are complex and multifaceted issues.<sup>18</sup> Additionally, it has been noted that treaties with broader scopes tend to have softer obligations. Furthermore, treaties such as the CBD, that address issues related to internal land use, require a greater level of compliance with the national sovereignty of party members than other agreements.<sup>19</sup> International agreements with a narrower scope such as those related to trade, impose fewer restrictions on national territorial sovereignty and therefore do not require the same level of compromise.

Even though the Secretariat of the CBD has initiated the creation of numerous reports on national implementation and best practices within national application, there remains a substantial implementation gap between the outlined targets and the actualisation of them on

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<sup>15</sup> Patricia W. Birnie, Alan E. Boyle, and Catherine Redgwell, *International Law and the Environment* (Oxford University Press, 2009), 612-616.

<sup>16</sup> Annecoos Wiersema, "Wildlife," in *The Oxford Handbook of International Environmental Law*, 2021, 566-559, <https://doi.org/10.1093/law/9780198849155.003.0032>.

<sup>17</sup> Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity, Decision V/6 Section A, Ecosystem approach, 15 - 26 May 2000 - Nairobi, Kenya.

<sup>18</sup> Philippe G. Le Prestre, *Governing Global Biodiversity: The Evolution and Implementation of the Convention on Biological Diversity* (Taylor & Francis, 2016), 1

<sup>19</sup> Wiersema, "Wildlife", 567.

a national level.<sup>20</sup> This gap could be attributed to the respective instruments and indicators, or the fact that the greatest assets of biodiversity lie within middle and low-income countries.<sup>21</sup> However, the implementation gap could also be linked to the more fundamental issue of trying to introduce abstract sustainability concepts in states where economic considerations dominate governance. Furthermore, national implementation is influenced by how states view their respective obligations under the CBD. Parties are required to fulfil a set of general commitments outlined in the CBD such as conserving biodiversity, using biodiversity sustainably, and sharing the access and benefits of biodiversity fairly and equitably.<sup>22</sup> The CBD leaves most of the practical responsibility of actually implementing these commitments up to the states themselves. Therefore, leaving room open for interpretation and adjustments to fit country specific contexts.<sup>23</sup>

Another influencing factor to national implementation of the CBD is how the state views its relation to other international agreements or national frameworks. In other words, with the many issues that the CBD addresses, the CBD could be mainly interpreted as a framework for environmental protection or as a framework for promoting sustainable development or for addressing social and economic issues such as the reduction of poverty or indigenous rights.<sup>24</sup> However, the specific emphasis given to each aspect largely depends on national political contexts. Vital sectors of national economies can control agenda setting and impact the power relations that exist within national politics.<sup>25</sup> These different factors can influence how each state party allocates its efforts and resources to align with the targets of the CBD.

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<sup>20</sup> Michael Hall, "Tourism and the Implementation of the Convention on Biological Diversity," *Journal of Heritage Tourism* 5, no. 4 (November 15, 2010): 281, <https://doi.org/10.1080/1743873x.2010.517844>.

<sup>21</sup> Hughes et al., "Challenges and Possible Solutions to Creating an Achievable and Effective Post-2020 Global Biodiversity Framework," 1.

<sup>22</sup> The Convention on Biological Diversity of 5 June 1992, art.6, art.10, art.15

<sup>23</sup> Henriksen, *International Law*. 201.

<sup>24</sup> William M. Adams et al., "Biodiversity Conservation and the Eradication of Poverty," *Science* 306, no. 5699 (November 12, 2004): 1146–49, <https://doi.org/10.1126/science.1097920>.

<sup>25</sup> Lester M. Salamon and John J. Siegfried, "Economic Power and Political Influence: The Impact of Industry Structure on Public Policy," *American Political Science Review* 71, no. 3 (September 1, 1977): 1042, <https://doi.org/10.2307/1960105>.

### 2.3 CBD concepts

Upon first inspection it might seem as if biodiversity conservation and management is built upon concepts that are in essence scientifically determined.<sup>26</sup> However, this view lacks sufficient reflection needed to understand the broader values that are involved with such concepts and their determined goals and actions. All knowledge production and actions is based on normative interpretations of reality. The values behind CBD concepts relate to how biodiversity is understood, how it is perceived to be affected and what is recommended to be done about this. Biodiversity conservation can thus be viewed as an intricate system of social processes and actors that attach normative meaning to it. Developing a better understanding of the way conservation problems are framed and the implications this has for the outcome of court cases is important as it has direct implications for people and nature. As it has direct consequences for the management of biologically important natural resources upon which many people rely.<sup>27</sup>

Internationally agreed upon standards that make up the CBD support the legal conditions for communities worldwide, who have access to legal systems, to challenge activities and projects that are harmful to biodiversity. However, the effectiveness of such legal processes is largely dependent on the stakeholders' conceptualisations of biodiversity concepts in practice. Concepts related to environmental governance are inherently multifarious, therefore their conceptualisations are open to many different perspectives. Stakeholders display diverse conceptualisations that each encompass varying elements such as the material content of concepts, the depth and breadth of their reach and the interaction with other legally ensured rights.<sup>28</sup> Essentially, these conceptualisations evolve through discourses which project ideological thought processes within the topic of biodiversity. Narrow or economically driven conceptualisations limit the level of successfulness that the related measures can establish for the conservation of biodiversity in practice.<sup>29</sup> For example, when in practice the conceptualisation of biodiversity only encompasses a limited view of

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<sup>26</sup> The CBD definition of biodiversity includes variety within species (genetic); between species; and between ecosystems. Whereas the definition of conservation includes ...

<sup>27</sup> Unai Pascual et al., "Biodiversity and the Challenge of Pluralism," *Nature Sustainability* 4, no. 7 (March 25, 2021): 568, <https://doi.org/10.1038/s41893-021-00694-7>.

<sup>28</sup> Nenad Šimunović, Franziska Hesser, and Tobias Stern, "Frame Analysis of ENGO Conceptualization of Sustainable Forest Management: Environmental Justice and Neoliberalism at the Core of Sustainability," *Sustainability* 10, no. 9 (September 1, 2018): 2, <https://doi.org/10.3390/su10093165>.

<sup>29</sup> Sara Rodrigues, "Localising 'the Rights of Nature': A Critical Discourse Analysis," *Green Letters* 18, no. 2 (May 12, 2014): 170–171, <https://doi.org/10.1080/14688417.2014.901895>.

relevant species and not diversity between all species within an ecosystem, the resulting management measures could negatively impact the whole ecosystem.

Correspondingly, Birnie et al. (2009) argue that in order to research the actual contribution of the CBD one should examine the implementation process of concepts rather than textually analyse the CBDs provisions.<sup>30</sup> The implementation of internationally determined CBD concepts in local contexts is accordingly the focus of this thesis. The internationally determined concepts of the CBD and their national perception are the object of this research. To be able to make comparisons across different countries and identify overarching patterns, this research analyses national court cases related to biodiversity concerns. The court cases that are selected all take place in countries that are party to the CBD. The research pursues a discourse analysis of the discourses that local and regional stakeholders perpetuate, focusing on the conceptualisation process of relevant CBD concepts.

The CBD stipulates general objectives and guiding principles for its party members which makes it a framework treaty. The text of the Convention was adopted in 1992 and went into force in 1993. The Conference of the Parties (COP) meets once every two years and forms the governing body that enacts progress reviews and sets priorities and targets accordingly. The Secretariat of the Convention on Biological Diversity (SCBD) in turn assists party governments with implementing the CBD and drafts documents in support of this.<sup>31</sup> COP decisions play a primary role in outlining how the Convention is to be implemented and actualisation of the treaty's text. Therefore, COP decisions and output documents offer a reliable data source to extract the international concepts that are relevant to party members. They are thus a good source for looking at the outcome of the international dynamic conceptualisation of the CBD goals.<sup>32</sup>

Accordingly, the most development around Article 8(j) of the CBD took place during the seventh COP meeting, in 2004. Article 8(j) of the CBD stipulates conditions for in-situ conservation that recognise the importance of including knowledge and activities of local communities. During the COP meeting the Akwé: Kon Guidelines and the Addis Ababa

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<sup>30</sup> Birnie, Boyle, and Redgwell, *International Law and the Environment*, 617.

<sup>31</sup> Bernd Siebenhüner, "Administrator of Global Biodiversity: The Secretariat of the Convention on Biological Diversity," *Biodiversity and Conservation* 16, no. 1 (January 1, 2007): 259–74, <https://doi.org/10.1007/s10531-006-9043-8>.

<sup>32</sup> Louisa Parks, *Benefit-Sharing in Environmental Governance: Local Experiences of a Global Concept* (Routledge, 2019), 108.

Principles and Guidelines were adopted.<sup>33</sup> The Akwé: Kon Guidelines were developed in collaboration with representatives of indigenous and local communities, governments, non-governmental organisations, and other stakeholders. The guidelines provide a framework for conducting cultural, environmental, and social impact assessments in accordance with indigenous and local knowledge and practices.<sup>34</sup> The Addis Ababa Principles and Guidelines on the Sustainable Use of Biodiversity were developed to provide guidance for the sustainable use of biodiversity at the national and local levels. Overall, the Addis Ababa Principles and Guidelines aim to promote the sustainable use of biodiversity for the benefit of both present and future generations, while also ensuring the conservation of biodiversity and the maintenance of ecosystem services.<sup>35</sup>

Unfortunately, during the tenth COP in 2010 it was established that not a single party reached the targets set under the CBD. This failure to reach the goals has been attributed to a combination of factors such as inadequate funding, lacking knowledge, low priority, and limited action combined with an undervaluation of biodiversity from many state governments of the parties.<sup>36</sup> However, during this same COP meeting, the parties acknowledged this and adopted the Strategic Plan for Biodiversity 2011–20 and the related Aichi Biodiversity Targets. The strategic plan and targets were meant to stimulate and facilitate national implementation through national targets. Furthermore, they were constructed to not only guide the work under the Convention but also the whole United Nations (UN) structure. In line with this, the work of other conventions has been influenced by these Aichi Targets since

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<sup>33</sup> Louisa Parks, “Spaces for Local Voices? A Discourse Analysis of the Decisions of the Convention on Biological Diversity,” *Journal of Human Rights and the Environment* 9, no. 2 (September 1, 2018): 141–70, <https://doi.org/10.4337/jhre.2018.02.02..>

<sup>34</sup> Leena Heinämäki, Thora Martina Herrmann, and Antje Neumann, “The Protection of the Culturally and Spiritually Important Landscapes of Arctic Indigenous Peoples under the Convention on Biological Diversity and First Experiences from the Application of the Akwé:Kon Guidelines in Finland,” *The Yearbook of Polar Law* 6, no. 1 (March 11, 2014): 189–225, [https://doi.org/10.1163/1876-8814\\_008](https://doi.org/10.1163/1876-8814_008).

<sup>35</sup> Claudia Ituarte-Lima, Amelie Dupraz-Ardiot, and Constance L. McDermott, “Incorporating International Biodiversity Law Principles and Rights Perspective into the European Union Timber Regulation,” *International Environmental Agreements-Politics Law and Economics* 19, no. 3 (May 4, 2019): 255–72, <https://doi.org/10.1007/s10784-019-09439-6>.

<sup>36</sup> Ademola A. Adenle, “Failure to Achieve 2010 Biodiversity’s Target in Developing Countries: How Can Conservation Help?,” *Biodiversity and Conservation*, (Springer, 2012): 2435–2442 <https://doi.org/10.1007/s10531-012-0325-z>.

then. This shows the wide ranging influential role of the CBD as well.<sup>37</sup> Given their relative importance to national implementation, the text of the Convention, Aichi Targets, the respective national targets, and the related indicators are used as the main sources of CBD concepts. The Aichi Targets are organised in five strategic goals that re-emphasise the main themes of the original text of the CBD.

These strategic goals include the following:

- A) addressing the underlying causes of biodiversity loss and integrating biodiversity concerns into decision-making;
- B) reducing direct pressures on biodiversity and promoting sustainable use;
- C) safeguarding ecosystems, species, and genetic diversity as a means to enhance biodiversity;
- D) enhancing benefits to all people from biodiversity and ecosystem services; and
- E) improving the processes for implementation with participatory planning, knowledge management, and capacity building.<sup>38</sup>

Within these many principles and guidelines, there are several main concepts that are crucial for biodiversity conservation on a national scale that are of relevance to the selected court cases within this thesis which are the following:

## **Biodiversity**

The way in which biodiversity is conceptualised by relevant stakeholders, has direct implications for its management. The CBD emphasises multiple dimensions of biodiversity that form the foundation for its conceptualisation. The exact definition of biological diversity outlined in Article 2 of the CBD includes variability among living organisms native to all types of ecosystems as well as diversity within and between species and ecosystems.<sup>39</sup> The CBD thus highlights three important dimensions within this definition of biodiversity. This definition provides an overarching umbrella that covers varying interests that exist within the conservation movement. However, mainstream conservation efforts over time have still been centred around conceptualisations of biodiversity relating to charismatic and aesthetic

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<sup>37</sup> Maria J. Ortiz, “Aichi Biodiversity Targets on Direct and Indirect Drivers of Biodiversity Loss,” *Environmental Law Review* 13, no. 2 (May 1, 2011): 100–106, <https://doi.org/10.1350/enlr.2011.13.2.121>.

<sup>38</sup> Wiersema, “Wildlife”, 566-569.

<sup>39</sup> The Convention on Biological Diversity of 5 June 1992, Article 2.



species.<sup>40</sup> Apart from the literal definition, the CBD framing of biodiversity also takes on an anthropocentric perspective that is driven by the idea that this would enable individuals to recognise the relevance of biodiversity within their lives. The Preamble of the CBD acknowledges the differing values attributed to biodiversity such as “social, economic, scientific, educational, cultural, recreational and aesthetic values”.<sup>41</sup> Article 2 of the CBD takes on an even more anthropocentric stance by defining biological resources as resources that possess actual or prospective usage or value for humanity. Thus the CBD positions biodiversity in an anthropocentric frame that underlines it as an essential asset to be protected for the sake of human well-being.

### **Livelihoods**

The concept of livelihoods is essential in biodiversity conservation as conceptualisation of livelihoods and its perceived connection to biodiversity has a direct impact on the conservation efforts directed to biodiversity. Additionally, livelihood dependence of communities on biodiversity resources affects the public support of conservation policies.<sup>42</sup> Therefore, the way in which livelihoods are conceptualised with regards to biodiversity influences conservation strategies. Although the term livelihoods is not explicitly included in the text of the Convention, the Preamble acknowledges that there are many local and indigenous communities directly dependent on biological resources. Thereby, the Convention sets up the basis for including livelihoods in conservation considerations. The Addis Ababa Principles and Guidelines recognise the significance of livelihoods by stating that often the poorest communities and their cultures are substantially dependent on biodiversity, for their livelihoods.<sup>43</sup> Furthermore, the Akwé: Kon guidelines mention that local community livelihoods, alongside biodiversity, can be negatively impacted by development projects and therefore require consideration in impact assessments.<sup>44</sup> The emphasis on livelihoods was consolidated by the 14th Aichi Target that linked ecosystem services that require safeguards to livelihoods.

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<sup>40</sup> Pascual et al., “Biodiversity and the challenge of pluralism”, 568

<sup>41</sup> The Convention on Biological Diversity of 5 June 1992, Preamble.

<sup>42</sup> Sanjay K. Nepal and Arian Spiteri, “Linking Livelihoods and Conservation: An Examination of Local Residents’ Perceived Linkages Between Conservation and Livelihood Benefits Around Nepal’s Chitwan National Park,” *Environmental Management* 47, no. 5 (March 3, 2011): 727–38, <https://doi.org/10.1007/s00267-011-9631-6>.

<sup>43</sup> The Convention on Biological Diversity (2004) Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, CBD Decision VII/128, p.7

<sup>44</sup> Convention on Biological Diversity (2004) Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment, CBD Decision VII/16, Foreword.

## Protected area

The text of the Convention stresses the importance of prioritising in-situ conservation of biodiversity. The CBD defines the term protected area in Article 2 as a geographically outlined area which is specially managed to fulfil specific conservation objectives.<sup>45</sup> Article 8(a) of the Convention stipulates that a system of protected areas should be established where special measures are taken in order to achieve in-situ conservation.<sup>46</sup> Establishing protected areas is thus portrayed as the main conservation method for achieving in-situ conservation objectives within the text of the Convention. Aichi Target 11 underscores the importance of protected areas and by advocating for an increase in protected area coverage. Target 11 furthermore addresses the need for these protected areas to be managed equitably.<sup>47</sup> The call for equitable management of protected areas is important as management practices have been criticised for having negative effects with impacts unequally distributed within local communities. The management of protected areas thus also has an impact on livelihoods which links to the public support for conservation measures. The inclusion of communities within management is crucial as more than two thirds of protected areas are inhabited by subsistence communities.<sup>48</sup>

## Development

Development is another concept that is inherently linked to biodiversity. Many economic activities that drive development are damaging to biodiversity such as commercial fishing, agricultural practices, forestry operations, mining, and energy production.<sup>49</sup> Therefore, economic development is historically seen as antithetical to biodiversity conservation, and for good reason. However, the desire to achieve economic growth, enhance living standards, and combat poverty continues to drive the agendas globally, especially for developing countries. The drive for economic development is therefore acknowledged by the

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<sup>45</sup> The Convention on Biological Diversity of 5 June 1992, Article 2.

<sup>46</sup> Ibid, Article 8(a).

<sup>47</sup> The Convention on Biological Diversity (2010) Strategic plan 2011-2020 Aichi Biodiversity Targets, Target 11.

<sup>48</sup> Caroline Ward, Lindsay C. Stringer, and George W. Holmes, "Protected Area Co-Management and Perceived Livelihood Impacts," *Journal of Environmental Management* 228 (December 15, 2018): 1–12, <https://doi.org/10.1016/j.jenvman.2018.09.018>.

<sup>49</sup> Sandra Díaz et al., "Pervasive Human-Driven Decline of Life on Earth Points to the Need for Transformative Change," *Science* 366, no. 6471 (December 13, 2019), 4. <https://doi.org/10.1126/science.aax3100>.

CBD. Within the Preamble of the Convention it is recognised that developing countries give priority to economic and social development. The Preamble furthermore calls for developed countries to allocate financial resources towards helping the developing countries reach their objectives under the CBD.<sup>50</sup> The CBD also calls for sustainable development in areas adjacent to protected areas in Article 8(e).<sup>51</sup> The Addis Ababa Principles and Guidelines stipulate that sustainable use of biodiversity is an essential aspect of sustainable development.<sup>52</sup> Additionally, the Akwé: Kon Guidelines emphasise that knowledge and values of local and indigenous communities should also be seen as an integral part of sustainable development.<sup>53</sup> In line with this, the Sustainable Development Goals of the UN are incorporated into the indicators designed for the Aichi Biodiversity Targets.

### **Environmental impact assessment**

Environmental impact assessments (EIAs) are tied in with the concepts of protected areas and especially with development. Article 14 of the Convention stipulates the need for parties to introduce the requirement for carrying out environmental impact assessments, incorporating public participation where appropriate, for projects that pose a threat to biodiversity with the aim to avoid or minimise the effects.<sup>54</sup> The option to include public participation in EIAs in the text of the Convention is left completely to the discretion of the parties. EIAs are complex as they encompass many substantive elements such as social and scientific aspects and are also associated with procedural requirements. Consequently, the Akwé: Kon guidelines were created to specifically address all the aspects of EIAs in the context of local and indigenous communities. The guidelines include advice on incorporating cultural, social and considerations of local communities with environmental considerations within EIA procedures. The guidelines furthermore address the need for EIAs to incorporate interrelated socio-economic aspects such as cultural and human health impacts.<sup>55</sup> EIAs thus encompass many aspects and are largely dependent on the policies implemented by the parties.

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<sup>50</sup> The Convention on Biological Diversity of 5 June 1992, Preamble.

<sup>51</sup> Ibid, Article 8(e).

<sup>52</sup> CBD (2004) Addis Ababa Principles and Guidelines, Decision VII/128, p.5.

<sup>53</sup> CBD (2004) Akwé: Kon Voluntary Guidelines, Decision VII/16, p.22.

<sup>54</sup> The Convention on Biological Diversity of 5 June 1992, Article 14(a).

<sup>55</sup> CBD (2004) Akwé: Kon Voluntary Guidelines, Decision VII/16, p.3.

## 2.4 From international law to national and regional case law

Within treaty law, interpretation is customarily seen as a process of giving meaning to texts in order to establish rights and obligations to the constituent parties. There is a great body of literature on treaty interpretation. The scholarship on international law interpretation mostly rests on the framework that is outlined in the Vienna Convention on the Law of Treaties (VCLT).<sup>56</sup> Interpretation and translation of established international environmental law is paramount to its application and successfulness in achieving its objectives. However, the literature on interpretation of international law is mainly constricted by the overdependence on the VCLT framework. Corresponding approaches to legal interpretation such as the textual approach, the restrictive approach, the teleological approach, and the effectiveness principle apply rules to the methodology of treaty interpretation.<sup>57</sup> The VCLT framework has provided scholars and international lawyers with structural continuity and the sense of objectivity to base their claims.<sup>58</sup> However, the framework has also been criticised for being too narrow. This is especially true in the case of environmental law interpretation. Traditionally, international agreements had been exclusively between states. With MEAs, Compliance mechanisms operate between the respective regime and its parties. However, they are usually weak and rarely utilised. Furthermore, within environmental law these agreements increasingly involve non-state actors. These non-state actors include lobbyists, pressure groups, scholars and other local actors that have a growing influence on the development of codes of conduct and the creation of principles.<sup>59</sup> These actors use their framing power to set agendas and impact the outcomes of MEAs.<sup>60</sup> Thus, the conceptualisation process of environmental legal terms which are stipulated in MEAs, is broader than what legal scholarship conveys. As a response, critical legal theory developed to take this power into consideration. Critical environmental law aims to examine the nature of the relationship between law and the ecological and social systems that it operates within. However, critical legal theory does not adequately address the actual process of the formation and conceptualisation of the legal environmental concepts and the way these are utilised. Legal language can be characterised both as universal, as it sets rhetorical standards, and it

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<sup>56</sup> Daniel Peat and Matthew Windsor, "Playing the Game of Interpretation," in *Interpretation in International Law* (Oxford University Press, 2015), 6, <https://doi.org/10.1093/acprof:oso/9780198725749.003.0001>.

<sup>57</sup> James Crawford, "The Law of Treaties," in *Brownlie's Principles of Public International Law*, 9th ed. (Oxford University Press, 2012), 379-380. <https://doi.org/10.1093/he/9780198737445.003.0016..>

<sup>58</sup> Peat and Windsor "Playing the Game of Interpretation", 5-6.

<sup>59</sup> Bodansky, D. "The art and craft of international environmental law", 156-157.

<sup>60</sup> Morrison et al., "The Black Box of Power in Polycentric Environmental Governance.", 3.

can be characterised as contingent as its interpretation and invocation are dependent on the historical and social contexts. CDA provides a comprehensive theory to uncover the mechanisms that underpin the contingent nature of environmental legal language. However, within the literature on environmental discourses and critical law, CDA is rarely used.<sup>61</sup>

Within the literature, a differentiation is made between legal interpretation and legal construction. Where legal interpretation pertains purely to the concept of semantic grammatical meaning of the legal texts. Whereas, legal construction considers the application of the semantic meaning to concrete cases. Environmental law encompasses content that continuously requires it to venture into unfamiliar territories. The transboundary nature of environmental issues challenges the sovereignty of states while scientific uncertainty is still prevalent in many environmental issues which complicates the implementation of universal laws and regulations. As a result, environmental law is in constant need of revision when it comes to its conventional legal institutions and norms.<sup>62</sup> This research therefore focuses on the construction of environmental laws and concepts, specifically examining the ambiguous nature and the influence of non-governmental actors on conceptualization and interpretation.

The legal system of international environmental law is evolving continuously with influences from many different actors. Therefore, this thesis takes on a descriptive approach to unfold the aspects of the phenomenon of interpretation within the specific context of biodiversity court cases. The selected cases take place in regional and local settings. Environmental court cases reveal differences between the perspectives of varying local and regional groups of actors. These differences can reveal important tensions in the relationship between actors and more broadly, between nature and society.<sup>63</sup> In order to reach the goal of conserving biodiversity, it is important to expand the understanding of the relationships among different actors that influence the interaction with biodiversity resources and how this differs across national socio-economic contexts.<sup>64</sup> International environmental law establishes concepts which are largely ambiguous and multifaceted which makes their application dependent on interpretation within concrete cases which unfold in local and regional contexts. This makes local and regional contexts a critical element in the success of

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<sup>61</sup> Gellers, “Greening Critical Discourse Analysis”, 482-493.

<sup>62</sup> Peat and Windsor “Playing the Game of Interpretation”, 11.

<sup>63</sup> Gellers, “Greening Critical Discourse Analysis”, 485.

<sup>64</sup> Parks, *Benefit-Sharing in Environmental Governance: Local Experiences of a Global Concept*, 4-19.

environmental law.<sup>65</sup> Therefore, all the elements covered in this literature review illustrate that a comparative, bottom-up approach to the research topic is most appropriate.

### 3. Theoretical Framework

This chapter outlines the theoretical framework that structures the research of this thesis. This framework consists of three sections. The first two sections address the theories that inform the choice of analysis method, explaining how the chosen methods are relevant to answering the main research question of which factors influence the interpretation and application of international environmental concepts on a national case level. The last section of this theoretical framework addresses important elements that contribute to the reflection of the significance of the results on an international level.

#### 3.1 Discourse analysis in legal context

This thesis answers the research questions through a comparative case study of national and regional court cases related to biodiversity. As the CBD leaves much of the responsibility of implementation up to the individual parties to the Convention, there is room for different discourses to influence the interpretation of crucial concepts. A prominent example can be found in the degree of ambiguity with regard to the conceptualisation of the term “environment”. There is no authoritative definition of ‘the environment’. However, existing international law has regulated certain environmental issues. The definition of the term is dependent on the context. Operationally, the term has evolved to include a variety of physical components, such as water or air, biological components, such as species and diversity, and even cultural aspects.<sup>66</sup> Overall, the connotations associated with environmental concepts, directly impact means of governance. In turn, such connotations are dependent on the meaning-making by the involved actors.

In this context, national and regional case law related to biodiversity is influenced by a network of local and international actors that each uphold unique perspectives and interests. Within biodiversity conservation, turning conceptual ideas into practice revolves around communication, negotiation bargaining and, ultimately, argumentation.<sup>67</sup> The influence of each actor is reflected in the level of consensus that their narrative is able to produce. This

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<sup>65</sup> Bodansky, “The art and craft of international environmental law”, 7.

<sup>66</sup> Henriksen, *International Law*, 187.

<sup>67</sup> Esther Carmen, Allan D. Watt, and Juliette Young, “Arguing for Biodiversity in Practice: A Case Study from the UK,” *Biodiversity and Conservation*, June 1, 2018, 1614-1615. <https://doi.org/10.1007/s10531-016-1264-x>.

relates to their framing power.<sup>68</sup> The foundational premise of discourse theories includes that discourse involves a collaborative exchange of concepts. Discourse analysis focuses on the language that shapes the differentiating ways of defining concepts and maintains that language in this way is able to contribute to the power of actors.<sup>69</sup> CDA, like discourse analysis, investigates the ways in which language produces and controls social and physical phenomena.<sup>70</sup> However, CDA additionally lays emphasis on the role of language as a source of power.<sup>71</sup>

As illustrated in the literature review, this linguistic mode of power is an important aspect within multilevel governance. Biodiversity concepts, particularly due to their inherently ambiguous and context-dependent nature, are subject to the framing power of multiple actors. Therefore, the application of biodiversity concepts at the national and regional levels depends not only on authoritative government hierarchies but also on the influence of actors such as lobbyists, non-governmental organisations, media, and public opinion which are active in both national and international governance.<sup>72</sup> CDA thus provides a framework for investigating the formation of dominant discourses and the framing power of actors in a given context. As the aim of this thesis is to analyse the various discourses that shape the interpretation of key CBD concepts, CDA provides a suitable framework for this study. Discourses reflect the way in which different stakeholders perceive the same issue or concept. Thus by focusing on the varying discourses, the conceptualisation of CBD concepts can be studied.

Michel Foucault significantly contributed to the development of this aspect of power within discourse analysis. Correspondingly, Foucault describes discourse as an accumulation of statements which utilise specific language to talk about and represent a particular kind of knowledge about a topic. In this way discourses provide a means for comprehending and constructing topics in a particular manner. Importantly, discourses also limit use of language that allows for other interpretations. For example, if a discourse depicts a protected area as blocking economic development, it subsequently excludes other perceptions such as environmental importance from its conceptualisation. Natural resources, including

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<sup>68</sup> Morrison et al., “The Black Box of Power in Polycentric Environmental Governance.”, 3.

<sup>69</sup> Gellers, “GREENING CRITICAL DISCOURSE ANALYSIS.”, 482-493.

<sup>70</sup> Maarten Hajer, *Words Matter in Policy and Planning: Discourse Theory and Method in the Social Sciences* (Koninklijk Nederlands Aardrijkskundig Genootschap, 2006), 64-74.

<sup>71</sup> Linda J. Graham, “Discourse Analysis and the Critical Use of Foucault,” *The Australian Association of Research in Education Annual*, 2005, 4. <https://orcid.org/0000-0002-6827-808X>.

<sup>72</sup> Morrison et al., “The Black Box of Power in Polycentric Environmental Governance.”, 3.

biodiversity, are fundamentally linked to politically sensitive and power-laden social relationships. The discourses surrounding biodiversity management thus depict the way that people think and communicate about certain topics.<sup>73</sup> CDA analyses the various discourses that differentiate perspectives on a topic, as well as who perpetuates them and why. By focusing on elements such as which actors perpetuate which discourse, CDA allows researchers to move beyond speculation and demonstrate the real life mechanisms through which laws and policies are influenced and interpreted.<sup>74</sup>

In order to underpin the terminologies of the varying discourses, this thesis analyses the discourses surrounding regional and national court cases linked to biodiversity by specifically looking at statements and media texts from actors that contributed to the court cases to underpin the terminologies of the varying discourses. Generally, competing or new forms of terminologies of a discourse do not automatically imply that institutional aspects (such as laws, norms and procedures) also reflect this shift. As Arts and Buizer (2009) contest, an analytical focus on speech and text only will not directly result in insight into institutional changes. However, this thesis analyses discourses within the context of resolved court cases. Therefore, the institutional outcome is already clear. As the prevailing discourses are evident from the outcome of the court cases. Consequently, a link can be made between the analysed discourses and actual institutional change.<sup>75</sup>

As mentioned before, an explanation for the implementation gap of the Convention could be linked to the fundamental issue of attempting to implement sustainability concepts within opposing economically focused contexts.<sup>76</sup> In some cases sustainability considerations seem to run counter to the considerations related to economic development. Biodiversity court cases also commonly present a conflict between economic and ecological considerations. These contesting narratives are defined within environmental discourse studies. Generally, environmental discourses and industrial discourses are considered to be antithetical to each other. Therefore, Dryzek argues that environmental discourses can be categorised on a spectrum of how far or not it differs from industrialist discourse, ranging from reformist to radical. The distinction between radical and reformist discourses is linked to the related sustainable outcomes of governance. Additionally, the spectrum of

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<sup>73</sup> Stuart Hall, “The West and the Rest: Discourse and Power [1992],” in *Race and Racialization* (Duke University Press, 2018), 141–84, <https://doi.org/10.1215/9781478002710-009>.

<sup>74</sup> Graham, “Discourse analysis and the critical use of Foucault”, 3

<sup>75</sup> Bas Arts and Marleen Buizer, “Forests, Discourses, Institutions,” *Forest Policy and Economics* 11, no. 5–6 (October 1, 2009): 342–343, <https://doi.org/10.1016/j.forpol.2008.10.004>.

<sup>76</sup> Hall, “Tourism and the Implementation of the Convention on Biological Diversity.”, 281.



environmental discourse ranges from conforming to status quo social constructions, prosaic, to including social transformative ideas, imaginative.<sup>77</sup> Below in Table 1 the spectrum of environmental discourse is depicted.

Within imaginative discourses, environmental issues are depicted as opportunities instead of problems. The imaginative perspective aims to harmonise the economic and environmental considerations. Reformist imaginative discourses align with the notion of sustainability. They support the notion of ecological modernization which aims to highlight the interdependence between economic growth and environmental protection. Whereas radical imaginative discourses, referred to as green radicalism, outright rejects the economically driven structures of the industrial society.

Within prosaic discourses, environmental issues are more seen as problems in need of addressment. In this context, reformist prosaic discourse accepts the political and economic structures that make up society but also acknowledges the need for modifications to deal with environmental issues. The discourse is therefore associated with problem-solving. These modifications within this discourse range from incorporating environmental expertise into administrative structures to pricing environmental impacts. Contrastingly, radical prosaic discourse stresses the planetary boundaries that are challenged through unchecked economic growth. This discourse, referred to as limits and survival, is radical in the sense that it promotes power shifts and it is prosaic in the sense that these power shifts are proposed within the existing structures of the industrial society by advocating for elites to take on more responsibility.

**Table 1:** Classifying Environmental Discourses. Adapted from: Dryzek, J. S. (December, 2021).

	<u>Reformist</u>	<u>Radical</u>
<u>Prosaic</u>	Problem-solving	Limits and survival
<u>Imaginative</u>	Sustainability	Green Radicalism

The different environmental discourses each hold worldviews that dictate how the actors who maintain them see environmental issues and what type of responses are possible and available. Therefore, each discourse aligns with different governmental responses and determines specific conservation agendas. The straightforward framework outlined by

<sup>77</sup> Dryzek, J. S. “Discourses”, p.35-36

Dryzek, forms a clear structure for organising the different discourses within the national and regional case studies. This framework acts as the basis for justifying the impact that the discourses pose on governance outcomes. Additionally, discourses evolve over time and reflect institutional changes thus this thesis contributes to the broader pursuit of tracking environmental discourses.<sup>78</sup>

### 3.2 Stakeholder analysis

In addition to the critical discourse analysis, a stakeholder analysis will be carried out. The stakeholder analysis complements the critical discourse analysis as it provides a structured overview of the relevant stakeholders involved in the selected court cases. All court cases concern biodiversity and natural resource management issues. Biodiversity and natural resource use systems are dynamic and complex systems that involve multiple actors. Additionally, the issues and actors that these systems involve are ever-changing. This contributes to the uncertainty when it comes to the management of biodiversity and natural resources. The preamble text of the CBD explicitly acknowledges this lacking information on and knowledge of biological diversity and stresses the urgency to increase scientific capacity in order to inform the implementation of the appropriate measures. The management of these systems is also influenced by many stakeholders that are dependent on them or attribute value to them. These stakeholders not only include local communities, but also stakeholders that may not actually be in close proximity to the natural resource such as government agencies, NGOs, markets, and industries. The term ‘stakeholder’ encompasses individuals or collectives that have a stake in the given natural resource and the management of it.<sup>79</sup>

Stakeholder analysis has been increasingly used in natural resource management and the relevance of the method has also been reflected upon in the literature and research. This is because stakeholder analysis is able to underpin sources of conflict, uncover and address the marginalisation of particular actors, as well as illustrate the varying interests.<sup>80</sup> Therefore, this additional method is applied to clearly identify the relevant stakeholders and depict their respective interests in the system. Furthermore, stakeholder analysis focuses on stakeholders’

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<sup>78</sup> John S. Dryzek, *The Politics of the Earth: Environmental Discourses* (Oxford University Press, 2013), 19.

<sup>79</sup> Yves Renard and Caribbean Natural Resources Institute, *Guidelines for Stakeholder Identification and Analysis: A Manual for Caribbean Natural Resource Managers and Planners*, 2004, 2-5.

<sup>80</sup> Christina Prell, Klaus Hubacek, and Mark Reed, “Stakeholder Analysis and Social Network Analysis in Natural Resource Management,” *Society & Natural Resources* 22, no. 6 (June 8, 2009): 502, <https://doi.org/10.1080/08941920802199202>.

power, interests, roles, and networks or coalitions. When the stakes or interests of stakeholders correspond on a specific topic, they can form coalitions. Uniting efforts can be useful in such cases where positions or manners of affliction coincide. Analysing such interconnected relationships among actors is an vital aspect of stakeholder analysis as they can result in institutional change and power shifts. Such relationships are an influential aspect in modern governance of natural resources.

Sustainability transitions such as those promoted by the CBD not only encompass socio-technical transformation but also socio-political shifts.<sup>81</sup> For example, many of the targets that the CBD sets out, call for more community engagement within natural resource use systems. Such proposed socio-political shifts can encounter resistance from actors as they can lead to decreased autonomy as well as higher management costs.<sup>82</sup> Therefore, it is useful to categorise the stakeholder types to highlight their roles within sustainability issues and transitions and to see how the stakeholders utilise their framing power to further their interests. This also links the literature gaps relating to the material content of CBD concepts and power relations that are outlined in the literature review.

In order for the analysis to complement the discourse analysis, it focuses on the identification of the relevant stakeholders, the governance level within which they operate, their interests, and their respective constituencies. The stakeholder identification and analysis of their interests provides a basic understanding of the social and institutional context within which the court cases take place. The constituencies refer to the overlapping interests and discourses among the stakeholders. By including the constituencies a clearer understanding of the power relations within the complex and dynamic governance settings of the selected court cases will be created.<sup>83</sup>

### 3.3 International governance perspective

This thesis is focused on interpretation and implementation of CBD concepts. While the research starts out from local and regional case studies in order to identify power relations

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<sup>81</sup> Flor Avelino and Julia Wittmayer, “Shifting Power Relations in Sustainability Transitions: A Multi-Actor Perspective,” *Journal of Environmental Policy & Planning* 18, no. 5 (October 19, 2016): 628–49, <https://doi.org/10.1080/1523908x.2015.1112259>.

<sup>82</sup> Christopher V. Hawkins, “Smart Growth Policy Choice: A Resource Dependency and Local Governance Explanation,” *Policy Studies Journal* 39, no. 4 (November 1, 2011): 679–707, <https://doi.org/10.1111/j.1541-0072.2011.00427.x>.

<sup>83</sup> Chanrith Ngin and Willemijn Verkoren, “Understanding Power in Hybrid Political Orders: Applying Stakeholder Analysis to Land Conflicts in Cambodia,” *Journal of Peacebuilding and Development* 10, no. 1 (April 2, 2015): 29, <https://doi.org/10.1080/15423166.2015.1009791>.

and material content contributing to concept interpretation on these levels, the findings of the research raise points that are relevant to international level governance of biodiversity. This research thus holds relevance on an international level as it sheds a light on the interaction between varying national and regional contexts and international concepts. By relating the international conceptualisation of the same concepts that are relevant to the outcome of the national and regional court cases, a comprehensive view on the norm diffusion of the CBD concepts is established. Norm diffusion concerns legal orders influencing one another.<sup>84</sup> By referring back to the internationally intended outcomes of a norm or concept, this thesis adopts a multilevel perspective that is useful for analysing how concepts move across governance levels and borders, and the roles of varying stakeholders within this process. In her research, Sarfaty (2007), demonstrates the contribution that local stakeholders make to shaping how international norms are adopted within their communities. This highlights the process of how terms are redefined and conceptualised as they move across governance levels.<sup>85</sup>

As outlined in the literature review, multilevel governance and especially the interaction of these levels is highly complex. The CBD has an impressive number of 196 state parties which cover a range of geographic regions and levels of development.<sup>86</sup> Therefore, the CBD has to take into account the impact of its concepts on varying local and regional contexts. Therefore, it is valuable to analyse the process of how specific concepts and norms that diffuse are conceptualised within different contexts, bringing the discussion to framing power of local stakeholders, and highlighting where biodiversity concepts are given additional connotations or have different outcomes. This is reflected in the discourses in global environmental governance, to understand how different discourses affect local communities, and the other way around.

This process helps guide solutions to address environmental problems. The literature on discourses and their role in norm diffusion also touch upon the discourses within international environmental governance. The literature is inter alia critical of marxist and colonial hegemonic discourses that exist within international governmental discourses.

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<sup>84</sup> Parks, *Benefit-Sharing in Environmental Governance: Local Experiences of a Global Concept*, 7.

<sup>85</sup> Galit A. Sarfaty, "International Norm Diffusion in the Pimicikamak Cree Nation: A Model of Legal Mediation," *Harvard International Law Journal* 48, no. 2 (January 1, 2007): 441–82, [https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1304&context=fac\\_pubs](https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1304&context=fac_pubs).

<sup>86</sup> Alvin Chandra and Anastasiya Idrisova, "Convention on Biological Diversity: A Review of National Challenges and Opportunities for Implementation," *Biodiversity and Conservation* 20, no. 14 (September 23, 2011): 3295–3316, <https://doi.org/10.1007/s10531-011-0141-x>.

However, the CBD is acknowledged for not enforcing such discourses and including intrinsic values of nature as well as the indigenous roles in biodiversity conservation.<sup>87</sup> Yet, this does not mean that the CBD does not include concepts with discourses that can be problematic in their implementation. For example, the CBD has been criticised for stimulating green grabs, which constitute the confiscation of lands or resources for conservation means.<sup>88</sup> The CBD is created through international discourse, and therefore requires constant examination of its concepts and their actual impact. A bottom up approach allows for common elements to emerge in relation to specific concepts that can inform future international decisions.

#### 4. Research Design

This section outlines the research design that is employed in this thesis. First, the criteria used for the case selection is explained, followed by a short description of each case. Next, the methods used for the qualitative data collection of each case are described. Lastly, a description of the data analysis process that was followed is presented.

##### 4.1 Case selection

International environmental law related to biodiversity is influenced by a network of different local, regional and international actors. Each provide distinct perspectives and interests which influence the interpretation and application of biodiversity concepts in practice.<sup>89</sup> To be able to study the conceptualisation of important CBD concepts within varying national and regional contexts, four court cases relating to biodiversity were selected. The selected court cases are all related to issues of biodiversity law application and interpretation and take place in countries with widely varying levels of development. Furthermore, all countries are parties to the Convention. This allows for a comparative case study of how the concepts of the CBD are interpreted within different national and regional contexts. The critical discourse analysis framework that is applied to the cases enables an analysis of the governmental and societal dynamics that could influence conceptualisation. The results of this analysis will allow for a comparison of how CBD concepts are interpreted and used by different stakeholders and within differing contexts. The unit of observation thus

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<sup>87</sup> Parks, *Benefit-Sharing in Environmental Governance: Local Experiences of a Global Concept*, 1-19.

<sup>88</sup> Catherine Corson and Kenneth G. MacDonald, “Enclosing the Global Commons: The Convention on Biological Diversity and Green Grabbing,” *The Journal of Peasant Studies* 39, no. 2 (April 19, 2012): 263–83, <https://doi.org/10.1080/03066150.2012.664138>.

<sup>89</sup> Carmen, Watt, and Young, “Arguing for Biodiversity in Practice: A Case Study from the UK.”, 1600.

includes concepts stemming from the CBD and their differing perceptions. The main overarching feature across the cases is the fact that biodiversity considerations played a decisive role in the final decision of the Court. Furthermore, local communities and NGOs contributed to the decisions of the cases.

Given these criteria, the following concrete cases on biodiversity law were selected:

### **Poland: Białowieża Forest Case**

In April 2018, the European Court of Justice (CJEU) ruled that the logging permits for the Białowieża Forest, issued by the Polish government, were illegal. The Białowieża Forest is officially an UNESCO World Heritage and Natura 2000 Site and is the habitat of many unique animal and insect species, of which the remaining population of European bison is often the most well known.<sup>90</sup> The Puszcza Białowieża Natura 2000 site's ecosystem is of high biodiversity significance due to a large amount of old trees that are upwards of 100 years old and it inhabits areas that have historically been protected and therefore remain relatively undisturbed. The Polish Natura 2000 site covers an area of around 630 square kilometres and falls under the management of two different governing bodies. The section of the Białowieża forest that is a National Park, is under the authority of Białowieska Park Narodowy, Poland. The other section which covers 20% of the total Site, and is managed by the Polish State Forest Office also called Lasy Państwowe. In the latter State Forest section, so-called 'sanitary pruning/felling' was implemented since 2016 as a forest management measure. The measure basically entailed an increase in logging permits in the area and was issued by the Polish Minister for Environment to combat the European Spruce beetle 'infestation'.

Due to this new amendment to the earlier established 2012 forest management plan, almost three times as much wood harvesting was permitted in the name of forest management. After emerging critique from the European scientific community and formal complaints made by multiple environmental NGOs, the European Commission took legal action and filed an official complaint in July of 2017. Consequently, the CJEU ruled that in fact the Polish Government failed to fulfil its obligations under the Birds and Habitats Directive and ordered the instant repeal of the logging permits.<sup>91</sup>

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<sup>90</sup> "Białowieża Forest Case: Judgement by Court of Justice of the EU," IUCN, May 15, 2018, <https://www.iucn.org/news/world-commission-environmental-law/201805/bia%C5%82owie%C5%B4-ca-forest-case-judgement-court-justice-eu>.

<sup>91</sup> Judgment of the Court of Justice of the EU of 17 April 2018 in case C-441/17, Commission v Poland (Białowieża Forest).

This case is of significance to this research as it addresses standard setting for forestry management across Europe. Forest conservation measures differ among forest-related agreements and the COP has stressed the need for coherence across management strategies. The COP has additionally highlighted the need to mainstream biodiversity into the forestry sector. This case illustrates different conceptualisation of relevant CBD concepts such as ‘conservation measures’ and the effect on management of biodiversity.

### **Australia: Warkworth Open Cut Mine Case**

In April 2013, the Land and Environment Court of New South Wales (NSW) overturned the approval for an expansion project of the Mount Thorley-Warkworth (MTW) coal mine. At the time of the proposed expansion, the MTW open cut mine, located near the small village of Bulga, was abiding by a Development Consent put in place in 2003. This Development Consent was approved on the condition of the establishment of designated non-disturbance areas and habitat management in perpetuity. However, the new expansion project would include these exact areas that were implemented as avoidance measures for the initial Development Consent. Additionally, the mine would encroach much closer towards the village of Bulga, crossing the initially agreed upon boundaries leading to heightened disturbances such as increased dust and noise. Despite this breach of the initial Development Consent, the Minister for Planning and Infrastructure of NSW approved the new expansion project for the mine in 2012. The Minister delegated the independent Planning Assessment Commission (PAC) to evaluate the project, which was approved provided that biodiversity offsets were included to compensate for the damage to the biodiversity.

In reaction, the residents of Bulga set up the Bulga Milbrodale Progress Association and appealed the project approval with the assistance of the Environmental Defenders Office. The case was brought before the Land and Environmental Court of New South Wales which ruled in agreement of the resident’s appeal. The Court stated that the expansion project of the mine would have a significant adverse impact on the local biodiversity, the health and well-being of the residents which outweighed the perceived economic benefits. Furthermore, the Court concluded that the offset package upon which the project was approved did not sufficiently compensate for the adverse impacts of the project on the ecological community.<sup>92</sup>

This case is of significance to this research as it encompasses the process of balancing pertinent matters of environmental and social impact with economic benefits. It furthermore

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<sup>92</sup> Decision by the Land and Environment Court NSW on case *Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited*, NSWLEC 48 of 2013.

addresses the merits of biodiversity offsets as well as environmental assessments as conservation measures. Therefore the case highlights the use of CBD concepts within a contentious situation.

### **Philippines: JAPEX Oil Exploration in Tañon Strait Case**

In 2015 the Supreme Court of the Philippines ruled that the oil exploration that was being implemented by a Japanese petroleum exploration company (JAPEX) in the Philippines Tañon Strait was illegal. The petroleum exploration company JAPEX started drilling exploration wells in the Tañon Strait in 2007 after closing a service contract with the Department of Energy (DOE). The Tañon Strait is an environmentally important area and the habitat of marine wildlife and endangered species and is therefore a designated protected seascape area. However, the exploratory activities of JAPEX significantly impacted this important habitat and the species that depend on it. Furthermore, the local fishermen who depend on the fish stocks within this area, claimed to experience a stark decline in fish stocks due to the oil explorations.

In response to this development, the local fisherfolk, represented by the Central Visayas Fisherfolk Development Center (FIDEC), and two local lawyers, representing the affected local marine mammals, sued JAPEX and the case ended up in the Supreme Court of the Philippines. The Court stated that due to the designation of the Tañon Strait as a protected area, it falls under the Philippines National Integrated Protected Areas System Act of 1992. This Act specifically mandates that an environmental impact assessment (EIA) be carried out for any proposed actions that do not fall under the scope of the outlined management measures. This EIA must be conducted in order to obtain the mandatory Environmental Compliance Certificate. The Court ruled that JAPEX and the DOE did not comply with these requirements as no EIA was carried out prior to the first phase of the explorations which included a seismic survey in the protected area. Thus the Court concluded that JAPEX violated the laws set out in the National Integrated Protected Areas System Act of 1992.<sup>93</sup>

This case is of significance to this research as it involves the conceptualisation of CBD concepts such as the role of livelihoods of the local fishing community within biodiversity conservation as well as the idea of stewardship role for nature. Additionally, the ruling addresses the responsibility of the state government, including its agencies, to protect

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<sup>93</sup> Decision by the Republic of the Philippines Supreme Court on cases Resident Marine Mammals v. Sec'y Reyes, G.R. No. 180771, and Central Visayas Fisherfolk Development Center v. Sec'y Reyes, G.R. No.181527 of 2015.



the environment. The case thus provides a view of the actualisation of many important CBD concepts.

### **Tanzania: Serengeti National Park Highway Case**

In 2014, the East African Court of Justice declared that the plan initiated by the government of Tanzania to construct a highway across the Serengeti, was illegal. The government had initially proposed the plan to connect the more remote northern Tanzanian communities to the more rural areas. According to the government, the highway would result in significant socio-economic growth for around two million Tanzanians. The road would furthermore lead to a better infrastructure which increases the connectedness of the people to better healthcare as transportation time decreases. Ultimately, the government claimed that the socio-economic impact and reduced transportation costs resulting from the highway would mitigate the negative impacts that the plan poses on the environment. These environmental impacts however, were highly contested. The Serengeti is listed as a National Park and an UNESCO World Heritage site and is considered to have universal values due to its unique ecosystem. The Serengeti is thus considered a protected area. However, the Tanzanian government gave higher priority to the socio-economic benefits than to the environmental impact.

In response, the Africa Network for Animal Welfare (ANAW), a Kenyan-based NGO, took legal action and filed the case in the East African Court of Justice. The applicant stated that the impact of the proposed highway would be detrimental to the Serengeti ecosystem. The court held that the highway would indeed have detrimental impacts on the ecosystem and would therefore violate the obligations of the Tanzanian government to protect and conserve its natural resources. The judgement mentions *inter alia*, the obligations under the East African Community Treaty and the CBD. The Court ultimately ruled that the plan was considered unlawful given the violations of the construction of the highway.<sup>94</sup>

This case is of significance to this research as it constituted a novel decision of a transnational judiciary to require a national government to give precedence to environmental conservation within economic deliberations. It thus addresses the conceptualisation of CBD concepts by actors operating on different governmental levels; and deals with perennial tensions between economic development and ecological conservation.

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<sup>94</sup> Judgement of the East African Court of case Justice African Network for Animal Welfare (ANAW) v. The Attorney General of the United Republic of Tanzania, Ref. No. 9 of 2010.

## 4.2 Data collection

As briefly illustrated in section 2.3 of this thesis, the decisions and output documents generated by the COP constitute a dependable data source for underpinning the international concepts that are relevant to party members. The decisions by the COP, as an international governing body, reflect the international dynamic conceptualisation of biodiversity goals.<sup>95</sup> The treaty text of the CBD acts as the main frame. Correspondingly, the Aichi Biodiversity Targets and the complementary indicators for assessment are used as a source of elaboration of CBD concepts. However, additional correlating COP documents such as the Akwé: Kon Guidelines and the Addis Ababa principles and guidelines for the sustainable use of biodiversity are also consulted for further clarification and context of the outlined concepts. The CBD framework requires parties to the Convention to submit periodic national reports to the Secretariat regarding the implementation of the CBD and COP decisions. These national reports depict progress as well as barriers when it comes to the national implementation of the CBD targets.<sup>96</sup> The national reports therefore provide a starting point for the analysis of the comparative case study of the differing national contexts. This additional analysis step was included to triangulate the methodology and place the discourses into context. This not only provides context relevant to carrying out the discourse analysis but also allows for trends to be detected and the sources of differing discourses to be identified. The judgements and decision documents of the four court cases are published online and therefore provide a reputable source for referring to the thought processes of the courts.

The data used for the critical discourse analysis was gathered through online research. It must be recognised that the inclusion of only written data poses a limitation as it can overlook non-textual forms of discourse. However, due to time constraints and the feasibility of the research, the data constituted solely written documents, such as newspaper articles, journals, transcripts of interviews, blog posts of non-governmental actors, and legal commentary. The written data was gathered through online searches of the relevant stakeholders to find their community website or blog. Additionally, newspaper articles, journals, transcripts of interviews, and legal commentary were collected through the online database of LexisNexis.

For the Polish Białowieża Forest case, 63 documents were collected. The documents mostly included news articles from European newspapers and local Polish newspapers such

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<sup>95</sup> Parks, *Benefit-Sharing in Environmental Governance: Local Experiences of a Global Concept*, 108.

<sup>96</sup> Hall, "Tourism and the implementation of the CBD", 277.

as PAP, and the Polish Press Agency. In addition to these sources, press releases of environmental NGOs that contributed to the debate on the appropriateness of the imposed forest conservation measures were also included. The NGOs consisted of organisations such as WWF, Greenpeace, and Wild Poland. For the Australian Warkworth Open Cut Mine case, 66 documents were collected. The documents mostly included news articles and press releases from local and regional newspapers such as *The Daily Advertiser*, *Newcastle Herald Australia*, and *Fairfax Media*. Additionally, the blog posts of the local community *Bulga Progress Association* were included. For the Filipino JAPEX Oil Exploration in Tañon Strait case, 47 documents were collected. The documents consisted mostly of news articles from national newspapers such as the *Philippines Daily Inquirer*, the *Manila Times*, and the *Philippines News Agency*. For contrast, some articles from sources such as the *Energy Intelligence Group* were also included. In addition to this, blog posts and fact-finding reports from the local fishing community organisation *FIDEC* were included. For the Tanzanian Serengeti National Park Highway case, 53 documents were collected. The documents consisted mostly of news articles from regional newspapers such as *The East African*, *Cape Times*, *Arusha Times* and *Africa News*. Additionally, press releases and posts from NGOs regarding the court case were collected from sources such as the *Wildlife Conservation Society*, the *Zoological Society of London*, the *East African Wildlife Society*, the *Frankfurt Zoological Society*, and *Serengeti Watch*.

All the documents of the cases were subsequently downloaded and coded. During this coding process of the discourse analysis, the qualitative analysis software of *Atlas.ti* was utilised to structure this analysis process and thereby uncover the relevant discourses that are linked to the CBD concepts outlined in section 2.3.

#### 4.3 Method of analysis

First, the documents were imported into the qualitative research program, *Atlas.ti*. For each case, a new project was created within the program to find the distinct discourses relating to the stakeholders for each of the settings that the cases provide. This also allowed for a clear comparison to be made during the analysis of the results. The main codes were assigned to the outlined CBD concepts. Next, the differing perspectives and associations attached to these concepts formed the subcodes within the coding structure. In this way, a clear coding system was created within which the different conceptualisations of the concepts were easily detectable. Figure 1, illustrates the coding system for the Tanzanian case study. The subcodes that constituted different conceptualisations and associations are visible to

illustrate the hierarchical structure of the coding system. The same hierarchical coding structure was applied to each case to maintain a clear arrangement and be able to compare conceptualisations across the cases.

Category	Count
Tanzania Case	
Documents	53
Codes	6
Biodiversity	48
Development	32
local development	12
Socio-economic	6
Sustainable development	14
Environmental impact assessment	15
Livelihoods	29
Indigenous coexistence	5
indigenous social/economic benefit	8
livelihood negative impact	4
Tourism	13
Power relations	17
Protected area	29
Memos	0
Networks	0
Document Groups	0
Code Groups	0

Figure 1: The coding system of the Tanzanian Serengeti National Park Highway case.

## 5. Results

The following chapter presents the results from the stakeholder and discourse analysis of the selected biodiversity court cases.

### 5.1 Poland case study

The court case of the Białowieża Forest was essentially about whether or not the amended forest management measures, issued by J. Szyszko, the Minister for the Environment of Poland, were appropriate given the circumstances or not. The judgement of the CJEU included an acknowledgement of the controversy around the correctness of active or non-active forest management in the context of a seemingly damaging beetle infestation. The court's decision mentioned that the new amendments to the 2012 management regulations did not constitute a 'management plan' within the meaning of the Birds and

Habitats Directive. This meant that the court saw the amendments as a project or plan that required an EIA for the implications of this plan for the Natura 2000 site. The court concluded that the EIA conducted by the Polish authorities was inadequate as it focuses solely on the infested trees and not on the impact on other species within the forest. The court ultimately ruled that the implemented measures were unlawful due the uncertainty surrounding the adverse effects of the amended active forest management measures. Yet, this contradicts the outlined text of the CBD, which states in the preamble that in case of a threat of loss of biodiversity, scientific uncertainty should not be seen as a justification for delaying measures mitigating said threat.<sup>97</sup> Table 2 depicts the stakeholders that contributed to the debates surrounding the biodiversity issues that this court case includes.

Table 2: Stakeholder analysis of the Polish Białowieża Forest Case

Stakeholder	Governance level	Interests	Constituencies
The European Commission (Applicant)	International/ EU level	Protecting the biodiversity of the Białowieża Forest	European Union, EU Scientific Community, NGOs
Republic of Poland (Defendant)	National government/ ministries	Defending the new forest management amendments	Ruling Law and Justice Party (PiS), Ministries, Local authorities
Environmental NGOs	National/ International	Protecting the biodiversity of the Białowieża Forest	The European Scientific Community, Local activists
Local citizen collectives	Local	Protecting forest biodiversity or their access to it	Local citizens
State foresters	Regional/ Local	Protecting their profession	25,000 employees, Local citizens
Law and Justice Party (PiS)	National	Upholding the image of the Party	Right-wing conservatives

Table 3 illustrates the two main contradictory discourses that were observed surrounding the case. The discourse that the Polish governmental stakeholders and state foresters reinforced, supported the active forest management amendments that were issued by the Minister for the Environment of Poland. Within this discourse the biodiversity and

<sup>97</sup> The Convention on Biological Diversity of 5 June 1992, Preamble.

integrity of the forest was overwhelmingly related to standing trees. Aligning with this portrayal of a healthy forest with tree growth, the beetle spread that kills spruce trees is seen as a direct threat to the forest biodiversity. Using this narrative, the Polish Minister for the Environment justified the need for the increased logging of infested trees as a conservation measure. He claimed the conservation measure was deemed necessary to protect “all the plant and animal species of importance to the EU” and that “there are reports which demonstrate it”.<sup>98</sup> In this way, the conservation measures deemed appropriate by these stakeholders directly link to their view of what constitutes biodiversity. Furthermore, in the court case the Polish government stated that the Commission neglected the fact that a large part of the site, that is now seen as integral parts of the natural forest, is formed through hundreds of years of human activities such as sustainable harvesting. The discourse in this narrative highlights that livelihoods of the local residents are also considered to be dependent on these management practices. During the court case, the Polish authorities mentioned that halting the active management measures would result in social and economic damage to the local population that is dependent on them for their economic activities. This aligns with the negative view held by stakeholders who support this discourse regarding the designation of the forest as a protected area. According to the discourse coalition, the status of the forest as a protected national park is associated with lower salaries than active forestry, job losses. This discourse therefore belongs to the problem-solving category as it sees conservation measures such as designated protected areas as obstacles for economic development. Moreover, a section of the local residents portray a feeling of exclusion associated with the protected area designation which is well illustrated in the following statement by the leader of the largest local council in the Bialowieza region: “I have even heard people say they will set fire to the forest rather than give it up.”<sup>99</sup> In light of this resistance, the new Minister for the Environment promised foresters that the park would not be expanded.<sup>100</sup> This portrays the dependent relationship between the foresters and other local residents and the governmental stakeholders.

Contrastingly, the second dominant discourse supports a narrative that strongly opposes the increase of the active forest management measures. This discourse was shared by

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<sup>98</sup> Matela Piotr, “Ex-Environment says court's advisor one-sided Bialowieza Profesor Szyszko comments come after Yves Bot, the advocate general (which is a part of the on that Court of Justice 's of the European to step up Union), statement Tuesday Poland recent move logging primeval Bialowieza forest , in the northeastern part of the country, against for the ECJ said in a in the is EU law.”, *PAP English news service*, February 21, 2018.

<sup>99</sup> Stephan Wagstyl, “Green concerns pose threat to Polish woodsmen's way of life” *Financial Times*, March 15, 2018.

<sup>100</sup> Morgan Erickson-Davis, “After logging, activists hope to extend protections for Bialoweiza Forest” *Mongabay News*, June 29, 2018.

the European scientific community, environmental NGOs such as WWF Poland and the local activist groups. Within the discourse, the beetle population spread and dead trees were depicted as a natural phenomenon. This reflected the broader conceptualisation of biodiversity that captures many aspects not typically associated with biodiversity. In the decision, the court mentioned that certain views within the scientific community regarded the spread of the spruce bark beetle not as an infestation but as part of the forest's natural cycle, conveying the framing power that the scientific community had in the case. The Commission adopted this broad conceptualisation during the court case as it included dead wood as one of the characteristics of the site. The narrative within this discourse therefore does not align with the active forest management that aims to clear the dead and dying wood. When it comes to livelihoods, local community activists highlight the importance of the national park to their cultural heritage due to its historical characteristics. Additionally, NGOs such as Wild Poland and Greenpeace contribute the development in the region to the establishment of the national park status. Thereby equating environmental conservation with socio-economic development. The NGOs and local community members that share this discourse, highlight the tourism that has been attributed to the national park and maintain that it employs many people in the community. This discourse belongs to the category of sustainability, as environmental issues are not seen as an obstacle to development. The community members that rely on the forest for tourism or cultural value thus align with this discourse. As can be seen in Table 3, this discourse included narratives in support of passive conservation.

Table 3: Discourse analysis of the Polish Białowieża Forest Case

Discourse	Narrative description	indicator terms	Stakeholders
<b>Active forest management</b>	The narratives within this discourse support the active forest management measures. The felling of trees is seen as necessary for nature protection, against the negative impact of the European spruce bark beetle. Other arguments include safety considerations and socio-economic dependence of the local residents.	Active forest management, safety, new growth, standing trees, plague/infestation, economic damage	Governmental authorities, state foresters, local community members
<b>Natural phenomenon</b>	The narratives within this discourse oppose the active forest management measures. The European spruce bark beetle outbreak is seen as a natural phenomenon within the forest ecosystem and should be left unmanaged. Passive forest management is encouraged as well as the expansion of the protected area of the National park.	Natural cycle, heritage, dead wood, species diversity, negative impacts, environmental impact assessment, national park	The European Commission, Environmental NGOs, scientific community, local community members

## 5.2 Australia case study

The court case of the extension of the Warkworth Open-Cut mine was essentially about whether the perceived socio-economic benefits of the extension outweighed the social and environmental impacts. Within this consideration the case mainly addresses the role of EIAs and the merits of biodiversity offsets. In its decision the court took the impacts of the project on biodiversity, noise and dust, and on the local society as a whole into consideration. Both parties called on experts to present their respective opinions and facts regarding each of these specific subjects. Ultimately, the court found that the initial approval of the extension of the open cut mine, was based on an insufficiently thorough EIA and stated that the biodiversity offset package within the project plan could not make up for the biodiversity loss of the site. Table 2 depicts the stakeholders who contributed to the discourses surrounding this court case.



Table 4: Stakeholder analysis of the Australia Warkworth Open Cut Mine Case

Stakeholder	Governance level	Interests	Constituencies
Bulga Milbrodale Progress Association Inc (Applicant)	Local citizen association	Stopping the extension of the mine	Local residents, activists
NSW Minister for Planning and Infrastructure (Defendant)	State ministry	Ensuring the expansion of the mine	Warkworth Mining Company, Mine workers, Bulga residents
Environmental Defender's Office	National NGO	Defending the local biodiversity	Local residents and activists
Rio Tinto: Warkworth Mining Company (Defendant)	International company	Expansion of the Warkworth mine	Mine workers, Local suppliers & Bussinesses
Coal & Allied company	NSW State	Maintaining the local coal industry	Mine workers, Warkworth Mining Company
Planning Assessment Commission (PAC)	NSW State	Assess the merits of the mine expansion	NSW Minister for Planning and Infrastructure

The two competing dominant discourses that were observed surrounding the court case debate are illustrated below in Table 5. The dominant discourse in favour of the mine extension project was shared among the governmental stakeholders as well as Warkworth Mining company, and Coal & Allied company. This discourse coalition conceptualised the biodiversity of the Warkworth Sands Woodland as specific species that resided in this area. The biodiversity loss that would occur due to the extension is acknowledged. However, within the framing of the discourse, this is directly followed by the biodiversity offset package that the project plan included. As biodiversity is seen solely as individual species of flora and fauna, they are seen as being capable of relocation and regeneration. In this way, biodiversity is portrayed as an expendable resource which is why the offset measures are seen as a viable option. The discourse does not include any avoidance measures as the discourse chiefly involves putting economic value to the impacts of the project. In line with this the Warkworth mining company stated that avoidance measures are not justifiable from an economic efficiency standpoint. Therefore, the biodiversity offsets are the main focus of the conceptualisation of biodiversity within the discourse. This discourse belongs to the category

of problem-solving environmental discourses as it follows puts a price on environmental impacts. The conceptualisation does not consider the importance of conserving species within their natural surroundings and therefore does not align with the CBD framing of biodiversity which emphasises the priority that should be given to in-situ conservation measures. The concept of protected area aligns with the expendable framing of biodiversity. Within the discourse, the several protected areas in question are conveyed as being interchangeable. This justifies the offsets that include enlarging another protected area to make up for the loss of another. In doing so, the proposed offsets do not take the impact of increasing other protected areas into account and even eradicate the protected area in Bulga that was part of the mitigation measures in the initial 2003 development plan. Similarly, the livelihood of the local community is expressed chiefly through jobs and economic development. This is where the governmental stakeholders share the discourse with the local mining company and employees. The shared discourse of the governmental stakeholders, the local mining employees and the corporate mining stakeholders points towards an interrelationship between these stakeholder types where the governmental actors are dependent on the mining companies for supplying jobs.

The competing discourse is reinforced by the local citizen association and NGO's. Within the discourse, biodiversity is mostly associated with endangered ecological communities. Through this, the significance of the ecological uniqueness is highlighted by the Bulga Milbrodale Progress Association. The cultural value is associated with the Aboriginal cultural heritage that exists within the Warkworth area. The significance of the ecological uniqueness is highlighted mostly by the Bulga Milbrodale Progress Association. The area in question is even referred to as one of the last wilderness areas of NSW. The local community stakeholders and environmental activists stress the importance of the Sands Woodland and use this narrative to argue that the ecosystem cannot be relocated as an offset measure. In this discourse, livelihoods are conceptualised as mainly pertaining to the health which contributes to the quality of life of the local residents. This discourse belongs to the category of sustainability discourses as it promotes equating environmental considerations with economic ones. The narratives encompassing health considerations are linked to biodiversity and specifically to the EIAs. The local community stakeholders of Bulga express that the area where the mine expansion was proposed was seen as a protected area from the mine. They associate the protected area not only with biodiversity conservation but also with a safeguard for their quality of life against the impacts of the mine. In line with this, the discourse conceptualised EIA as a means for excluding public participation. The narratives in

the discourse associate the concept of EIA with marginalisation of the local community stakeholders. This depiction of the role of EIA in upholding institutional marginalisation is reflected in the following quote from John Krey, the president of the Bulga Milbrodale Progress Association who stated: "I'm asking the PAC to look at what has been going on behind the scenes,".<sup>101</sup> The statement referred to the EIA that was executed by the Warkworth mining company. Even though the EIA inadequately weighed the impacts of the mine extension, the Planning and Assessment Commission (PAC) still endorsed it. This narrative is shared by community stakeholders that live near the offset area. They emphasise the lack of consideration and community engagement related to the impact of the biodiversity offsets that are proposed. The offsets include the expansion of a protected area which negatively affects the agricultural livelihoods within the area, according to the affected community stakeholders. In accordance with this discourse, the Court concluded that the EIA included a survey that inadequately involved the local community stakeholders.

Table 5: Discourse analysis of the Australia Warkworth Open Cut Mine Case

Discourse	Narrative description	indicator terms	Stakeholders
<b>Mine extension</b>	The narratives within this discourse defend the approval of the mine extension. The indispensable view of biodiversity supports the narrative that is in favour of implementing biodiversity offsets. Additionally, the jobs related to the mine are seen as important and outweigh the need for replacement of species.	Biodiversity offsets, community development, jobs, income, resource use, impact assessment	Governmental authorities, local miners, Warkworth mining company
<b>Local livelihoods</b>	The narratives within this discourse oppose the approval of the mine extension. The main argument rests on the impact of the mine extension on the livelihoods of the local residents. Within the narrative of livelihoods, health is a main concern followed by the impact on unique and culturally significant local biodiversity.	Biodiversity loss, environmental and social impact assessment, health, livelihoods	Local community association, Environmental Defenders Office

### 5.3 The Philippines case study

The court case regarding oil exploration in the Tañon Strait marked an exceptional trial that addressed the human guardianship role toward nature. Ultimately, the crucial

<sup>101</sup> Peter Hannam, "Biodiversity Mine Warkworth approved despite doubts", *Sydney Morning Herald*, December 19, 2012.

responsibility of the state government to protect the environment played a decisive role. The initial petition that was submitted by the applicants included a plea to grant the resident marine mammals of the Tañon Strait legal standing. The Court declared that there was no need for such legal standing as the national environmental laws already provided Filipino citizens with the right to file a lawsuit as stewards of nature. Thereby the Court adopted a relatively anthropocentric take on stewardship, which defined the relationship between humans and nature. The case furthermore illustrates how this narrative takes shape and how different stakeholders utilise it to pursue their interests. Table 6 demonstrates the key stakeholders involved in the court case and their interests.

Table 6: Stakeholder analysis of the Philippines Tañon Strait Case

Stakeholder	Governance level	Interests	Constituencies
FIDEC (Applicant)	Local community organisation	Protecting the livelihoods of the fisherfolk	Local Visayas Fisherfolk, Resident Marine Mammals, Nature stewards
JAPEX (Defendant)	International Company	Defending the merits of the oil explorations	Department of Energy, Department of Environment & Natural Resources
Department of Energy (DOE) (Defendant)	National government department	Development & energy independence	JAPEX, Department of Environment & Natural Resources
Marine Mammals (Applicant)	Local residents	Protecting resident marine mammals	Local lawyers as nature stewards, FIDEC
Department of Environment & Natural Resources	National government agency	Economic development, energy independence	Department of Energy, JAPEX

The two main competing discourses that were present within the discussion around the court case are depicted in Table 7. The discourse that the governmental stakeholders and the private oil company JAPEX reinforced, rarely mentioned biodiversity or related aspects. Furthermore, biodiversity or related aspects were only addressed in responses to alleged negative impacts. The main aspect of biodiversity that the stakeholders within the shared discourse mention, are the fish stocks. For example, within the court case, the governmental stakeholders contest the fact that the fish stocks declined due to oil exploration activities. They held that the fish stocks were declining since 1970 due to destructive fishing practices.

Additionally, the stakeholders' limited conceptualisation of biodiversity was evident in their approach to the environment compliance certificate for the oil explorations. To demonstrate, the Department of Environment and Natural Resources (DENR) was responsible for granting the required environment compliance certificate (ECC) before JAPEX could proceed with the exploration drilling. Initially, the DENR argued that this was no longer necessary as the Department of Energy (DOE) had concluded that the project did not have any significant impacts on the environment and issued a certificate of non-coverage. Yet, two years later after the DOE closed a service contract with JAPEX, the DENR approved the EIA and granted the ECC for the oil exploration to commence. As Table 6 demonstrates, the governmental actors were recognised as each other's constituencies. This dynamic reflects the intergovernmental power relations that the project approval was involved in. The conceptualisation of development that the discourse held, was related to the achievement of energy independence for the Philippines. The governmental agencies were driven by the Medium-Term Philippine Development Plan which included the main goal of developing the countries' indigenous energy sources. This discourse correspondingly belongs to the category of problem-solving environmental discourses as it depicts environmental issues as obstacles for economic development.

The environmental lawyers that represented the resident mammals and the local fishing community, took on the competing discourse within which they conceptualised biodiversity in relation to stewardship. Stewardship towards nature is an anthropocentric narrative within which the stakeholders conceptualised biodiversity and is supported by the environmental laws of the Philippines. The local fishing community adopted the same discourse as the environmental lawyers, by taking on the narrative of stewardship for nature. Additionally, through this narrative, the stakeholders emphasised the role of the government in protecting the environment as well. Concerning livelihoods, the stakeholders involved in this discourse stressed their dependence on marine biodiversity for sustaining their means of living. This included the need for sustainably maintaining fish stocks, as they form the main source of income and food for the local fishing communities. This narrative thus also included a focus on food security related to the maintenance of biodiversity. The local fishing community attributed the stark reduction in fish yields to the destruction of their artificial reefs which are a part of their traditional fishing practices. The focus on food security was mainly adopted by the local fishing community, FIDEC, in order to stress the importance of fish stocks to the livelihoods of the local communities. Similarly, the notion of development as it was conceptualised by the governmental stakeholders was contested. As the stakeholders

involved in this discourse mostly attribute their livelihoods to fishing, the development of national energy resources and the associated wealth is not seen as important. This sentiment is reflected in the following statement by Gilbert Sape of People's Coalition on Food Sovereignty "The experience of fisherfolk in Central Philippines has again proven that potential oil discovery has led to even greater poverty".<sup>102</sup> Consistent with this narrative, the concept of protected areas is framed as a protection mechanism for the local subsistence fishing community. Within the court case, the local community stakeholders and environmental lawyers emphasised the role of the protected seascape area in ensuring biodiversity conservation and blocking damaging activities. Additionally, FIDEC framed the protected area as a State-protected fishing ground intended to protect fishermen and the environment. Local fishing practices are also included in the outlined acceptable activities within the protected seascape. Thus within this discourse protected areas are conceptualised as providing protection for local subsistence communities as well. This discourse belongs to the category of green radicalism environmental discourses as it rejects the economic structures of industrial society. The concept of EIA is also linked to the concept of protected areas within this court case. Projects proposed within protected areas involving activities that are not explicitly approved require an EIA before approval. The stakeholders involved in this discourse stressed that even though the EIA was conducted after the initial seismic surveys, they did not involve adequate consultation with the potentially affected stakeholders. The substance of the EIA was therefore criticised. Furthermore, the local community stakeholders claimed that JAPEX and the DOE utilised the EIA as a method for justifying the oil exploration and to make up for the initial lack of assessment of the impact of the seismic surveys. In line with this lack of involvement of local communities within the EIA process, the court stated that the Presidential authorisation of service contracts was put in place as a safeguarding mechanism to combat corrupt practices that departments and agencies are susceptible to.<sup>103</sup>

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<sup>102</sup> "Philippines: Oil and gas bringing misery and destruction in mangrove region" *World Rainforest movement*, January 30, 2009.

<sup>103</sup> Decision by the Republic of the Philippines Supreme Court on G.R. No. & G.R. No.181527, p.26.

Table 7: Discourse analysis of the Philippines Tañon Strait Case

Discourse	Narrative description	indicator terms	Stakeholders
<b>Energy independence</b>	The narratives within this discourse support the oil explorations that were conducted by JAPEX. The main narrative supporting this discourse focused on achieving energy independence for the Philippines.	Energy independence, development, commercial production, energy prices, service contract, resource utilisation	Governmental authorities, JAPEX
<b>Nature Stewardship</b>	The narratives within this discourse opposed the oil explorations within the Tañon Strait. The main narrative emphasised in this discourse stressed the importance of biodiversity for sustaining the livelihoods of subsistence fishing communities.	Biodiversity loss, environmental and social impact assessment, livelihoods, fishing, stewardship, governmental responsibility	Local community association, local lawyers, FIDEC

#### 5.4 Tanzania case study

The court case of the Serengeti highway project is essentially a classic exhibit of the seemingly endless conflict between socio-economic development and the protection of the environment. The Tanzania Roads Agency had provided an EIA in an effort to endorse the project. The applicant, ANAW, utilised this very impact assessment to support its position on the negative impacts. ANAW added that the impacts could not be sufficiently mitigated by the proposed measures. Thus both the Tanzanian government and ANAW acknowledged that the proposed construction of the highway across the Serengeti, would have negative impacts. However, the experts called on by both parties disagreed on the magnitude of these impacts and the sufficiency of the proposed mitigation measures for the project plan. The court recognised this discrepancy and referred to statements by UNESCO, as an objective and authoritative renowned global organisation, to come to the decision that the negative impacts would be irreversible making the project unlawful. Table 8 below depicts the stakeholders that contributed to the debates surrounding the biodiversity issues that this court case includes.

Table 8: Stakeholder analysis of the Tanzania Serengeti Highway Case

Stakeholder	Governance level	Interests	Constituencies
Africa Network for Animal Welfare (Applicant)	International NGO	Protecting the ecosystem of the Serengeti	East African Community
Tanzanian government (Defendant)	National government	Defending the highway, socio-economic development	Northern Tanzanian communities
Civil society associations	Regional/ Local	Local socio-economic development	Residents of Loliondo in Ngorongoro District
UNESCO	UN Specialised Agency	Protecting the UNESCO site	International community
Environmental NGOs	International NGO	Protecting the Serengeti ecosystem	International community, Scientific community, Conservationists
TANAPA	Parastatal organisation	Managing the National Park	Tanzania government authorities

Table 9 illustrates the two main discourses that were found to be taken on by the various stakeholders regarding the highway project. The discourse in support of socio-economic development is rooted in the political and historical context of the role of development within Tanzanian society. Tanzanian governmental agencies mostly reinforce this discourse, as well as several civil society organisations in the area. As can be seen in Table 8, the coinciding discourse among these stakeholder types is consistent with their shared interest of stimulating local growth and socio-economic development. There exists a dependent relationship among these two stakeholder types. The civil society actors that prioritise development, highlight that it is a responsibility of the government to provide this. This is reflected in the following quote from Mr Edward Porokwa who is head of the Pastoralists Indigenous Non-Government Organizations: “The Government is responsible to ensure it constructs roads so that people can have easy access to social services.”<sup>104</sup> Kikwete, the president at that time, acknowledged this responsibility of providing social services in many ways. The statement by the Minister for Natural Resources and Tourism, Shamsa Mwangunga, additionally depicts this dependent

<sup>104</sup> “East Africa NGOs Attack Kenya Over Serengeti Highway” *Africa News*, April 30, 2012.



relationship, by referring to the highway as a pledge made to the voters of Lake Victoria. She further mentioned that it was part of the election manifesto that elected Kikwete as president.<sup>105</sup> The association with development of these stakeholder is reflected in the following quote which appeared in an article from Tanzania Daily News in support of the highway: “the founding president, Mwalimu Julius Nyerere, said that anything that is going to bring development to the people should be well-taken and encouraged. Let the same spirit apply for the planned highway”.<sup>106</sup> This illustrates a more historical perspective on the conceptualisation of development that these stakeholders adopt within the discourse. Additionally, intergovernmental power relations were also observed. This was apparent when, despite initial opposition, the Tanzania National Park Authority (TANAPA) approved the project. The Tanzanian government even had two witnesses from TANAPA, defending the project.

Within this discourse, biodiversity is rarely mentioned, and when it is, it is usually in reference to its relevance for tourism or to downplay or minimise its negative effects in contrast to the economic benefits. Furthermore, the livelihood of the affected community is demonstrated to encompass social services and incomes dependent on local markets and tourism. The protected area status of the Serengeti as a National Park is also linked to tourism. It aligns with the industrialist idea of development and when faced with environmental issues, gives more weight to economic benefits. The discourse therefore belongs to the category of problem-solving discourses. In line with this, the governmental stakeholders highlighted the importance of the proposed mitigation methods to enhance the socio-economic benefits of infrastructure. The main mitigation measure included upgrading a part of the highway only to gravel status.

Contrastingly, there are local community members that do not support the highway project. Their narratives align with the discourse that is reinforced among local and international environmental NGOs, the scientific community and most notably, UNESCO. The organisations that upheld this discourse included inter alia, the Wildlife Conservation Society, the Zoological Society of London, the East African Wildlife Society, the IUCN, the Frankfurt Zoological Society, Humane society International and Serengeti Watch. The stakeholder network of environmental NGOs called for international pressure to be put on the government as well as other organisations that would otherwise finance the project. The discourse acknowledged the need for development and reflected this by supporting the notion

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<sup>105</sup> Mcadams Michael, “Dar Dismisses Outcry Over Serengeti Highway”, *The East African*, July 2010.

<sup>106</sup> “Tanzania Highway Beneficial” *Tanzania Daily News*, September 5, 2012

of sustainable development. This included implying alternative routes for the highway as well as emphasising the negative impacts that the highway would have on tourism. This discourse therefore belongs to the category of sustainability discourses where economic development is not seen as antithetical to environmental conservation. The discourse most notably stressed the importance of conserving the migration route of wildebeests and zebras which is integral to the functioning of the Serengeti ecosystem. Thus biodiversity is recognised as an intricate ecosystem, and the values of the biodiversity are stressed as having universal value. The local stakeholders also demonstrated their ancestral link to the Serengeti. Within this discourse, the government's EIA was also criticised insufficiently considering the social impacts as well as conceding a myriad of negative impacts. The stakeholders within this discourse substantiated their view of the governmental stakeholders by referring to when Tanzania resisted signing the East African Community's environmental and natural resource management protocol. This was perceived as an attempt by the government to avoid having to include the community in environmental issues, especially concerning transboundary ecosystems such as the Masai Mara. Yet, the transboundary nature of the ecosystem of the Serengeti strengthened the position of the applicant in the court case by pointing out the large-scale effects of the highway. This narrative is also reflected in the discourse as the protected area of the Serengeti National Park was closely linked to the neighbouring Masai Mara Park.

Table 9: Discourse analysis of the Tanzania Serengeti Highway Case

Discourse	Narrative description	indicator terms	Stakeholders
<b>Socio-economic development</b>	The narratives within this discourse support highway project. The main argument in favour of the project stresses the role of the government in providing the country and its communities with socio-economic development. The development of the Northern communities in Tanzania depicted as the main motive.	Social services, infrastructure, tourism, growth, mitigation measures, development, trade	Governmental agencies, civil society organisations
<b>Serengeti conservation</b>	The narratives within this discourse oppose the highway project. The negative impact of the highway on the migration route of wildebeests is depicted as the main concern. The discourse adopts a comprehensive view of biodiversity and emphasises the universal value of the Serengeti ecosystem.	Universal value, wildebeest migration, sustainable development, irreversible impacts	Environmental NGOs, scientific community, local community members

## 6. Discussion

This chapter includes four sections. The first section aims to answer the main research question of how national and regional actors frame and utilise internationally determined CBD concepts. As a starting point, the section reflects upon the overall results of the case analyses. These findings are then generalised and overarching patterns or outstanding discrepancies with regards to the way CBD concepts are used and given meaning among the types of actors within the cases are highlighted. Based on the stakeholder analysis, the power relations between the stakeholders and how this relates to the framings is also highlighted.

In the second section, the observations regarding the framing of particular CBD concepts are related to the international framing. Thereby answering the subquestion that goes into the discrepancies between the international framing of the concepts and their intended outcomes and the actual framing and outcomes of the cases. In doing so, this section furthermore addresses the gap between international rulemaking and national action and the interaction between the levels of governance and the effects on the concrete local and regional management of biodiversity.

In the third section the political context and the related power relations that influenced the conceptualisation of the concepts is contemplated. The tensions between stakeholders are important to understand as they uncover the local and regional dynamics relevant to conceptualisation of CBD concepts.

The final section of this chapter addresses the significance of the findings from the previous three sections as well as addressing the relevance of the results for the previously identified research gaps. Lastly, it reflects upon takeaways for the CBD.

### 6.1 Dominant discourses

By analysing the results of the critical discourse analysis some commonalities and disparities were found in the discourses that framed the CBD concepts. It is important to understand the overarching and conflicting frames that are supported by differing actors. Commonalities within the frames that are addressed by local community actors can point to novel aspects that can be of importance for the CBD and its targets. As the CBD is able to further shape and support the discourses that have a positive impact on biodiversity and its management across the globe as well as being aware of potentially harmful implications related to the concepts it promotes.

The interests of stakeholders affect the discourse they adopt and reinforce. The discourses differed greatly in their depiction of what aspects of biodiversity are considered to

be important. The conceptualisation of biodiversity not only directly affects the conservation measures that the respective stakeholders deem appropriate but also has implications for the way in which other concepts are utilised and interpreted. In all four case studies, the local and national governmental stakeholders tended to endorse discourses that did not promote the most optimal outcome for the conservation of biodiversity. The main difference between the discourses of the governmental stakeholders and other discourses lies in the perception of the relationships between people and nature. Throughout the discourses that the governmental stakeholders reinforced, nature is viewed from a utilitarian perspective. The most prevalent example of this utilitarian perspective was found in the case study of Poland where the governmental stakeholders linked the importance of the forest to the economic reliance of people on the forest. Therefore, they stated that halting the management measure would result in social and economic damage. Furthermore, in the discourses the interconnection of species and their relation to the ecosystem is downplayed and the values of biodiversity are minimised, in order to validate the implementation of insufficient compensatory measures.

Governmental stakeholders promote these discourses in order to justify prioritising the economic benefits of the projects over environmental considerations. For example, in Poland only parts of the components that make up the forest biodiversity were protected, even at the expense of others. This came down to prioritising tree growth over insects and other species reliant on the insects. Similarly, in Tanzania, minimal mitigation methods were deemed as sufficient by the government as the economic benefits outweighed the biodiversity costs. In Australia the governmental agencies also proposed inadequate biodiversity offsets to compensate for the damage to biodiversity. Finally, in the Philippines the governmental bodies approved a project based only on a belated and relatively superficial impact assessment.

Contrastingly, conceptualisations of biodiversity that positively impacted biodiversity underlined the intrinsic value of nature as well as the interconnected relationship of humans with nature. The stakeholders that emphasised these discourses included environmental NGOs as well as local communities who are dependent on the environmental services of affected biodiversity areas. In all four case studies, local community activists and NGOs stressed nature's intrinsic value as well the area's cultural and historic value. These discourses thus stressed the intangible values of biodiversity. Although not dominantly, some stakeholders within the local communities took on the economically incentivised discourses of the governmental stakeholders in the case studies of Australia and Tanzania. Their narratives were included within the arguments presented by the governmental stakeholders in

the court cases.

It becomes clear that, aside from small varying perspectives, there are two main diverging discourses that are found within the case studies. Within these two main discourses the concepts of livelihoods, development, protected areas and EIAs are all framed differently. For instance, within the discourses of the governmental stakeholders the concept of livelihoods mostly concerns jobs in local communities. This corresponds to the way in which the term development is framed by these stakeholders to mostly encompass economic development. The depiction of livelihoods as encompassing solely economic aspects was reinforced by both the governmental stakeholders and local community stakeholders that were found to be in an interdependent relationship. This interdependent relationship was detected in three of the case studies, where the local residents expressed their dependence on government decision-making for their income and in turn the governmental stakeholders expressed concern for the opinion of the local residents in light of political tension.

On the other hand, local community and NGO stakeholders include a wide array of activities that encompass livelihoods, which are mostly connected to the biodiversity resources in question. For example, in the Philippines case study, the local fishing community related their food security to biodiversity of the Tañon Strait. Due to this interdependence on biodiversity for livelihoods, the aspect of sustainability is considered to be most important to these stakeholders. Within this narrative of sustainable development, the stakeholders stress that biodiversity must not suffer in the pursuit of economic development.

From these diverging discourses, and the types of stakeholders that endorse them, the overarching relationship between the governmental stakeholders and the non-governmental and local community stakeholders becomes clear. The relationship is characterised by conflicting discourses. This is especially true, for the way these discourses depict the concepts of protected areas and EIAs. EIAs are extensively mentioned in each of the four case studies and they play a significant role within the relationship between the stakeholders and in the outcome of the court cases. The discourses of the local community stakeholders and NGOs depict EIAs as a tool for avoiding or minimising the adverse impacts of projects. But more importantly, the discourse portrays EIAs as a way of including local community stakeholders in the governmental decision-making process. In all the case studies, the local community stakeholders reiterated that they were inadequately or not at all involved in the EIA process. In this way, the discourse not only depicts EIAs as conservation tools but also as a mechanism through which local communities are able to express their lacking influence on

the projects imposed or approved by their governmental stakeholders. This discourse surrounding EIAs thus addresses power imbalances in biodiversity management and is propagated by local community stakeholders within the case studies.

Contrastingly, the competing dominant discourse that conceptualises EIAs, pertains solely to their role in justifying the approval of projects. In this discourse, EIAs are used as grounds for the approval of projects and the involvement of local stakeholders is often not addressed. The EIAs themselves are seen solely as a prerequisite for implementing projects that will have adverse impacts. Therefore, the related measures for avoiding or limiting impacts on biodiversity are briefly addressed. In this way, EIAs allow for the justification of inadequate conservation measures. Governmental stakeholders utilise this conceptualisation of EIAs to maintain the institutionalised underrepresentation of local communities within environmental decision-making as they could impede their projects.

Similarly to EIA, power relations between these stakeholder types influence the conceptualisation of the term protected area. However, the association that stakeholders have with protected areas in the case studies has proven to differ significantly. Protected areas are mainly managed by governmental agencies, and can therefore exclude local community interests which can negatively and unequally impact local communities. In the Białowieża Forest case, some local actors opposed the expansion of the protected area as they feared that their access to the forest and therefore, their livelihoods would be affected. However, the community stakeholders in the other three case studies overarchingly framed protected areas as a method of protecting biodiversity. The discourses in the Australian and Filipino cases depicted protected areas as a method of protecting community rights such as food security and health.

## 6.2 Power relations

Although power relations are already briefly touched upon in the previous section in relation to shaping discourses, this section delves deeper into the dynamics of the relationships between the stakeholders in their regional and national context. This section thus answers the sub question related to how regional and national power relations affect the conceptualisation of CBD concepts. The specific emphasis given to aspects of the CBD concepts, is largely dependent on the national political contexts of the case studies. The interdependent relationships between citizens and governmental actors were associated with discourses that were less focused on biodiversity value and thus its conservation. The cases where the governmental actors leaned more into the interdependent relationship with its

citizens, are also the cases where the government experienced political criticism. This shows that local political tension leads to a focus on short term gains.

For instance, in Poland political tension arose as the ruling party encountered criticism for implementing institutional reforms which in addition to the controversy of their forest management put their reputation at risk. This led to an increased attention to the local community members that opposed the expansion of the national park in order to appease criticism. This is reflected in the following statement that is related to the new Minister for the Environment's approach to the expansion of the protected area: "environmentalists call for expanding national park status (...) the Environment Ministry is taking a cautious approach (...) Kowalczyk has already promised foresters that the park would not be expanded."<sup>107</sup> Similarly, in Tanzania, the presiding president had used promises of the highway project and the associated socio-economic development to become elected. In this narrative, which the local residents in favour of the highway reinforced, the government was in charge of building the promised highway at any cost. The following quote from an article that covered the highway project and its political relevance: "Tanzania will go to the polls in October and political pundits say the highway is a matter of life and death for the government."<sup>108</sup> Similarly, in Australia, the local residents as well as the governmental stakeholders stressed the importance of the jobs that the project would uphold. Thereby illustrating the interdependent relationship of citizens and the government. This relationship is evident in the following statement that covered the motivation for the mine "the miner worked with the state government to press ahead with plans it says will secure 1300 jobs."<sup>109</sup>

Within these political contexts, EIAs were utilised to enable harmful projects to be implemented in the name of economic development. In this way, EIAs play a role in upholding institutionalised marginalisation of local communities and environmental activists. This is associated with the fact that better collaboration between stakeholders can help local governments in the sustainable management of biodiversity resources; however, enabling these relationships is not without costs. Such costs for governmental stakeholders are associated with loss of autonomy and higher management costs.<sup>110</sup> The added costs and managerial complexity create a barrier and can lead to a reluctance from governmental and

<sup>107</sup> Morgan Erickson-Davis, "After logging, activists hope to extend protections for Bialoweiza Forest," *Mongabay News*, June 29, 2018.

<sup>108</sup> Mcadams Michael, "Dar Dismisses Outcry Over Serengeti Highway," *The East African*, July, 2010.

<sup>109</sup> Peter Hannam, "Biodiversity plan for Rio mine at Warkworth approved despite doubts." *Sydney Morning Herald*, December 19, 2014.

<sup>110</sup> Hawkins, "Smart Growth Policy Choice: A Resource Dependency and Local Governance Explanation.", 684.

corporate actors to include this in the EIA. Literature on EIAs has also suggested that the concept is associated with upholding problematic hegemonic governance and a lack of transparency.<sup>111</sup>

The case studies also show examples of power relations amongst governmental stakeholders. For instance in Tanzania, the authority in charge of the national parks, TANAPA, had approved the project despite initial opposition. Two people in the Organisation of TANAPA even acted as witnesses for the Tanzanian government in Court. The parastatal organisation sided with the Tanzanian government in approval of the highway despite the negative impact on the national park. This points to intergovernmental conflicting interests. The organisation has been thought to encounter such issues before.<sup>112</sup> Similarly, in the Philippines case, the governmental agencies DENR and DOE worked together to approve the project, even without initial impact assessments. Lastly, in Australia, the NSW Department of Planning approved the mine extension in reference to the PAC who conducted public hearings before approving the extension. The cases point to socio-technical transformation but also socio-political shifts that CBD concepts require.<sup>113</sup>

### 6.3 International level reflections & court case reflections

This section answers the sub question related to the discrepancies between the international concepts and their intended outcomes and the conceptualisation, and actual outcomes. The dominant discourses that are outlined in section 6.1 illustrate the varying conceptualisations of CBD terms that different stakeholders adopt. These choices can have significant effects on the effectiveness of biodiversity conservation efforts. The local communities and NGO stakeholders that are involved in the cases tend to take on discourses that more closely reflect the internationally determined definitions and outcomes of the CBD concepts. The CBD pursues an anthropogenic approach to biodiversity as it mostly frames biodiversity in relation to its “ecological, genetic, social, economic, scientific, educational,

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<sup>111</sup> Patrick N A Harris et al., “The Institutional Dynamics behind Limited Human Health Considerations in Environmental Assessments of Coal Mining Projects in New South Wales, Australia,” *Environmental Impact Assessment Review* 86 (January 1, 2021): 106473, <https://doi.org/10.1016/j.eiar.2020.106473>.

<sup>112</sup> Henry Rabi Sawe and Mussa S. Muneja, “ANALYSIS OF GOVERNANCE CHALLENGES & ACHIEVEMENT IN GOVERNMENT OWNED PARASTATALS IN TANZANIA: A CASE STUDY OF TANZANIA NATIONAL PARKS AUTHORITY HEADQUARTERS,” *Public Policy and Administration Research* 7, no. 5 (2017), 144. <https://doi.org/10.7176/ppar>.

<sup>113</sup> Avelino and Wittmayer, “Shifting Power Relations in Sustainability Transitions: A Multi-Actor Perspective.”, 628-649.



cultural, recreational and aesthetic values”.<sup>114</sup> It highlights this anthropocentric approach in Article 2 of the CBD as it depicts “biological resources as genetic resources (...) with actual or potential use or value or humanity”.<sup>115</sup> The CBD bases this approach on the presumption that it would help people see the relevance of biodiversity in their life. Even though this risks justifying overriding social or economic considerations within projects, these values proved to be vital in court as they allowed the judges to validate the stance of the local community stakeholders.

The CBD narrative and the discourse that is perpetuated by the governmental stakeholders showed most discrepancies regarding the conceptualisations of the term livelihood. In the CBD Voluntary Guidelines text livelihoods are depicted as being underpinned by biodiversity and pertaining to “food security, access to water, and the health of present and future generations.”. As livelihoods were considered solely as related to jobs or income, reference to this discourse should justify the government’s position. However, this contradictory discourse was not able to affect the outcomes of the court cases. The term livelihood was most important to the Australian and Filipino court cases mainly because the considerations of the livelihoods of the local communities substantiated the decisions in favour of biodiversity conservation.

In all court cases, the economic benefits of the proposed projects were weighed against the costs that they pose on biodiversity. This classic debate forms the basis of the CBD narrative regarding the term sustainable development. In the Addis Ababa guidelines for the sustainable use of biodiversity, biological diversity is one of the pillars of sustainable development. However, many stakeholders in the case studies still see development as antithetical to biodiversity conservation. This is evident within the dominant discourse of the governmental stakeholders where economic considerations are weighed against the biodiversity impacts and therefore biodiversity is almost seen as a hurdle to development. Seeing as this discourse is overarching across all the governmental stakeholders within the case studies, this points towards a need to address this discrepancy. Within the court cases, the need for economic development is acknowledged. However, the overriding concern for biodiversity impacts outweighed this need. The main decisive considerations in court that contributed to this outcome were related to the discourse of the local community stakeholders and the environmental NGOs that reflected the concerns of national and international scientists.

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<sup>114</sup> The Convention on Biological Diversity of 5 June 1992, Preamble.

<sup>115</sup> Ibid, Article 2.

In all court cases, biodiversity was situated within an established protected area. Protected areas are defined in the CBD as areas with specific conservation objectives. This feature of protected areas proved to be of substantial relevance in court when determining whether the projects and their impacts fulfilled necessary biodiversity criteria. Even though the statuses and thus objectives of the protected areas differed across the case studies, giving an area the status of protected area supported the conservation of biodiversity. This CBD derived conceptualisation mostly overlapped with the discourse of the local community stakeholders and the NGO stakeholders. The CBD text stipulates the need for establishing a network of protected areas. The concept of a network of protected areas was most relevant to the court case in Tanzania. The highway project was seen as illegal mainly due to the fact that the highway project would negatively affect multiple protected areas. Moreover, across all the cases the community stakeholders also utilised the protected area status as a means for defending the protection for local community rights. This link between protected areas and local community rights was most supported by the Philippines' Supreme Court.

Correspondingly, the concept EIA was utilised by this stakeholder type to argue for the lacking consideration and inclusion of community perspectives within the decision-making of the governmental actors. Article 14 of the CBD also outlines this aspect of impact assessments by stipulating in the first sentence that the parties should “where appropriate allow for public participation in such procedures.” This public participation element was absent across all case studies. As mentioned in section 6.1, the discourse depicts this as a tool for the institutionalised underrepresentation of local communities. However, the effect that the concept of EIA had within the court cases contradicts this as it provides solid grounds for the community stakeholders to argue for their limited involvement. Research on social movements reveal that the perception of having an opportunity to voice concerns is equally important as the actual existence of such an opportunity.<sup>116</sup> The case studies in this research illustrate the importance of the concept of EIA in providing local communities the perception of opportunity to speak up. Moreover, the EIA concept forms the basis of the courts' arguments when addressing the concerns raised by national scientists regarding inadequate mitigation of impacts or procedural deficiencies. However, the discourses and their discrepancies in the depiction of the role of EIA do point to a need for improving open conversations and including local communities in impact assessments.

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<sup>116</sup>Parks, “Spaces for Local Voices? A Discourse Analysis of the Decisions of the Convention on Biological Diversity.”, 28.

#### 6.4 Relevance for multilevel governance

Since the creation of the CBD regime in 1992, the parties to the CBD have been focusing on national implementation and the establishment of guidelines and indicators to facilitate implementation efforts. The guiding documents not only describe guidelines but also further develop and frame concepts from the treaty text. These texts are made to address issues that the parties might encounter. They are designed to fit into differentiating local and regional contexts. However, these conceptualisations can and should be continuously evolving to more accurately fit the dynamic and ever-changing issues that arise within local and regional environmental governance. This thesis shows the need for drawing attention to local circumstances by studying the overarching contradictory discourses that demonstrate how internationally determined concepts have effects on the concrete management of biodiversity on local and regional levels.

The inclusion of the critical discourse analysis, illustrates how relations between stakeholder and their interactions affect the discourses that frame international concepts. Despite the great diversity within the contexts of the selected case studies, there are similarities in power relations. This has an effect on the discourses, and can especially be seen in the discourse surrounding EIAs.

The results address the gap in the research field on multilevel governance. The importance of power within multilevel governance is well established within the literature review, and this power not only pertains to authoritative governmental hierarchies but also includes framing power. The descriptions of the two main dominant discourses and the stakeholders that reinforce them, in relation to the governmental hierarchy, is contrasted against the framing power evident in the outcomes of the court cases. The discourses and their correlation to power show the importance of research on the interaction between governance levels within multilevel environmental governance and the need for further scientific research within this field.

### 7. Conclusion

The research presented in this thesis aims to shed light on the conceptualisation of biodiversity at different levels of environmental governance as well as the national and regional dynamics influencing the implementation of the CBD. The research includes a critical discourse analysis combined with a stakeholder analysis that was applied to four regional and national court cases concerning biodiversity conservation. The court cases provided concrete examples of implementation and conceptualisation of important CBD

concepts. Additionally, the court cases presented fruitful sources of competing discourses shaping CBD concepts. The ambiguity and scientific uncertainty related to biodiversity concepts allows for diverging conceptualisations from stakeholders. This is evidenced in this research as the conceptualisations of CBD concepts differed across the relevant stakeholders on regional and national levels. The local communities and NGO stakeholders involved in the cases tended to adopt discourses that more closely aligned with the internationally determined definitions and outcomes of the CBD concepts. Whereas the governmental stakeholders reinforced discourses that did not reflect the conceptualisation of the CBD.

Moreover, the results of this research reveal that national dynamics are relevant to the conceptualisation of the stakeholders. National political contexts provided explanations for the specific discourses that underpinned the conceptualisations adopted by stakeholders. Most notably, the concept of EIA played a significant role in the relationships among stakeholders. Within each case study, the governmental stakeholders implemented EIAs that contributed to the marginalisation of local communities and environmental activists. In this way, this thesis emphasises the need for drawing attention to local circumstances in multilevel governance research. Future research could expand on this by including field research to study local and regional conceptualisation, as well as exploring strategies for addressing challenges at the international level. Another aspect that requires more attention is the interaction between levels of governance that is touched upon in this research. Within multilevel governance, the CBD has the impactful role of shaping and supporting the discourses that have a positive impact on biodiversity. As evidenced in this thesis through the valuable contribution that the anthropocentric approach of the CBD had to the considerations of the courts within the cases. However, harmful implications related to the concepts that the CBD promotes must not be overlooked.

Ultimately, this thesis uncovers new intricacies relevant to the study of multilevel environmental governance. Even though the pursuit of effective environmental governance is incredibly daunting and can seem impossible at times, it is a crucial endeavour as each step in the right direction leads to the improvement of the lives of current and future generations.

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