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*TOWARDS CRITICAL ENVIRONMENTAL JUSTICE
APPROACH IN MULTICULTURAL DIVIDED STATES:
LESSONS FROM THE ISRAELI REGULATIVE SYSTEM*

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ABSTRACT

This article draws upon the evolving framework of the Critical Environmental Approach in examining the conceptualization and manifestation of the Environmental Justice approach and its pillars within the regulatory system of multicultural and divided societies. These are states comprised of marginalized ethnic and minority groups that frequently face instances of social and environmental injustice. Employing this perspective through a case study show that gradual and anecdotic but unorganized and incoherent incorporation of Environmental Justice pillars lacks the capacity to effectively address long-standing historical environmental injustices and fails to challenge the prevailing social framework. In fact, it runs the risk of exacerbate rather than mitigating these issues. In contrast, the article advocates for a more comprehensive approach to rectify these injustices. This involves the complete application of Environmental Justice pillars within well-structured, long-term strategies that take into consideration the existing social hierarchy affecting marginalized ethnic groups and local communities, as well as the impact of the segregated spatial reality on these injustices.

I. INTRODUCTION

The term "environmental (in)justice" first emerged during the 1980s, within the context of the civil rights movement in the United States. It was used to describe the unequal and disproportionate placement of hazardous waste facilities near African American

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residential neighborhoods.² This revelation spurred numerous empirical studies that prioritize group identity as a focal point, exploring who bears the brunt of environmental harms and who reaps the fewest environmental benefits.³

Research, both in the United States and other multicultural countries around the world, has consistently reinforced this insight. These studies affirm that ethnic minorities and socially marginalized communities, who are often victims of institutional discrimination and human rights violations, also face an uneven distribution of environmental harms and benefits.⁴ This corroborates the fact that environmental inequalities are intrinsically linked with broader societal disparities, underscoring the interconnected nature of social, environmental, and racial injustices.

Subsequent to the empirical research, a normative exploration began to take shape, focusing on the incorporation of the Environmental Justice approach into regulatory systems. This approach rests upon three foundational pillars that serve as guiding principles: equal distribution of environmental harms and goods (Distributive Justice); full participation in decision making (Procedural Justice); recognition of unique community needs throughout the allotment of environmental harms and goods

² Julian Agyeman et al. *Trends and Directions in Environmental Justice: From Inequity to Everyday Life, Community, and Just Sustainabilities*, 41 ANNU. REV. ENV'T. RES.. 41 (2016). See also, Charles Lee. *Toxic Waste and Race in the United States*, In: RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS: A TIME FOR DISCOURSE (Bunyan Bryant & Paul Mohai, 1992).

³ Dorceta E. Taylor, *The Rise of the Environmental Justice Paradigm: Injustice Framing and the Social Construction of Environmental Discourses*, 43 AMER BEHAV SCIEN 508, 523 (2000).

⁴ John A. Hird, *Environmental Policy and Equity: The Case of SuperFund*, 12 J. OF POLY ANALYSIS & MGMT. 323 (1993); Mary B Collins et al. *Linking 'Toxic Outliers' to Environmental Justice Communities* ENV'T. RES. LETT. 11 (2016); Chona Sister et al. *Got Green? Addressing Environmental Justice in Park Provision*, 75 GEOJ. 229 (2010); Alessandro Rigolon & Travis L. Flohr, *Access to Parks for Youth as an Environmental Justice Issue: Access Inequalities and Possible Solutions*, 4 BUILDINGS 69 (2014); Jennifer R. Wolcha et al., *Urban Green Space, Public Health, and Environmental Justice: The Challenge of Making Cities 'Just Green Enough'*, 125 LANDSCAPE & URB. PLAN. 234 (2014); Ronald Pop et al., *"Spatial Patterns of Air Pollutants and Social Groups: A Distributive Environmental Justice Study in the Phoenix Metropolitan Region of USA*, 58 ENV'T. MGMT. 753 (2016).

(Recognitive Justice). Together, these three pillars form the foundation for an integrated and comprehensive Environmental Justice approach (EJ). By focusing on equitable distribution, inclusive participation, and recognition of community diversity, this framework aims to rectify historical inequalities and pave the way for a more just and sustainable environmental future.⁵

Embedding EJ pillars into the state policies of multicultural-divided countries, composed of different ethnic, national, and religious groups, holds paramount importance particularly those where ethnic and marginalized minorities confront systematic discrimination across various aspects of daily life. Such an integration is essential for shaping a fair and equitable socio-environmental landscape. I posit that these pillars aptly capture the intricacies of multicultural-divided societies and offer effective means to tackle the ramifications of exclusionary practices and the complexities of identity politics. Consequently, the incorporation and effective implementation of EJ pillars within the regulatory framework become pivotal in mitigating both environmental and social inequalities, as well as curbing human rights violations. These issues are inherently interconnected and require comprehensive strategies to address them successfully.⁶

This article delves into the conceptualization and manifestation of the Environmental Justice approach and its pillars within the Israeli regulatory system, as a case study, characterized by its multicultural and divided societal structure and a growing rise of incorporating EJ pillars within the regulative system. Akin to other diverse countries, Israel comprises marginalized ethnic and minority groups that frequently face instances of social and environmental injustice; thus, this case study provides insights to societies that endure similar challenges and driven with related motives.

⁵ Many books and articles that conceptualize the EJ framework were published throughout the years, and it is impossible to address all these important theoretical and empirical research in this short section. For a rich overview of research on EJ, *See*, David Naguib Pellow, *WHAT IS CRITICAL ENVIRONMENTAL JUSTICE?*, 3-11 (2018).

⁶ Julian Agyeman & Bob Evans, *Just Sustainability: The Emerging Discourse of Environmental Justice in Britain?*, 170 *GEO. JOUR.*, 155, 159 (2004).

Accordingly, the article explores the burgeoning themes, actions, and strategies that surface within the Israeli regulative system in the past three decades, aimed at tackling urgent social and environmental concerns along with human rights violations. As presented in section three, even though the Israeli regulatory framework does not consistently address Environmental Justice pillars in an organized manner and through explicit terms, certain elements of this approach are indeed present within regulatory decisions and legislations. Additionally, other facets of EJ are introduced through anecdotal decisions. Consequently, while similar to other countries, the procedural justice dimension finds integration within the Israeli planning and construction law, the distributive and recognition justice components are promoted primarily through the policies of key stakeholders responsible for shaping the spatial and environmental landscape. It is notable that the focus on the distributive aspect is largely confined to injustices and discrimination prevalent at the regional level, particularly between different regions. The article draws upon the evolving framework of the *Critical Environmental Approach* (CEJ).⁷ Employing this perspective necessitates, as a primary step, a fundamental reconsideration of the prevailing social and spatial hierarchy, which, in part, has been responsible for both establishing and perpetuating the reality of environmental injustice. Furthermore, a CEJ approach tackles responses to inequality in a multifaceted fashion. Instead of reinforcing the current social framework, it endeavors to question and contest it. Hence, the CEJ framework offers a fresh avenue for envisioning an alternative future in terms of environmental justice for all segments of society. This approach represents a departure from conventional paradigms and provides an opportunity to reshape the discourse around equitable environmental practices.

Building on this approach, I contend that despite the gradual incorporation of Environmental Justice pillars this process is ultimately counterproductive. This is because it is unorganized and incoherent that lacks the capacity to effectively address long-standing historical environmental injustices and fails to challenge the prevailing social framework. In fact, it runs the risk of exacerbating rather than mitigating these issues. In contrast, the article advocates for a more comprehensive approach to rectify these injustices. This

⁷ Pellow, *supra* note 5, at 3.

involves the complete application of EJ pillars within well-structured, long-term strategies that take into consideration the existing social hierarchy affecting marginalized ethnic groups and local communities, as well as the impact of the segregated spatial reality on these injustices.

Moreover, it is crucial to integrate EJ pillars within the regulatory framework and establish them as an integral requirement throughout the implementation of any social and environmental policy. By adopting this approach, the article aims to ensure that addressing environmental injustices is not superficial or short-lived, but rather deeply embedded within the fabric of societal structures and policies. This holistic approach stands a better chance of fostering lasting change and achieving genuine environmental justice for all affected groups.

The article not only offers a case-specific examination but also extends its relevance to broader comparative studies and interdisciplinary discourse. In focusing on the Israeli context, this article makes a valuable contribution to the expanding field of comparative research. The insights and recommendations garnered from this investigation hold the potential to inform the ongoing incorporation of EJ principles within various regulatory and judicial frameworks worldwide.⁸ This facilitates a deeper understanding of Environmental Justice in its complexity and contributes to the development of more holistic approaches to addressing environmental and social inequalities.

Furthermore, the article aims to enrich the growing body of research centered around the Critical Environmental Approach. This endeavor involves drawing connections between diverse subjects, including intersectionality, human rights discourse, and Environmental Justice. Through these connections, the article shines a light on the intricate nature of the Environmental Justice concept, exploring its multifaceted aspects and their interplay.

⁸ Éloi Laurent, *Issues in Environmental Justice Within the European Union*, 70 *ECO. ECON.* 1846 (2011); Andrea Olive & Andrew Rabe, *Indigenous Environmental Justice: Comparing the United States and Canada's Legal Frameworks For Endangered Species Conservation*, 46 *AM. REV. OF CANADIAN STUD.*, 496 (2016).

The article commences by providing an overview of the development of the Environmental Justice approach. This is succeeded by a presentation of Israel's demographical and geographical characters and an examination of the evolution of this concept within the specific Israeli context. Subsequently, the fourth section outlines the methodology of the research of the incorporation process of the Environmental Justice pillars within the regulative system in Israel in the last three decades. In the fourth section, a critical environmental analysis of the findings is presented. This section not only scrutinizes the outcomes within the Israeli local context but also extrapolates insights applicable to other regulative systems. Finally, the article concludes by summarizing the key findings, implications, and broader relevance of the study.

II. *Environmental Justice Approach*

A. *General Overview*

Over the past few decades, a substantial body of environmental protection laws has rapidly evolved, exerting significant influence across diverse aspects of modern life on a global scale. These are legal frameworks and regulations established by governments to address and mitigate the negative impacts of human activities on the environment. Environmental protection laws and regulations encompass two primarily key issues: the responsible utilization of natural environmental resources and the prevention or mitigation of environmental hazards and damages arising from human activities.⁹ On the procedural front, these legal provisions focus on establishing mechanisms that ensure the dissemination of information to the public. This, in turn, should guarantee their active participation in decision-making processes and enforces legal measures pertaining to environmental concerns.¹⁰ These laws, which aim to ensure the sustainable use of natural resources, the prevention of pollution, and the conservation of ecosystems for the benefit of present and future generations, have become an integral part of

⁹ See Jane Holder & Maria Lee, ENVIRONMENTAL PROTECTION, LAW AND POLICY: TEXT AND MATERIALS (Cambridge University Press, 2007); Robert L. Glicksman et al. ENVIRONMENTAL PROTECTION, LAW AND POLICY (Aspen Publishing, 2023)

¹⁰ *Id.* at 703- 709.

various legal domains, including Administrative Law, Tort Law, Criminal Law, and Nuisance Law.

However, such regulations and legal enactments do not acknowledge the unjust distribution of risks and nuisances as well as environmental benefits among different groups, that were widely introduced and discussed by the Environmental (in)Justice movement and paradigm. Empirical research conducted over the years, indicate a high correlation between the location of environmental hazards, pollution and waste sites, and residential neighborhoods of disadvantaged communities, mainly African Americans.¹¹ Accordingly, this paradigm, that started to evolve in the United States, refers to the unjust distribution of environmental harms on marginalized and poor communities.

Research on environmental injustice has gained considerable traction not only in the US, but also in Europe,¹² Canada,¹³ Australia¹⁴ and Africa.¹⁵ The overarching theme across studies conducted in these regions is that, in comparison to more affluent and influential groups, marginalized communities including indigenous peoples, ethnic minorities, immigrants, and impoverished populations

¹¹ United Church of Christ Commission. *Toxic Wastes and Race in the United States*. Commission for Racial Justice, 1987; Hird, *supra* note 3; John A. Hird & Michael Reese, *The Distribution of Environmental Quality: An Empirical Analysis* 79 SOC. SCI. Q. 693 (1998); Paul Stretesky & Michael J. Hogan, *Environmental Justice: An Analysis of Superfund Sites in Florida*, 45 SOC. PROBS. 268 (1998); Paul Stretesky & Michael L. Lynch, *Environmental Justice and the Predictions of Distance to Accidental Chemical Releases in Hillsborough County, Florida* 80 SOC. SCI. Q. 830-846 (1999); Yuanuan Mao, *et al.*, *Review of Empirical Studies on Relationship Between Street Environment and Crime* 36 J. OF PLAN. LITERATURE 187 (2021).

¹² Horst-Dietrich Elvers *et al.*, *The Diversity of Environmental Justice: Towards a European Approach*, 10 EUROPEAN SOCIETIES, 835.

¹³ Dayna Nadine Scott, *The Networked Infrastructure of Fossil Capitalism: Implications of the New Pipeline Debates for Environmental Justice in Canada*, 43 REV. GEN. 11 (2013).

¹⁴ Michelle Maloney, *Environmental Justice Network Australia - Where to from Here*, 17 ASIA PAC. J. ENVTL. L. 155 (2014); Brad Jessup, *Justice, Recognition and Environmental Law; The Weilangta Forest Conflict Tasmania, Australia*, 34 U. TAS. L. REV. 5 (2015).

¹⁵ ENVIRONMENTAL JUSTICE IN SOUTH AFRICA (David McDonald ed., Athens, OH: Ohio University Press and Cape Town University Press 2002).

experience a disproportionate share of environmental burdens. Simultaneously, they face limited access to environmental benefits.¹⁶ Typically, these disadvantaged groups reside in segregated and densely populated enclaves. They grapple with systematic violations of their housing rights, encompassing issues related to land allocation, open spaces, and affordable housing.¹⁷ Additionally, they contend with subpar healthcare and sanitation facilities,¹⁸ inadequate educational opportunities, limited transportation options,¹⁹ and unequal access to public resources.²⁰ What further compounds these challenges is that violations of rights are often the outcome of entrenched discriminatory policies woven into the fabric of legal and political systems. These structural biases contribute to perpetuating an unjust triad of environmental, social, and racial disparities, exacerbating an already complex predicament.²¹

Another facet of the Environmental Justice concept comes to light in the form of inequitable distribution of environmental goods. These goods encompass valuable resources like clean air and access to natural resources. The disparity in allocation between privileged

¹⁶ Hird, *supra* note 3; Maria L. Miranda *et al.*, *Making the Environmental Justice Grade: The Relative Burden of Air Pollution Exposure in the United States* 8 INT'L. J. OF ENV'T RSCH. AND PUB. HEALTH 1755 (2011); Kyle Powys Whyte, *Environmental Justice in Native America*, 4 ENV'T. JUST. 185, 186 (2011).

¹⁷ Robert D. Bullard *et al.*, *Toxic Wastes and Race at Twenty: Why Race Still Matters After All of These Years*, 8 ENV'T L. 371 (2008).

¹⁸ Robert D. Bullard *et al.*, ENVIRONMENTAL HEALTH AND RACIAL EQUITY IN THE UNITED STATES: STRATEGIES FOR BUILDING ENVIRONMENTALLY JUST, SUSTAINABLE, AND LIVABLE COMMUNITIES (NWWashington, DC: American Public Health Association; 2011).

¹⁹ Robert D. Bullard *et al.*, HIGHWAY ROBBERY: TRANSPORTATION RACISM AND NEW ROUTES TO EQUITY (Cambridge, MA: South End Press; 2004).

²⁰ Danial Faber & Deborah McCarthy, NEOLIBERALISM, GLOBALIZATION AND THE STRUGGLE FOR ECOLOGICAL DEMOCRACY: LINKING SUSTAINABILITY AND ENVIRONMENTAL JUSTICE, In: JUST SUSTAINABILITIES: DEVELOPMENT IN AN UNEQUAL WORLD (Robert Bullard *et al.*, eds., New York: Earthscan Publications; 2003).

²¹ RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS: A TIME FOR DSICOURSE (Bunyan Bryant & Paul Mohai eds., Boulder, CO: Westview Press; 1992); Sheryll D. Cashin, *Civil Rights in the New Decade: The Geography of Opportunity*, 31 COLUM. L. REV. 467, 469 (2001); Spencer Banzhaf *et al.*, *Environmental Justice: The Economics of Race, Place, and Pollution*, 33 J. of ECON. PERSP. 185 (2019).

and marginalized groups becomes evident in this context.²² Frequently, dominant and affluent groups tend to profit more from the utilization of significant environmental advantages, which inherently belong to the broader public.

Examples of such disparities include the preferential utilization of shared resources like grazing lands, fishing privileges, mining zones, water rights, and public open spaces.²³ In many instances, these resources are exploited by more powerful groups, often to their benefit, at the expense of others who may lack the same level of influence and access. This aspect of the EJ concept underscores the importance of addressing these disparities to ensure fair access and usage of resources for all members of society.

Despite receiving relatively less attention than the discussion on exposure to environmental hazards, the disproportionate utilization of public resources is a matter of profound significance. It plays a crucial role in exacerbating the existing landscape of inequity. This is because the allocation of opportunities to exploit these resources has substantial consequences that extend beyond the immediate realm.²⁴

Firstly, it's important to recognize that environmental goods are interconnected with environmental harms, forming two sides of the same coin. Decisions regarding the distribution of opportunities to exploit public resources wield significant influence on the potential emergence of environmental hazards. For example, the establishment of industrial activities or infrastructure facilities, like waste disposal sites or highways, locations can significantly impact the environmental quality for the population living or working nearby.²⁵

²² Richard Lazarus, *The Meaning and Promotion of Environmental Justice*, 1 MD J. CONTEMP. LEG. ISSUES 1 (1994).

²³ Peter L. Reich, *Greening the Ghetto: A Theory of Environmental Race Discrimination*, 23 UNIV. KANS. L. REV. 271 (1994).

²⁴ Katinka Wijsman & Marta Berbés-Blázquez, *What Do We Mean by Justice in Sustainability Pathways? Commitments, Dilemmas, and Translations from Theory to Practice in Nature-based Solutions*, 136 ENV'T SCI. & POL'Y (2022).

²⁵ Glen Bramley *et al.*, *Environmental Justice in the City? Challenges for Policy and Resource Allocation in Keeping the Streets Clean*, 44 ENV'T & PLAN. A: ECON. & SPACE 741 (2012).

Furthermore, the allocation of rights to a specific group for the utilization of a public resource often leads to the deprivation of others' access to that same resource. This can diminish their ability to also benefit from it. Moreover, the control that one group gains over a certain resource tends to perpetuate itself. This is because this group is inclined to shape conditions and norms that favor its interests, while simultaneously preventing other groups from gaining control over the same resource.

Therefore, the disproportionate exploitation of public resources plays a pivotal role in perpetuating inequality and fostering a cycle of advantage for certain groups. Recognizing and addressing these dynamics is essential in the pursuit of a more just and equitable environmental landscape.

B. *From Environmental to Climate Justice to Human Rights*

The ongoing and increasingly fervent debate surrounding climate change has not only amplified discussions on equity but has also illuminated the intricate nexus of social and environmental injustices faced by marginalized communities. These communities, predominantly comprising poor and minority groups, bear a disproportionate burden of climate change impacts despite having contributed less to its causation.²⁶

Overall, climate justice seeks to reframe the discourse around climate change from a purely environmental issue to a social, economic, and ethical one. It emphasizes the interconnectedness of environmental concerns with broader social justice and human rights considerations. It encompasses both the ethical and political dimensions of climate change, advocating for equitable and fair responses to the challenges posed by a changing climate.

²⁶ Sheila R. Foster & Paolo Galizzi, HUMAN RIGHTS AND CLIMATE CHANGE: BUILDING SYNERGIES FOR A COMMON FUTURE, ENTRY, IN 1 ELGAR ENCYCLOPEDIA OF ENVIRONMENTAL LAW: CLIMATE CHANGE LAW 43-53 (Daniel A. Farber & Marjan Peeters eds., Northampton, Mass.: Edward Elgar 2016); *Summary of the Panel Discussion on Human Rights, Climate Change, Migrants and Persons Displaced Across International Borders Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/37/35* (14 November 2017) ["Panel report"], <https://undocs.org/A/HRC/37/35>.

Accordingly, key aspects of climate justice include equity and fairness; vulnerability and marginalization; human rights; participation and inclusion; global solidarity; environmental racism and discrimination; just transition and accountability.²⁷

This evolving discourse has led Environmental Justice scholars and Climate Justice scholars to recognize that environmental and climate change concerns are inextricably linked to the very fabric of communities' lives — encompassing their habitats, work environments, recreational spaces, educational opportunities, and social interactions.²⁸ This realization has given rise to the contemporary Climate Justice movement, which places a renewed emphasis on understanding the local impacts and lived experiences of communities. Furthermore, it underscores the crucial need for these communities to have agency in shaping their environments and contributing to decision-making processes.²⁹

Significantly, this emerging dialogue has propelled the introduction of a novel legal perspective to the realm of environmental studies — that of human rights, recognizing the indispensability of a human rights-based approach for advancing both environmental and climate justice.³⁰ This acknowledgment underscores the intrinsic connection between human well-being, equitable access to resources, and a sustainable environment.³¹

²⁷ See David Schlosberg & Lisette B. Collins, *From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice*, 5 WILEY INTERDISC. REV.: CLIMATE CHANGE 359, 362-364 (2014).

²⁸ Charles Lee, *Environment: Where we Live, Work, Play and Learn*, 6 RACE, POVERTY & THE ENV'T. 6 (1996). Also See, Patrick Novotny, *WHERE WE LIVE, WORK AND PLAY: THE ENVIRONMENTAL JUSTICE MOVEMENT AND THE STRUGGLE FOR A NEW ENVIRONMENTALISM* (West Port, CT: Praeger; 2000).

²⁹ For exploring the connection between environmental and climate justice, See, Schlosberg and Collins, *supra* note 27..

³⁰ The year 2015 is frequently marked as the moment in the human rights turn in climate change litigation. For further elaboration on this turn, See, Doreen Lustig & Iil Gabison, *The Climate Change Turn in Human Rights* sec. in *THE OXFORD HANDBOOK OF COMPARATIVE HUMAN RIGHTS LAW* (Neha Jain and Mila Versteeg eds., Forthcoming, 2023).

³¹ David Schlosberg, *Climate Justice and Capabilities: A Framework for Adaptation Policy*, 26 ETHICS & INT'L AFFAIRS 445 (2012); Geraldine Terry, *No Climate Justice Without Gender Justice: An Overview of the Issues* 17 GENDER & DEV. 5 (2009); Stephen Gardiner, *Climate Justice*, In: *THE OXFORD HANDBOOK OF CLIMATE CHANGE AND SOCIETY*, 309-322 (John S. Dryzek et al., eds., 2011).

Moreover, litigation framed in human rights terms related to climate change involves legal actions that highlight how the impacts of climate change infringe upon or violate basic human rights.³² This type of litigation seeks to hold governments, corporations, and other entities accountable for their contribution to climate change and their failure to adequately address its consequences.³³ Therefore, litigation that frames climate change concerns in human rights terms often seeks not only compensation but also policy changes, mitigation efforts, and increased accountability from governments and corporations. It aims to use the language of human rights to amplify the urgency of addressing climate change and protecting the rights of those most vulnerable to its impacts.

Lawsuits have been filed asserting that failure to address climate change can result in health issues and loss of life due to extreme weather events, rising temperatures, and increased air pollution. Plaintiffs argue that the failure to mitigate climate change constitutes a violation of their right to a safe and healthy environment.³⁴ Furthermore, litigation in international courts may use human rights treaties and conventions to make a case against states for their failure to take sufficient action to combat climate change.³⁵ This approach, first embedded in Paris Agreement, seeks to establish that states have an obligation under international law to protect human rights from the impacts of climate change.³⁶

³² See, César Rodríguez-Garavito, *Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action*, SSRN, at 4 (2021).

³³ See, Linda H. Leib, *Human Rights And The Environment: Philosophical, THEORETICAL & LEGAL PERSP.* 2 (2010).

³⁴ See, Richard Heede, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Procedures*, 122 *CLIMATE CHANGE* 229 (2014).

³⁵ Svitlana Kravchenko & John Bonine, *HUMAN RIGHTS AND THE ENVIRONMENT: CASES, LAW & POLICY* (Carolina Academic Press, 2008); Sumudu Atapattu, *HUMAN RIGHTS APPROACHES TO CLIMATE CHANGE, CHALLENGES AND OPPORTUNITIES* (Routledge, 2016); Sumudu Atapattu & Andre Schapper, *HUMAN RIGHTS AND THE ENVIRONMENT: KEY ISSUES* (Routledge, 2019).

³⁶ Paris Agreement to the United Nations Framework Convention on Climate Change, preamble. 11, Dec. 12, 2015, T.I.A.S. No. 16-1104.

Indeed, this approach necessitates a comprehensive framework that prioritizes the representation, inclusion, and safeguarding of the rights of the most vulnerable members of society. It implies that while addressing environmental harms, solutions should concurrently foster equitable access and distribution of fundamental resources.³⁷ Consequently, the recent environmental justice perspective extends its focus beyond ecological concerns and traditional environmental matters.

In this evolved view, the scope of inquiry encompasses a wider range of issues, including land policies, urban planning strategies, the promotion of equitable public transportation systems, and the facilitation of unrestricted public access to parks and beaches.³⁸ These elements are essential components of an inclusive and holistic approach that seeks to redress historical inequities, ensure fair resource allocation, and uphold the rights of all individuals, especially those disproportionately affected by environmental challenges.

C. Environmental Justice Regulation

In tandem with empirical research, a normative and public policy framework has emerged, advocating the integration of an Environmental Justice perspective within regulatory systems. This framework is rooted in three primary pillars that serve as guiding principles.

The first pillar revolves around the concept of just distribution.³⁹ This encompasses the fair apportionment of environmental burdens, such as pollution, as well as benefits, including access to clean air and water, across all societal groups. This principle seeks to mitigate the disproportionate impact of environmental hazards on vulnerable communities while ensuring equitable access to positive environmental outcomes.

The second pillar places emphasis on meaningful and comprehensive participation. It underscores the significance of allowing affected parties, whether individuals or communities, to be

³⁷ Taylor, *supra* note 3, at 536.

³⁸ *Id.*

³⁹ David Schlosberg, *Theorizing Environmental Justice: The Expanding Sphere of Discourse*, 22 *ENV'T POL.* 37 (2013).

actively involved in the decision-making processes related to environmental policies and projects that may directly affect them. This approach aligns with the principles of procedural justice, aiming to ensure that all stakeholders have a voice in shaping their environmental realities.⁴⁰

Notwithstanding, this pillar, focusing on meaningful and comprehensive participation, holds special significance in multicultural societies marked by structural inequalities and disparities that hinder the full and equal engagement of minority groups in decision-making processes and voicing their perspectives. This is particularly crucial due to a multitude of factors. To begin with, environmental decisions entail the weighing of various factors, some of which may take precedence over others. These decisions often necessitate expertise in areas such as law, urban planning, and intricate technical fields.

Most citizens lack proficiency in these areas, which leads to distinct advantages for individuals and groups who can afford legal representation, planning consultation, and specialized scientific services.⁴¹ However, this disadvantage is intensified within marginalized groups that have lesser means and awareness to overcome this obstacle. Furthermore, this inherent complexity can lead to disparities in participation, wherein marginalized groups may struggle to navigate the intricacies of the decision-making process. The associated costs and technical demands create barriers that limit the ability of minority communities to meaningfully engage and contribute their viewpoints.⁴²

The second challenge lies in the language used within multicultural and multilingual states, which significantly impacts the ability of marginalized groups to effectively participate in decision-making processes. For instance, considering the Israeli context where

⁴⁰ Alice Kaswan, *Environmental Justice: Bridging the Gap Between Environmental Laws and Justice*, 47 *Am. UL Rev* 221(1997).

⁴¹ Tracey Bedford *et al.*, *Limits to New Public Participation Practices in Local Land Use Planning*, 73 *THE TOWN PLAN. REV.* 311 (2002).

⁴² Sheila R. Foster & Christian Iaione, *CO-CITIES: INNOVATIVE TRANSITIONS TOWARD JUST AND SELF-SUSTAINING COMMUNITIES* 59 (2022).

all proceedings are conducted in Hebrew, if an area's population is primarily composed of foreign workers, immigrants, or Arabs, some of whom might not be fully proficient in Hebrew, their capacity to participate becomes inherently restricted.

A third obstacle arises from the composition of authorized committees responsible for making environmental decisions. In cases where these committees are dominated by members from the hegemonic group or where this group holds the majority, the interests and needs of minority groups that lack sufficient representation within the committee may not be adequately heard. This imbalance can lead to decisions that don't fully consider the perspectives of marginalized communities, even if the decision-making process is formally open to all.⁴³

Addressing these challenges becomes a pivotal step in achieving genuine procedural justice and ensuring that the voices of all communities, especially those traditionally marginalized, are heard and considered in environmental decision-making processes. Taken together, these challenges underscore the potential for unjust decision-making processes within environmental matters, even if the process appears to be inclusive on the surface. Hence, the incorporation of Environmental Justice pillars into environmental decision-making processes becomes incredibly critical and indispensable. It is paramount for ensuring that the voices, needs, and interests of marginalized groups are genuinely considered, particularly in multicultural societies where these dynamics are pronounced. This integration is crucial for fostering equity and authenticity in the decision-making processes.

The third pillar is centered on the recognition aspect and presents a complex and often unexplored dilemma within academic scholarship. This aspect calls for incorporating the needs and interests of communities into environmental policies and regulations, recognizing their perspectives as crucial components of decision-making processes related to environmental concerns. However, a pertinent challenge arises when communities, based on their way of life or cultural values, do not prioritize environmental goods as highly as other factors.

⁴³ Nestor M. Davidson & Sheila Foster, *The Mobility Case for Regionalism*, 47 U.C. DAVIS L. REV. 63 (2013).

This challenge underscores the intricate balance that policymakers must strike. On one hand, the recognition aspect advocates for valuing and integrating the preferences of all communities, ensuring their voices are heard. On the other hand, it raises questions about whether prioritizing certain cultural or traditional practices might inadvertently lead to the perpetuation of environmental harm or exacerbate existing inequities. For example, while certain environmental goods like access to parks and gardens, waste management quality, air quality, and noise levels might not be classified as high preferences by a particular community, cleanliness of the environment emerges as a dominant concern. This highlights the diversity of perspectives within communities and underscores the need for policymakers to navigate these nuances effectively. It also stresses the complexity of incorporating the recognition aspect within environmental policies and regulations when different communities have varying priorities and preferences based on their way of life and cultural values.

In such cases, it becomes crucial to engage in meaningful consultation and collaboration with the community in question. Open dialogue can help policymakers understand the underlying values and concerns that influence these preferences. This approach allows for the development of policies that address the community's unique needs while also upholding broader environmental and social goals. Striking this balance requires a thorough understanding of cultural values and priorities, while also ensuring that these values align with sustainable environmental outcomes.

Together, these three pillars form the foundation for an inclusive and equitable Environmental Justice perspective, aiming to rectify historical disparities, empower marginalized communities, and foster a more just environmental landscape.

In this regard, the United States has made significant strides in incorporating the concept of Environmental Justice into its regulatory framework and policies. The formal integration of EJ within the United States Environmental Protection Agency (EPA) and the broader policy landscape reflects a commitment to addressing environmental disparities among various communities. The EPA's adoption of EJ as a formal policy in 1992 marked a pivotal moment, signifying the recognition of the need to ensure fair treatment and

meaningful involvement for all people, regardless of race, color, national origin, or income, in environmental decision-making processes.⁴⁴ The establishment of a council comprised of diverse representatives further emphasized the importance of strengthening the agency's EJ program.

The Presidential Executive Order issued in 1994 by the Clinton administration underscored the significance of environmental justice across various federal agencies. The order mandated that each federal agency consider EJ as a fundamental component of its mission. This directive aimed to identify and address disproportionately high and adverse impacts on minority and low-income populations stemming from agency programs, policies, and activities.⁴⁵

More recently, President Biden issued Executive Order on Environmental Justice on the eve of Earth Day which ensures the importance of a healthy environment for all citizens: "... every person must have clean air to breathe; clean water to drink; safe and healthy foods to eat; and an environment that is healthy, sustainable, climate-resilient, and free from harmful pollution and chemical exposure. Restoring and protecting a healthy environment — wherever people live, play, work, learn, grow, and worship — is a matter of justice and a fundamental duty that the Federal Government must uphold on behalf of all people".⁴⁶ Furthermore, the Executive

⁴⁴ EPA - Environmental Justice: Reducing Risk for All Communities Volume 1; EPA - Environmental Justice: Reducing Risk For All Communities Volume 2; United States. Environmental Protection Agency. Environmental Equity Workgroup. (1992). Environmental equity: Reducing risk for all communities (Vol. 1). United States, Environmental Protection Agency; Roque, J. A. (1993). Environmental equity: Reducing risk for all communities. Environment: Science and Policy for Sustainable Development, 35(5), 25-28.; United States. Environmental Protection Agency. Environmental Equity Workgroup. (1992). Environmental equity: Reducing risk for all communities (Vol. 1). United States, Environmental Protection Agency.

⁴⁵ Summary of Executive Order 12898- Federal Actions to Address Environmental Justice Minority Population and Low-Income Populations 59FR 7629 (February 16, 1994), <https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-a-ddress-environmental-justice>.

⁴⁶ The White House, President Biden's Executive Order on Revitalizing our Nation's Commitment to Environmental Justice For All (April 21, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for->

Order draws a clear link with racial discrimination and exclusionary land use policies against those who have low income, racial minorities as well as Indigenous, native Americans, migrant farmworkers who all experience disproportionate and adverse human health and environmental burdens.

These initiatives in the United States demonstrate a clear commitment to integrating EJ principles into regulatory practices and policies, ensuring equitable environmental outcomes and addressing the historic disparities faced by marginalized communities.⁴⁷ The explicit integration of environmental justice approach into the policy level can be also detected in the early 2000s in some countries,⁴⁸ and as will be discussed in the following section also in Israel but on a small scale.

I. The Case Study: Environmental (in)Justice in Israel

A. Basic Demography

Israel's population of approximately nine million is comprised of diverse groups. The largest portion, accounting for 74.7 percent, consists of Jews,⁴⁹ Arab-Palestinians constitute 20.8 percent of the population,⁵⁰ while the remaining 4.5 percent falls under the category of "others," as defined by the Israeli Central Bureau of Statistics (ICBS).⁵¹

all/#:-:text=To%20fulfill%20our%20Nation's%20promises,harmful%20pollution%20and%20chemical%20exposure.

⁴⁷ Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, available at:<https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>.

⁴⁸ Laurent, *supra* note 8.

⁴⁹ I here refer to violations of housing rights within the borders of the State of Israel, commonly referred to as the 'green line.' I do not address the vicious violations of housing and human rights in the occupied territories.

⁵⁰ The questions of Israel's status as a settler state have long been debated in historical and postcolonial literature. See, Neve Gordon & Moriel Ram, *Ethnic Cleansing and the Formation of Settler Colonial Geographies*, 53 POL. GEOGRAPHY 20, 24 (2016). It is worth noting here that the Israeli government persists in denying the state's colonial heritage and the indigeneity of Palestinians. See, Oren Yiftachel *et al.*, *Between Rights and Denials: Bedouin Indigeneity in the Negev/Naqab*, 48 ENV'T & PLAN. 2129, 2130 (2016).

⁵¹ Referring to non-Arab Christians, members of other religions, and persons not classified by religion in the Population Registry. CENTRAL BUREAU OF STATISTICS, STATE OF ISRAEL, *On the Eve of Israel's 69th Independence*

Within the Jewish population, there are further divisions into various sub-groups. These include religious, secular, and Ultra-Orthodox groups, as well as immigrants hailing from diverse origins such as Europe, the United States, and Muslim countries.⁵² Each subgroup brings distinct practices, perspectives, and needs. The Arab community within Israel is also characterized by its own divisions. This community is divided into religious groups, including Christians, Muslims, and Druze. These religious divisions contribute to the unique cultural and social dynamics within the Arab population. These division has implications for understanding and addressing environmental justice concerns, as different communities may have varying perspectives on environmental goods, hazards, and priorities based on their distinct practices, needs, and experiences.

B. *Geographical Characteristics*

Israel's distinct geographical and demographic characteristics contribute to a unique set of environmental justice challenges. Firstly, its relatively small size, coupled with a dense population, amplifies the severity of environmental injustice issues. The scarcity of available land for both residential construction and industrial development further complicates these matters. This situation can lead to increased environmental burdens being disproportionately placed on certain communities due to spatial constraints. Particularly because Jews and Arabs and their sub-groups often inhabit separate and segregated localities, with limited interaction between them and which enables a differentiated land, zoning and environmental policy.⁵³

Day—8.7 Million Residents in the State of Israel (2017), http://www.cbs.gov.il/www/hodaot2017n/11_17_113e.pdf [<https://perma.cc/QMM4-U8CR>] (archived Sept. 8, 2019).

⁵² Noah Lewin-Epstein & Yinon Cohen, *Ethnic Origin and Identity in the Jewish Population of Israel*, 45 *J. OF ETHNIC & MIGRATION STUD.* 2118-2137 (2018); Calvin Goldscheider, *Israel's Changing Society: Population, Ethnicity, and Development* (Routledge, 2019).

⁵³ ISSACHAR ROSEN-ZVI, *TAKING SPACE SERIOUSLY: LAW, SPACE AND SOCIETY IN CONTEMPORARY ISRAEL* (Routledge 2017).

Water scarcity represents another significant challenge. Israel has long grappled with severe and ongoing water shortages, exacerbated by a dwindling of water sources.⁵⁴ This scarcity has implications for equitable water distribution and further intensifies the environmental and social impacts on vulnerable communities. Moreover, due to the arrival of hundreds of thousands of immigrants from the former Soviet Union in the nineties, a rapid and unregulated process of zoning changes has occurred in various locations within Israel.⁵⁵ The lack of comprehensive and detailed planning has led to a proliferation of conflicting land uses, which resulted in the emergence of severe environmental issues in some areas.⁵⁶ The fact that approximately 90% of the land in Israel is owned by the state and its institutions has also resulted in conflicts over land use, as competing interests vie for access and control.⁵⁷

Geographically, Israel is divided into six main administrative districts or regions, each with its own unique characteristics, local governance and administrative structure, responsible for various services and policies within their respective regions.⁵⁸

The Northern District that encompasses areas like the Galilee, Golan Heights, and parts of the coastal plain. It includes diverse landscapes, historical sites, and a mix of Jewish and Arab communities. Haifa District is centered around the city of Haifa, located on the Mediterranean coast, and encompasses the northern coastal areas, the Carmel mountain range, and Haifa Bay and is an

⁵⁴ Micha Gisser and Samuel Pohoryles, *Water Shortage in Israel: Long-run Policy for the Farm Sector*, 13 WATER RESOURCES RESEARCH, 865 (1977); Saul Arlosoroff, *Integrated Approach for Efficient Water Use Case Study: Israel*, 297 IN PERSPECTIVES IN WORLD FOOD AND AGRICULTURE (Colin G. Scanes and John A. Miranowski- eds., 2004); David Katz, *Undermining Demand Management with Supply Management Moral: Hazard in Israeli Policies*, 8 WATER, 159 (2016).

⁵⁵ Rachele Alterman, *PLANNING IN THE FACE OF CRISIS* (Routledge, 2002).

⁵⁶ Gabriel Lipshitz, *Immigrants from the Former Soviet Union in the Israeli Housing Market: Spatial Aspects of Supply and Demand*, 34 URB. STUD. 471 (1997).

⁵⁷ Tobias Kelly, 'A Land of Rock, Marshes and Sand' ?Forests, Orchards and Legal Inequality in Israel/Palestine, 22 SOC. & LEGAL STUD. 575 (2013); Erez Tzfadia, *Abusing Multiculturalism: The Politics of Recognition and Land Allocation in Israel, Environment and Planning D*, 26 SOC'Y & SPACE 1115 (2008).

⁵⁸ Danial E. Orenstein, & Steven P. Hamburg, *Population And Pavement: Population Growth And Land Development In Israel*, POPUL ENV'T. 31, 223–254 (2010).

industrial and cultural hub. It is also the home of important technological sectors and plays a role in the country's economic development.

Third is the Central District, which is the heart of Israel, that includes the Tel Aviv metropolitan area and extends to the Sharon plain and surrounding regions and it's the country's economic and cultural center. Fourth is Tel Aviv District, focusing specifically on the city of Tel Aviv and its immediate surroundings. Tel Aviv stands as a major hub of economic activity in Israel, serving as the primary center for economic power. This metropolitan area hosts much of the country's affluent population and acts as a nucleus for various economic ventures, industries, and innovation. The city's prominence is marked by its status as a financial and technological hub, attracting both domestic and international investments.

Fifth is Jerusalem District encompassing the city of Jerusalem and its surroundings, which holds immense religious, historical, and cultural significance for Jews, Christians, and Muslims. Jerusalem also serves as a multifaceted focal point of governmental power and authority. It houses key institutions such as the Israeli Knesset (parliament), the Supreme Court, and various government ministries. As the capital city of Israel, Jerusalem holds a unique significance in the nation's political landscape and holds a central role in matters of governance. The concentration of economic and governmental power in Israel is notably focused around the country's three largest cities, Tel Aviv, Jerusalem, and Haifa, collectively forming a powerful metropolis.

And finally, the Southern District which covers the Negev desert and the southern regions, includes both urban centers like Beersheba and Eilat, as well as agricultural areas and desert landscapes. In contrast to the economic and governmental power centers, the Negev region in the south of Israel is often characterized as the periphery and faces significant environmental challenges and hardships.⁵⁹ The Negev is home to a diverse population, including Arab Bedouin residents, Mizrahi Jews, and immigrants from the former Soviet Union and Ethiopia. This region experiences a range of environmental injustices, including unequal access to resources,

⁵⁹ Boris Portnov & Uriel Safriel, *Prospective Desertification Trends in the Negev — Implications for Urban and Regional Development*, 37 ENV'T. CHALLENGES IN THE MEDITERRANEAN 2000-2020, 123 (2004).

inadequate infrastructure, and exposure to environmental hazards. The marginalized communities residing in the Negev are often disproportionately affected by these environmental burdens. In fact, these environmental disparities in the Negev reflect broader social and economic inequities in Israel.

The cities and villages in the Negev region are characterized by low population density, remoteness from centers of power, and notably high unemployment rates in comparison to localities in other regions of Israel.⁶⁰ This economic disadvantage is further compounded by discrimination across various domains, including education, land allocation, and infrastructure development funding.⁶¹

The disparities extend to environmental matters as well. The Negev hosts the largest waste landfill in Israel, underscoring an inequitable distribution of waste management facilities.⁶² Furthermore, the presence of Israel's largest nuclear reactor in the south of the country introduces another layer of potential contamination and exposure to radioactive materials. This poses significant health and environmental risks to residents in the Negev region.

However, the situation of the Arab-Bedouin population in the Negev region is much more concerning, particularly those residing in the "unrecognized villages." These are localities that lack formal recognition by the state and consequently lack the essential infrastructure required for daily living, such as water, sewage, and electricity facilities.⁶³ This lack of recognition leads to a host of

⁶⁰ Ann Gardner & Emanuel Marx, *Employment and Unemployment among Bedouin*, 4 NOMADIC PEOPLES 21 (2000). Also See, Oren Tirosh et al., *Employment Patterns and Barriers to Employment in the Bedouin Population in the Negev: Summative Evaluation Study* (2023) RR-935-23. Myers-JDC-Brookdale Institute. (Hebrew).

⁶¹ Ismael Abu-Saad, *Access to Higher Education and its Socio-Economic Impact Among Bedouin Arabs in Southern Israel*, 76 INT'L J. OF EDUC. RSCH. 96 (2016).

⁶² Zafirir Rinat, *Israel's Negev Is Becoming Dumping Ground for Household Trash*, Haaretz, (Sep 22, 2019).

⁶³ Ilana Meallem, Yaakov Garb, & Julie Cwikel. *Environmental Hazards of Waste Disposal Patterns—A Multimethod Study in an Unrecognized Bedouin Village in the Negev Area of Israel* 65 ARCHIVES OF ENVIRONMENTAL & OCCUPATIONAL HEALTH, 230 (2010); Suleiman Abu-Bader & Daniel Gottlieb, *Education, Employment and Poverty Among Bedouin Arabs in Southern Israel* 8 HAGAR 121 (2008); Tawfiq S. Rangwala, *Inadequate Housing, Israel, and the Bedouin of the Negev* 42 OSGOODE HALL L.J. 415 (2004); Thabet Abu-Ras, *Land Disputes in*

challenges for the residents, who are approximately 40% of the Bedouin population in the Negev. Moreover, the inhabitants of these unrecognized villages are faced with environmental injustices stemming from land ownership disputes with the state.⁶⁴ The state's policies have led to harmful and abusive consequences, particularly with regard to the spraying of agricultural crops by the Israel Land Administration or its representatives. The state claims that this spraying is aimed at clearing areas that have been allegedly invaded for illegal agricultural purposes.⁶⁵ This practice not only damages cultivation and sowing but also has adverse effects on the health of nearby residents.

This multifaceted problem highlights a layered experience of environmental injustice for the Bedouin residents. Not only do they face discrimination within the Negev region, but they also endure additional layers of environmental injustice due to their lack of recognition, inadequate infrastructure, and the impacts of state policies. These challenges underscore the importance of addressing both broader societal inequalities and specific policy practices to ensure a more just and equitable environment for all communities in Israel.

In fact, empirical surveys that focused on environmental justice and mapping environmental hazards in Israel have revealed a notable correlation between environmental inequities, socioeconomic status, and the national identity of different localities.⁶⁶ Similar to other multicultural divided states, this correlation has shed light on the prevalent issue of environmental injustice faced by the Arab

Israel: The Case of the Bedouin of the Naqab 24 ADALAH'S NEWS LETTER, 1 (2006).

⁶⁴ Ahmad Amara et al., *Indigenous (In) Justice? Human Rights among Bedouins in Southern Israel/Palestine* (2013); Oren Yiftachel et al., *Recognizing Justice: Identities and Policies in Beer Sheva*, SÉGRÉGATION ET JUST. SPATIALE 221 (2014).

⁶⁵ Rangwala, *supra* note 63.

⁶⁶ Carmit Lubanov, ENVIRONMENTAL JUSTICE INDEX: LOCATION OF POLLUTING SITES, QUARRIES AND WASTE SITES (The Association of Environmental Justice, 2013) (Heb); Laurence Amar & Timna Kolberg, *Survey Of Environmental Justice In Jewish And Arab Municipalities In Central Galilee* (2010).

minority who suffer from various aspects of historical environmental injustice.⁶⁷

Localities in Israel are rated by the Central Bureau of Statistics Socioeconomic Index,⁶⁸ which reflects the economic and social status of the population within the local authority's jurisdiction. The socioeconomic index expresses a combination of basic population characteristics within local authority jurisdiction areas and divides local authorities into ten clusters. Cluster 1 indicates the lowest socioeconomic level, and Cluster 10 indicates the most affluent socioeconomic level. 64% of the localities i.e., 164 out of 255 local authorities in which 4.93 million residents and who make up 61% of Israel's population are ranked between 1 to 5.⁶⁹ Most of the localities located in the lowest cluster, ranked between 1-3 are Arab and Jewish Ultra -Orthodox.⁷⁰

Localities ranking 1-5 suffer from a low standard of living in many areas and they particularly suffer from environmental injustice. Those encompasses inadequate waste and sewage management, deficiencies in municipal and hazardous waste handling, insufficient land allocation for housing and public facilities,⁷¹ limited access to open spaces, disparities in accessing public resources, and unequal transportation opportunities.⁷² Moreover, the disposal of hazardous waste, including the sole national site for asbestos waste disposal, is situated near Arab localities in the northern regions.⁷³ Another

⁶⁷ Deborah F. Shmueli, *Environmental Justice in the Israeli Context*, 40, ENV'T. & PLAN. A 2384 (2008); Shiri Spector Ben-Arie, ENVIRONMENT PROTECTION IN THE ARAB LOCALITIES (Knesset Research Center, 2016).

⁶⁸ The Israel Central Bureau of Statistics (CBS) rating of Local Authorities.

⁶⁹ See Nasreen Haddad Haj-Yahya *et al.*, *Statistical Report On Arab Society 2021*, available at <https://en.idi.org.il/articles/38540>, Quality of Life Among Israel's Population Groups Comparative study, The Haredi Institute for Public Affairs (2018)

<https://machon.org.il/wp-content/uploads/2019/07/quality-of-life-among-israels-population-groups.pdf>.

⁷⁰ *Id.*

⁷¹ Carmit Lubanov & Dani Rabinowitz, ACCESSIBILITY TO PUBLIC TRANSPORTATION IN ARAB LOCALITIES (The Association of Environmental Justice, 2017) (Heb).

⁷² Maisa Totry-Fakhoury & Liron Farchi, PUBLIC TRANSPORTATION IN ARAB LOCALITIES IN ISRAEL: FROM GOVERNMENTAL PLANS TO REALITY (The Abraham Fund Initiatives, 2012) (Heb).

⁷³ Deborah F. Shmueli, *Environmental Justice in the Israeli Context*. 40, ENV'T. & PLAN. A 2384 (2008).

critical concern widespread in Arab cities and villages pertains to waste management and waste incineration.

Furthermore, numerous Arab localities within the country lack modern purification plants, leading to sewage treatment levels falling significantly below legal requirements. This is because environmental regulations, especially ones that involve the installation of infrastructure, often require initial financial investment unavailable to economically disadvantaged authorities, which struggle to obtain bank credit. As a result, disadvantaged local authorities, and particularly Arab localities lack proper regulation and environmental infrastructure.

The lack of proper infrastructure due to the lack of required resources leads to the creation of more hazards, such as air pollution from waste burning, health and sanitary hazards from improper waste treatment, and soil and water pollution from illegal landfills in the local authority's vicinity. Old and/or deficient infrastructure for sewage treatment can also cause soil and water contamination, health hazards, and the like. It should be emphasized that over time, the gap between the regulation and environmental infrastructure of disadvantaged and more affluent authorities only grows larger.⁷⁴ Disadvantaged authorities invest fewer resources in environmental regulation; thus, environmental hazards and pollution increase. Taken together, these factors and others that will be presented in depth in the fifth section, highlight the intricate interplay between demographic, geographic, and environmental aspects that shape the environmental justice landscape in Israel.

C. Israel's commitment to Environmental Justice

The introduction of the concept of environmental (in)justice in Israel can be attributed to environmental non-governmental (NGOs) legal and social organizations.⁷⁵ These organizations have

⁷⁴ Sheila Foster, *Infrastructure Sharing in Cities*, 123 *YALE L.J.F.* 440 (2022).

⁷⁵ These organizations included: "Adam Teva Vadin," "Ramot for the Environment," "Jerusalem Green Found," "The Association for Distributive Justice," "The Green Network," "Life and Environment," "Sustainable

taken the American Environmental Justice framework as their inspiration, adopting it as a central concept in their campaigns and initiatives, but also tailoring EJ principles to address issues they perceive as unique to the Israeli context.

Accordingly, over the last three decades, civil society actors have played a significant role in advocating for environmental justice that have had an immense impact on environmental issues and social relations in Israel. They have launched public campaigns, engaged in public protests, and filed legal petitions, all with the aim of addressing various aspects of environmental justice across a wide array of issues. Notably, both individuals and administrative bodies of local governments have also been involved in submitting legal petitions that focus on the EJ concept.⁷⁶ These legal actions and advocacy efforts underscore the growing recognition of the importance of environmental justice in the Israeli context and stress the fact that environmental issues are deeply connected with just allocation of land and budgets, human rights issues and social justice. Thus, they demonstrate the dedication of civil society to addressing disparities in environmental impacts and benefits and striving for a more equitable distribution of resources and opportunities.

This bottom-up strategy seems to have integrated in the regulatory level. In 2014, the Ministry of Environmental Protection (MoEP), the regulatory authority responsible for environmental regulations in Israel, formulated an environmental justice draft covenant, known as the "EJ scheme 2014". The environmental justice draft covenant, that is supposed to serve as a guiding document, is based on the American Environmental Protection Agency's (EPA) environmental justice plan and demonstrate the government's recognition of the importance of addressing environmental justice concerns within the regulatory framework. It is rooted in the principles of justice, equality, and freedom, grounded in the belief that a healthy and sustainable environment is a fundamental prerequisite for individual well-being and the exercise of basic human rights.

Development for the Negev." Neta Lipman (Servi), THE DEVELOPMENT OF ENVIRONMENTAL- JUSTICE DISCOURSE IN ISRAEL (2012).

⁷⁶ Daniel Mishori, Conceptualizing the Commons: Reflections on the Rhetoric of Environmental Rights and Public Ownership, 104 DEVELOPMENT AND CONFLICT IN THE 21ST CENTURY (Otto F. Von Feigenblatt, ed., JAPSS Press, 2010).

Furthermore, the draft proposes the integration of procedural justice within the environmental justice approach, underscoring the importance of involving affected communities in decision-making processes. Interestingly, the draft covenant goes beyond strict adherence to the traditional environmental justice framework. It includes various mechanisms that extend beyond environmental justice principles. For instance, it advocates for the application of the precautionary principle and the polluter-pays principle in addressing environmental hazards. These efforts by the MoEP seem to reflect a commitment to fostering environmental justice in Israel's regulatory landscape, by ensuring more equitable distribution of environmental benefits and burdens while also addressing a wider spectrum of environmental concerns. However, as shall be presented in the following section this is only seemingly.

Beyond this apparent local commitment, it should be noted that Israel is a member in numerous international treaties addressing climate change which seemingly underscores its commitment to addressing this global crisis.⁷⁷ Despite implementing treaty provisions through legislation and regulations, Israel's performance falls short of achieving the targets outlined in these agreements. An illustrative example can be found in the findings of the State Comptroller's report, which highlights Israel's failure to meet established goals for greenhouse gas emissions reduction, renewable energy production, and infrastructural improvements.⁷⁸

Over the years, a few studies dedicated to the exploration of the Environmental Justice concept's evolution within the country have been conducted,⁷⁹ offering analysis and insight into the integration of

⁷⁷ The International Convention for the Prevention of Pollution from Ships (MARPOL), The Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, The Montreal Protocol, The United Nations Framework Convention on Climate Change (UNFCCC), The Kyoto Protocol, The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Protocol for the Protection of the Mediterranean Sea Against Pollution from Land-Based Sources and Activities, The Paris Agreement.

⁷⁸ The State Comptroller and Ombudsman of Israel, *Special Audit Report National Climate Action By The Government Of Israel* (2021).

⁷⁹ Laurence Amar & Timna Kolberg, *SURVEY OF ENVIRONMENTAL JUSTICE IN JEWISH AND ARAB MUNICIPALITIES IN CENTRAL GALILEE* (2010) (Heb); Amit Bracha, *The Practice of Environmental Justice*, 1 MA'ASEI

EJ principles into the Israeli legal framework, accompanied by various recommendations. A key finding from a research conducted in 2004 is the distinction between cases where legal struggles are framed solely as environmental battles versus those framed as broader social struggles. In instances where the legal dispute is presented as an environmental concern, the court has demonstrated reluctance to incorporate environmental justice principles.⁸⁰ However, when the issue is reframed as a broader social issue encompassing environmental concerns, the court has shown a greater willingness to consider the inclusion of environmental justice principles. This discernment underscores the importance of intertwining environmental issues with social dimensions when seeking to address environmental justice concerns in the legal system.

As a result of these observations, it has been concluded that the regulatory and legal system should actively integrate environmental justice principles into the field of environmental law. Such an approach can provide a framework for addressing not only environmental challenges but also the underlying social and equity dimensions, leading to a more comprehensive and just legal landscape that addresses the concerns of marginalized communities and promotes environmental well-being for all.⁸¹

MISHPAT -- TEL AVIV UNIVERSITY JOURNAL OF LAW AND SOCIAL CHANGE 179 (2008) (Heb); Efrat Eizenberg, *Just Urban Regeneration: A Theoretical Model towards Environmental Justice*, in THE PLANNING DISCOURSE IN ISRAEL, WHERE TO? (Tali Hatuka & Tovi Fenster, eds., Resling Press, 2013) (Heb); Daniel Fisch, *Environmental Justice in Israel: Between Human Rights Law and Environmental Law*, 7 MISHPAT U'MIMSHAL 911 (2004) (Heb); Carmit Lubanov, ENVIRONMENTAL JUSTICE INDEX: LOCATION OF POLLUTING SITES, QUARRIES AND WASTE SITES (The Association of Environmental Justice, 2013) (Heb); Dganit Manor, ENVIRONMENTAL JUSTICE: BETWEEN ENVIRONMENT AND SOCIETY (Shatil, 2011) (Heb); Daniel Mishori et al., *The Commons in Israel: A Challenge of Environmental and Social Justice*, THE ENVIRONMENTAL (IN) JUSTICE REPORT 105 (Carmit Lubanov, ed., Life and Environment – The Israeli Network of Environmental NGOs, 2005) (Heb); Dani Rabinowitz, Environment and Inequality, 204 ENVIRONMENTAL JUSTICE- RIGHTS, ACCESSIBILITY AND FAIRNESS (Jeremy Benstein, ed., The Heschel Center for Environmental Learning, 2011) (Heb); Arie Vanger & Gilad Ostrovsky, *The Discourse of Rights and Environmental Quality: Can the Two Coexist?*, 2 MA'ASEI MISHPAT - TEL AVIV UNIV. J. OF L. & SOC. CHANGE 39 (2009) (Heb).

⁸⁰ Fisch, *supra* note 79, at 936-942.

⁸¹ *Id* at 942-943.

Another study examining the evolution of Environmental Justice discourse in Israel, particularly in the context of environmental struggles during the 1990s to the early 2000s, offers valuable insights into the nature of environmental discourse in the country as well. Through the analysis of two case studies, the research arrives at the conclusion that the prevailing environmental discourse in Israel has predominantly centered on ecological arguments, with a strong focus on the impacts of environmental hazards on natural elements such as animals, air, water, and soil.⁸²

This finding points to a narrower scope of environmental discourse that has predominantly centered on the ecological aspect of environmental issues. However, the study also recognizes the potential for constructing a more inclusive and comprehensive perspective of the environment. By expanding the focus beyond purely ecological concerns, a more egalitarian viewpoint can be cultivated. This broader perspective has the potential to encompass social and human dimensions, leading to a more holistic understanding of environmental challenges. This can result in a deeper and more impactful engagement with environmental challenges, ultimately leading to a more holistic and equitable approach to environmental protection and justice.⁸³

Another work that explores the rhetoric used in environmental campaigns by activists provides a unique perspective on the conceptualization of the legal definition of Environmental Justice in Israel. According to this work, a discourse termed 'the commons discourse' emerges as a powerful approach to addressing the protection of public space within environmental campaigns. The argument is that the 'commons discourse' is more effective than the discourse of EJ and traditional environmental rights in addressing the challenges related to public space protection. Unlike EJ and environmental rights discourse, which emphasize individual rights, the 'commons discourse' focuses on collective rights. By highlighting the concept of shared resources and communal ownership, this discourse underscores the idea that public spaces are vital resources that belong to and benefit all members of the community.⁸⁴

⁸² Lipman, *supra* note 75.

⁸³ *Id.* at 152.

⁸⁴ Mishori, *supra* note 76

This analysis suggests that the 'commons discourse' offers a more comprehensive and inclusive framework for understanding and addressing issues related to public space protection. It aligns with the notion of collective responsibility and encourages collaborative efforts to safeguard public spaces for the well-being of all. As such, this perspective challenges the traditional individual rights-based approaches that EJ and environmental rights discourse may emphasize. Overall, this examination opens a new perspective on how environmental issues can be framed and approached in legal and advocacy contexts. The recognition of collective rights and shared resources may offer a more effective way to rally support and address environmental challenges related to public space.⁸⁵

Despite these important works, there is no up-to-date, comprehensive, and detailed scholarly research regarding the definition and the elements that compose the conceptualization of environmental justice within *the Israeli regulative system*. This article adds to these studies, and examines the definition, elements, and conceptualization of environmental justice within the Israeli regulatory system. It focuses on understanding how various stakeholders, including policymakers perceive environmental justice issues, through a critical environmental justice approach. It aims to investigate how the pillars of distributive justice, participatory justice, and recognition justice are integrated within the conceptual framework of environmental justice in Israel. In order to develop a more complete understanding of the current state of environmental justice in the country, it's crucial to explore how these principles are translated within the regulatory system, the challenges faced in their implementation, and their impact on affected communities.

Through its critical inquiry, this research aims to provide a comprehensive overview of the scope and nuances of environmental justice in Israel. It seeks to scrutinize the effectiveness of environmental justice policies in addressing injustices and disparities, thereby contributing to a deeper understanding of the challenges and opportunities associated with achieving environmental justice in the country. Such research could shed light on areas where improvements are needed, potential barriers to implementation, and opportunities for enhancing the legal and regulatory framework to better address environmental injustices. It would not only contribute

⁸⁵ *Id.*

to the academic understanding of environmental justice within Israel but also provide practical recommendations for policymakers, legal practitioners, and advocacy groups to advance more equitable and just environmental practices.

II. Methodology

The findings presented in this section are derived from an extensive research of collecting the diverse range of regulative documents, encompassing bill drafts, enactments, administrative guidelines, policy documents, and regulative ordinances that touch upon pillars of environmental justice. This meticulous research approach was necessitated by the scattered nature of EJ regulations and the multi-dimensional landscape of regulatory bodies overseeing related matters. The goal was to provide a comprehensive understanding of how EJ principles are incorporated across different sectors and regulatory frameworks within Israel.

This endeavor posed notable challenges because environmental justice regulations are not confined solely to environmental laws but can be dispersed across various regulations, sometimes embedded within specific clauses within legislation. A concrete example highlights this complexity: the right to unrestricted access to local public parks, which is enshrined in section 249(8) of the municipalities' ordinance (1964). While this provision guarantees park access, it is not traditionally categorized under environmental law, despite its alignment with EJ principles. Another illustration is the topic of access to environmental information, which is facilitated through the freedom of information law. Although it functions as an embodiment of the procedural justice aspect of EJ, it may not necessarily be overtly framed within the context of environmental justice.

Furthermore, investigating the various institutional policymakers responsible for regulating issues linked to EJ presented another challenge. This encompassed governmental bodies, planning committees, the Israel Land Authority (which manages public land), as well as semi-state entities like the Jewish National Fund (which owns a large portion of the land in Israel). The research, however, focused primarily on five key ministries that play a pivotal role in regulating matters closely tied to EJ themes. These ministries include the Ministry of Environmental Protection (MoEP), the Ministry of

Interior Affairs, the Ministry of Finance, the Ministry of Construction and Housing, and the Ministry of National Infrastructure, Energy, and Water Resources.

In order to comprehensively encompass all regulations related to Environmental Justice concepts within the regulatory system, a thorough search was conducted across two electronic repositories. The primary source was the Nevo system, an up-to-date legal website renowned for its advanced search engine capabilities.⁸⁶ The research period spanned from 1990 to 2023, and searches were performed using specific word pairs to capture various aspects of EJ. The word pairs included: "environment and distributive justice," "environment and procedural justice," "environment and public participation," "environment and community," and "environment and lifestyle."

To further explore and identify the diverse themes encompassed by EJ, additional word pairs were employed in the search, including "environment and planning," "environment and land use," "environment and public resources," "environment and free access/entry," "environment and (in)equality," "environment and waste management," "environment and sewage management," "environment and allocation of resources," "environment and sustainable development," "environment and housing," and "environment and transportation."

The second repository for the search was the websites of five key governmental offices. This endeavor aimed to cover both enactments directly addressing environmental aspects and general laws that touched upon such aspects. The scope of this exploration encompassed a wide range of regulatory documents, including bill drafts, enactments, administrative guidelines, policy documents, and regulative ordinances.

The dual repository strategy, coupled with a diverse set of search terms, aimed to ensure that a comprehensive spectrum of EJ related regulations was captured, shedding light on the various dimensions and complexities of environmental justice within the country. Exploring references to the term "justice" within the regulatory landscape provides valuable insights into how the concept of Environmental Justice is integrated into various aspects of policy

⁸⁶ Nevo System, *Administration and forms*, <https://www.nevo.co.il/FilesSearch.aspx>

and decision-making in Israel. But more importantly, it also uncovers which pillars of EJ are left behind. By employing this comprehensive approach, the research sought to provide an exhaustive overview of how EJ concepts are reflected within the regulatory landscape of Israel. Furthermore, this methodology offers a new avenue for future research on the incorporation of EJ pillars elsewhere.

III. Findings and Discussion

The conceptualization of EJ pillars within the regulative system differs from one country to another. Existing empirical, theoretical and comparative studies focus on the United States and some European countries⁸⁷ that have distinctively incorporated the concept of EJ and its mechanisms in their regulative system. These studies identify a European and an American approach to the conceptualization of EJ pillars that are attributed to the differentiated historical, institutional and legal structures of each continent.⁸⁸

In the United States, the origins of the EJ movement are closely tied to the civil rights movement, which inherently brings a strong emphasis on racial disparities and injustice. This racialized perspective has led to a focus on race-based legal actions and policies. The recognition of racial minorities as distinct groups in US federal law provides a framework for addressing environmental injustices based on race. The social and legal context has shaped how EJ issues are perceived and framed within the regulatory and policy landscape.⁸⁹

On the other hand, European countries may approach environmental injustices in a different manner. While they may not explicitly focus on race-based issues as a primary concern, they tend to consider environmental injustices within the broader context of social inequalities, such as income disparities, housing access, and public amenities.⁹⁰ This distinction doesn't mean that environmental inequalities in Europe lack a racial dimension, but rather that they are

⁸⁷See Schlosberg & Collins, *supra* note 27, at 361; Paul Chatterton *et al.*, *Articulating, Climate Justice in Copenhagen: Antagonism, the Commons, and Solidarity*, 45 *ANTIPODE* 602 (2013).

⁸⁸Laurent, *supra* note 8, at 1849.

⁸⁹*Id.*

⁹⁰*Id.*

often approached from a social category perspective due to differing cultural and legal backgrounds.⁹¹

The findings of the current Israeli research offer valuable insights into the process of incorporating the Environmental Justice concept within the regulatory system, highlighting a unique path that is shaped by its historical, political, and legal context and social structure. These findings contribute to the broader field of comparative research on EJ by offering a distinct case study that can shed light on the complexities of integrating EJ principles into different regulatory systems in which marginalized communities also suffer from environmental injustices.

The comprehensive review of regulatory decisions and documents reveals that up until a decade ago environmental justice was not commonly addressed within the framework of Israeli governmental institutions. Most notably, the environmental enactments in Israel primarily focus on advancing ecological aspects of environmental issues, without explicitly considering the justice component or the pillars of environmental justice.⁹² Instances of government and ministerial decisions that explicitly refer to EJ concept were rare, and these references often lack substantive content that elaborated on the implementation of environmental justice

⁹¹ *Id.*

⁹² These include several enactments, for example: The Law on the Deposit on Beverage Containers - 1999, the Law on the Collection and Removal of Waste for Recycling - 1993 (P), the Law on the Prevention of Environmental Hazards (Civil Claims) - 1992, the Law on the Prevention of Sea Pollution from Land Sources – 1988. Law regulating the practice of sanitary pest control (2016); Law to reduce the use of disposable carrier bags (2016); Environmental Protection Law (Emissions and Transfers to the Environment - Reporting and Registration Obligations) (2012); Law for environmental treatment of electrical and electronic equipment and batteries (2012); Law for the Prevention of Asbestos Hazards and Harmful Dust (2011); Environmental Protection (Supervision and Enforcement Powers) Law (2011); Law to regulate the handling of packaging (2011); Clean Air Act (2008); Law for disposal and recycling of tires (2007); The law of non-ionizing radiation (2006); Coastal Environment Conservation Law (2004). Law on Representation of Public Bodies Concerned with Environmental Protection (2002); The Law of Deposit on Beverage Containers (1999); Law of National Parks, Nature Reserves, National Sites and Memorial Sites (1998); Waste collection and disposal for recycling law (1993); Law for the Prevention of Environmental Hazards (1992); Law for the Prevention of Sea Pollution from Land Sources (1988); The Cleanliness Maintenance Law (1984); Law for the Prevention of Pollution of the Sea (Dumping of Debris) (1983); Ordinance for the Prevention of Oil Pollution of Seawater [new version] (1980).

principles. It is surprising to note that even the Ministry of Energy and Infrastructure, which is in charge of all areas of energy, electricity, natural resources, infrastructure and water in the State of Israel, had not referred to EJ concepts in its decisions concerning the allocation of public resources by the state and the distribution of environmental harms among different groups.

However, since 2013, there has been a growing regulatory effort within the realm of Environmental Justice in Israel led mainly by the MoEP and by the residing minister. This development is particularly evident through various initiatives, including ministries' decisions, reports and publications that reflect a heightened focus on addressing environmental justice issues.⁹³

A. Social and Distributive Justice

The term "distributive justice" was employed in two distinct contexts. On one level, it was used to address ecological concerns, such as curbing private vehicle usage through taxation as a means of promoting more sustainable transportation practices.⁹⁴ On another level, it was invoked to address socio-environmental matters, as evidenced by the MoEP's recommendation to prohibit the use of coal ash, which can be detrimental to specific groups within the country.⁹⁵

⁹³Here are some of these initiatives: Environmental Education and Sustainability Education 34-36 (2009). https://www.gov.il/BlobFolder/reports/enviromental_education_and_sustainability/he/education_P0512_env_education_sustainability.pdf; ""Sustainability Forecast for Israel 2030"" 70 (2012) https://www.gov.il/BlobFolder/reports/sustainability_forecast_israel_2030/he/sustainability_economy_P0711.pdf; Environmental planning 23-24 (2014) [tichnun_svivati.pdf](https://www.gov.il/BlobFolder/reports/sustainability_forecast_israel_2030/he/sustainability_economy_P0711.pdf) (education.gov.il); Guiding Principles for Planning Sustainable Settlements and Neighborhoods 10 (2007).

⁹⁴In the document presented by the MoEP aimed at "restraining the use of private vehicles" there is a proposal to reduce the benefit (taxation) of a private vehicle and thus distributive justice will be created (2007).

⁹⁵ In the plan to implement green roofs in educational buildings in Israel, it is stated that urban sustainability reinforces values of environmental and social justice (2014); a position paper submitted by the MoEP to the Shishinsky Committee (a committee to examine the policy regarding the share of the state received in favor of the use of national natural resources by private entities) stated that in the calculation of the natural resources their immune cost is included (that is, the profit that is derived from the property and not only from its economic value) this situation is contrary to the principles of public trust and distributive justice.

This dual application of "distributive justice" demonstrates how the term is utilized to address both ecological and social dimensions of environmental concerns. However, it should be stated that the term was mentioned without any meaningful content.

The term "social justice" is primarily emphasized within the realm of planning and zoning through the Ministry of Construction and Housing. The ministry actively employs this term in the context of specific initiatives, such as the "Live with Dignity" project, which supports public housing for marginalized communities, and the "Strengthening Neighborhoods" project, designed to uplift marginalized neighborhoods. This usage underscores the ministry's commitment to addressing social disparities and promoting equitable living conditions through its planning and construction endeavors, which deeply connects to environmental justice issues.⁹⁶

An additional crucial finding derived from the research and that manifest the distributive and social justice pillar is the series of governmental resolutions addressing environmental injustices within Arab localities which have been implemented since 2010. These resolutions have allocated substantial funding and resources to tackle the issues at hand.⁹⁷ In 2016 another very important Government

⁹⁶“Government Resolution 1539 " "Five-year plan for the economic development of settlements in the minority sector" (2010); “Government Resolution 3211 " "A multi-year plan for the development and empowerment of the Bedouin settlements in the north for the years 2011-2015" (2011); “Government Resolution 1298 " "Plan for the empowerment and development of the city of Taiba" (2014); “Government Resolution 2365 " "The government's activity for economic development in the minority sector" (2015); “Government Resolution 922 " "Government activity for economic development in the minority population in the years 2016-2020" (2015); “Government Resolution 2365 " "Government plan for the empowerment and economic-social strengthening of the Bedouin settlements in the north for the years 2016-2020" (2016); “Government Resolution 1496 " "Regulating the Waste Management in the Arab Bedouin and Druze Population Settlements" (2016).

⁹⁷ “Government Resolution 1539 " "Five-year plan for the economic development of settlements in the minority sector" (2010); “Government Resolution 3211 " "A multi-year plan for the development and empowerment of the Bedouin settlements in the north for the years 2011-2015" (2011); “Government Resolution 1298 " "Plan for the empowerment and development of the city of Taiba" (2014); “Government Resolution 2365 " "The government's activity for economic development in the minority sector" (2015); “Government Resolution 922 " "Government activity for economic development in the minority population in the years 2016-2020" (2015); “Government Resolution 2365 " "Government plan for the empowerment and economic-social strengthening of the Bedouin settlements

Resolution, that explicitly regarded the EJ concept, and might serve as a key mechanism for addressing environmental disparities within Israel's regulatory framework, was also implemented.⁹⁸

In essence, this resolution stems from the acknowledgment of a clear correlation between a local authority's socioeconomic status, the effectiveness of its environmental infrastructure, and the prevalence of pollution and environmental hazards within its vicinity. This connection arises from the diminished priority afforded to environmental concerns in the agendas of economically disadvantaged local authorities. Consequently, this circumstance can give rise to environmental vulnerabilities and dangers, which may even extend beyond the jurisdiction of the given local authority. Instances of such risks encompass air and soil pollution, among others.⁹⁹

To address this situation, the resolution proposes the identification of priority areas based on the socioeconomic status of local authorities in order to designate these economically disadvantaged localities as national priorities. This would qualify them for budget allocations and additional assistance from the Ministry of Environmental Protection aiming to bring these localities in line with the environmental standards of other localities in Israel. Accordingly, the resolution establishes national priority areas for the Ministry of Environmental Protection's activities and expands the scope of localities and populations to include those in socioeconomic cluster 5 (not just clusters 1 to 4 as previously defined in governmental decisions). As stated in the resolution, this broader inclusion aims to mobilize a larger portion of the population for

in the north for the years 2016-2020" (2016); "Government Resolution 1496 "Regulating the Waste Management in the Arab Bedouin and Druze Population Settlements" (2016).

⁹⁸ "Government Resolution 1588" "Setting National Priority Areas Regarding the Activity of the Ministry of Environmental Protection, Resolution" (2016).

⁹⁹ It refers to research on Environmental Justice conducted in the United States. It also referred to a study by the OECD, which also found that only powerful and wealthy local authorities with access to human and economic capital have the "privilege" to act to reduce greenhouse gas emissions in their region and address environmental hazards, while more disadvantaged cities and local authorities are unable or unwilling to invest resources and inputs on these issues. This situation will likely only increase the gap between advantaged and disadvantaged local authorities.

emission reduction and proper waste management practices. It also promotes the adoption of a sustainability-oriented culture among the Israeli public.

B. Procedural Justice

Another avenue through which EJ principles are indirectly integrated into the regulatory landscape is the issue of public participation. During the years 2013-2019 there seems to be a strong emphasis on enhancing public awareness about various pollutants through active public participation. Thus, there are numerous regulative documents that incorporate the procedural justice aspect, despite not explicitly addressing the concept of environmental justice.¹⁰⁰

Moreover, since the notion of public participation is closely intertwined with planning and zoning regulations, it has garnered significant attention within the activities of the Ministry of the Interior, responsible for zoning matters.¹⁰¹ The emphasis on public participation extends also to the efforts of the Ministry of Construction and Housing, where a focus is placed on encouraging public engagement in construction projects, particularly those situated in peripheral regions and among minority groups in society. This inclusive approach encompasses communities such as the Arab population, the Jewish Ultra-Orthodox community, and the Ethiopian population, who suffer from environmental injustices.¹⁰²

This emphasis on procedural justice was also underscored by NGOs that engaged with governmental committees and who advocate for transparent decision-making processes that incorporate

¹⁰⁰ Israel's Preparation Adapting to Climate Change: Recommendations to the Government for a National Strategy and Action Plan (2020); National Policy for Urban Nature 5-6 (2017); The Master Plan for the Development of Nahal Beer Sheva Park 25, 28 (2002); The Ministry's Policy on Contaminated Land (2017).

¹⁰¹ It should be noted here that the Ministry of the Interior in Israel is in charge of the planning administration in

Israel: <https://www.gov.il/en/departments/iplan/govil-landing-page>.

¹⁰² Public Transportation for the Arab Population: The Situation in Several Localities (2014); The program for the integration of Ethiopian immigrants in the field of housing loans and in the field of urban renewal is launched by the Prime Minister's Office and the Ministry of Construction and Housing (2016).

https://www.gov.il/he/Departments/news/spokesman_21122016

public participation, further emphasizing the significance of procedural justice.¹⁰³ The primary references to environmental justice concepts and elements within the regulatory context often stem from opinions and positions submitted by non-governmental organizations (NGOs) to various governmental committees.¹⁰⁴

Many of these committees, which were focused on discussions related to laws that intersect environmental and societal issues, included representatives from socio-environmental NGOs. In most of these discussions, socio-environmental NGOs (with the prominent presence of the largest environmental organization, Adam Teva VeDin) actively participated and provided their perspectives on the proposed laws.¹⁰⁵ By engaging with governmental committees and offering their expert insights, these NGOs contribute to shaping policies that better address the complex interplay between environmental quality and social equity. Notwithstanding, due to the NGO's tremendous contribution in promoting environmental justice in the regulative system this matter requires a separate research and article.

C. So, What Can we learn from these Findings?

Contrary to the US, apart from a general call to establish an "EJ scheme 2014", there isn't any formal obligation to promoting EJ aspects within the regulative system and it seems that it is not yet a concept that is internalized as a leading approach. However, the

¹⁰³ On April 12, 2010, the Minister of Finance appointed the Sheshinsky committee to examine the fiscal policy on oil resources and gas in Israel. The committee heard representatives from the public, including NGOs who advocated for the rights of the general public to be part of the process of decision-making and in January 2011, published its first report on the matter.

https://www.gov.il/BlobFolder/unit/physics-policy/committee/he/Vaadot_ahchud_PhysicsPolicyCommittee_FullReport_FullReport.pdf

¹⁰⁴ See the reports provided by the Association of Environmental Justice in Israel (AEJI), <https://www.sviva.net/en/>; Adam Teva V'din, <https://adamteva.org.il/en/>; the Israeli Green Building Council (ILGBC).

¹⁰⁵ Shira Leao Zchout & Alon Tal, *Conflict Versus Consensus Strategic Orientations Among Environmental NGOs: An Empirical Evaluation*, 28 *VOLUNTAS* 1110 (2017).

research findings highlight that while the concept of environmental justice is not explicitly addressed by policy makers in Israel, the regulatory system has shown some progress in advancing two pillars of environmental justice: distributive and procedural in distinct levels.

The procedural justice aspect, emphasizing public participation *from all communities*, is present in the policies and zoning regulations of many government offices. In recent years, there appears to be a shift towards focusing on the participation of marginalized communities that are most affected by environmental injustices. This practice aligns with the participatory justice pillar of environmental justice, aiming to empower marginalized and underrepresented communities by affording them the opportunity to influence decisions that affect their surroundings, living conditions, and overall well-being. Hence, by emphasizing public involvement in these critical sectors, there is a concentrated effort to ensure that the concerns, needs, and interests of diverse groups are acknowledged and considered when shaping the built environment. Accordingly, the focus on procedural justice, particularly as it pertains to public participation and transparency, highlights a key aspect of EJ advocacy and implementation in Israel. The distributive and social aspects are found mainly in administrative and guidance decisions issued by some ministries and are also directed towards specific marginalized communities.

At first hand, these findings seem to provide a welcoming incorporation of EJ pillars in uncovering injustices and remedying them. Moreover, these efforts might indicate a growing awareness of the interconnectedness of environmental concerns with education, urban planning, social equity, and other areas. However, analyzing these insights through the *Critical Environmental Justice (CEJ)* approach reveals a more complex picture and offers valuable insights into the limitations and complexities of incorporating Environmental Justice principles within the Israeli regulatory system.

The CEJ approach recognizes the importance of interdisciplinary collaboration to fully understand the complexities of environmental injustices.¹⁰⁶ By moving beyond a narrow focus on social sciences methodology it seeks to explore the contribution of

¹⁰⁶ Pellow, *supra* note 5, at 14.

other actors, beyond state institutions to the unjust reality. This perspective emphasizes the roles of various actors, including civil society organizations, corporations, and individuals, in contributing to or addressing environmental injustices.

One of the key elements of CEJ approach is that it calls for rethinking the validity of the social order when addressing suggested solutions and invites perspectives that ask whether we should rely on the state to facilitate social change or whether there may be other paths that can lead us to those goals.¹⁰⁷ More importantly, a CEJ approach demands linking the recent evolving research on the structured connection between environmental and social injustices and human rights violations particularly in divided societies. It also highlights this invariable connection and show that the existing environmental injustice is indeed part of a broader social order that enables these injustices.¹⁰⁸

Consequently, incorporating the CEJ approach enriches the analysis by highlighting the broader contextual factors, power dynamics, and limitations that influence the implementation of EJ principles within the regulatory system. It serves as a reminder that addressing environmental injustices requires a holistic and multifaceted approach that considers a wide range of perspectives, actors, and systemic influences.

Based on the CEJ approach, I argue that while progress is being made in incorporating elements of environmental justice within the regulatory system in Israel, this progress is often fragmented, lacks a comprehensive implementation and is ultimately counterproductive, due to the following reasons.

First, investigating the incorporation of EJ aspects within the Israeli regulative system show that it is not formed in a systematic and ordered way that would provide an organized legal conceptualization of EJ concept, and more importantly of legal remedy for the infringement of environmental injustices and human rights. The incorporation is reactive, rather than a proactive-organized policy and is not based on identified values. This point characterizes the Israeli regulators and legislator's work in general as in many other areas there isn't any planned and well-studied

¹⁰⁷ *Id.* at 15-18.

¹⁰⁸ *Id.*

regulative and legal policy that guides regulators or legislators in their work, but their reactions are usually receptive.

Second, the ministries decisions are mostly anecdotic references and are dependent on the stakeholders' policy who are in charge at the time. The reference is also affected by the extent of NGO's influence and involvement in the concrete issue, making these institutions as central actors in enforcing EJ approach. This means that the incorporation of EJ values is not inherited in the ministries policies and leaves the rehabilitation of environmental injustices subject to arbitrary policies of changing regulators depending on the person's preference in charge and his or her openness to internalize NGOs recommendations. Considering Israel's unstable political system and the ongoing elections this might result in ineffective implementation of EJ pillars;¹⁰⁹ particularly since only some aspects are formally embodied in the legal structure and in the regulative system.

Third, ethnic minorities and other marginalized groups often face additional barriers that go beyond economic and social factors. This calls for a deeper understanding of the cultural and contextual factors that influence their ability to participate in decision-making processes and advocate for their rights. Recognizing that marginalized groups may face multiple forms of discrimination and oppression, the concept of intersectionality becomes relevant. It highlights the interconnectedness of social identities and the need to address overlapping inequalities. However, none of the government resolutions found regarded or confronted these issues.

Another very important insight that rises from the research relates to the spatial structure of Israel as a small, crowded and very segregated country. One would think that the relevant unit for promoting EJ in such a reality would be the local level. But in fact, it seems that the EJ regulative discourse in Israel is evolving around the regional level. This approach enables an interesting and fruitful connection between the different injustices of the diverse marginalized ethnic groups between regions. It also enables an overall look of width problems between regions and state policy.

¹⁰⁹ Toi Staff, *'Israel has Held Most Frequent Elections Among Democracies Since 1996- Report'*, THE TIMES OF ISRAEL (22 March 2021).

Nevertheless, while a regional overview would reveal injustices between regions, concurrently such a reduction conceals inner-regional injustices and thus maintains the status quo of the most vulnerable communities within the disadvantaged regions who, as research indicate, are the Palestinian- Arab minority. This group is disadvantaged economically and politically and thus has very limited power to affect the evolving anecdotic EJ vision within the regulative system. Such an approach also obscures the uniqueness of these distinct injustices within the region, in which the different groups encounter. For example, the spraying of the agricultural crops of the Bedouin residents are actions directed only to this community and a regional overview of environmental injustices might undermine these actions and leaves them untreated.

Thus, based on CEJ premise, I contend that the most troubling insight of this research is that the current mode of incorporation does not contest the existing exclusionary and discriminatory social and spatial order in Israel, that has enabled and intensified the creation of environmental injustice. Consequently, despite the welcoming initiatives and resolutions, the core problem remains that such an approach provides only anecdotic remedy to a deep and immense challenge that does not touch upon many other areas which are connected to environmental issues but are left unsolved. These include lack of budgets and vacant land that are essential for establishing proper waste disposal and sewage purification and for promoting environmental justice.

Accordingly, I contend that a mode of incorporation that confirms and maintains the current social and spatial hierarchy fails at promoting full and comprehensive environmental justice. EJ pillars cannot be left for the distinct policies of ministers or the general directors of ministries, but it should be established as a binding component of the regulative system's working plan. Otherwise, a cherry-picking policy might eventually intensify injustices. CEJ is also a *historical responsibility* approach on which harmed communities should be entitled for compensation and reparations for damages.¹¹⁰ Subsequently, there is a need for a vision that contest this reality and provides accountability for past injustices through the

¹¹⁰ Carlos J Bernier, *ALMOST EVERYTHING YOU NEED TO KNOW ABOUT ENVIRONMENTAL JUSTICE*, N.D., 18.

allocation of land and budget for establishing environmental facilities.

Finally, while litigation is an important tool, policy advocacy is equally essential. Collaborative efforts among NGOs, affected communities, and policymakers can help shape regulations and policies that genuinely address environmental injustices and create more equitable outcomes. These organizations can help bridge the gap between policy intentions and on-the-ground realities by amplifying the voices of affected communities. Building the capacity of marginalized communities to engage in the decision-making process and advocate for their rights is a long-term goal. Empowerment through education, training, and community organizing can lead to more effective participation. There is also a need for a proactive and organized policy framework that guides regulators and legislators in addressing environmental injustices. This would require the identification of underlying values that inform environmental justice principles. This process helps in aligning policy and legal frameworks with these values, thereby providing a clearer and more consistent approach to addressing injustices.

These insights are similarly applicable to other multicultural divided states, that contains ethnic minorities and marginalized groups that struggle for enforcing environmental justice values. These groups usually also suffer from alike discriminatory practices of crowded residential spaces, lack of open spaces and environmental facilities and restricted access to resources.

IV. Conclusion

Environmental Justice is a dynamic conception composed of two complex and flued conceptions: ‘environment’ and ‘justice’. The article delved into various aspects related to the concept of environmental justice, shedding light on the multifaceted themes that fall under its umbrella and that would set paths for both theory and practice of EJ in order to provide a model of EJ policy applicable to racially diverse societies.

This article joins emerging work that consolidate Critical Environmental Justice approach in analyzing EJ challenges, which I believe provides a more detailed account on the essence of the incorporation of EJ pillars and accountability of state actors.

Exploring the incorporation of EJ pillars uncovers the complex strategies that relevant stakeholders occupy in the matter and their affect their application on the injustice reality.

While the Israeli context is unique, there are parallels and lessons that can be drawn for EJ advocacy in other countries. Understanding the challenges faced and strategies employed can contribute to a more nuanced and effective global approach to environmental justice.

First, the Israeli case study further show how the incorporation of EJ is influenced by the specific historical, political, and legal context of the country. This understanding can help researchers and policymakers appreciate the need for context-specific approaches when analyzing the integration of EJ principles in different regions. Second, The Israeli case demonstrates that EJ principles can be adapted and integrated into regulatory and legal systems in various ways, depending on the prevailing norms and practices of a given country. Comparative research can benefit from exploring the different ways in which EJ concepts are translated into policy and practice across different regions.

Third, the Israeli research doesn't just provide insights into EJ practices, but also offers insights into how regulatory systems deal with broader social justice issues. Comparative research can explore how EJ policies intersect with other social justice efforts, shedding light on the interconnections between environmental, racial, and economic inequalities. Finally, the findings provide lessons for policymakers and advocates working on EJ issues in other countries. By examining the Israeli experience, researchers and practitioners can gain insights into effective strategies for pushing EJ principles forward and overcoming challenges within the regulatory and legal systems.

In conclusion, the Israeli research offers a unique case study that enriches the comparative research landscape on Environmental Justice. The Israeli experience underscores the importance of incorporating all pillars of EJ—distributive, procedural, and recognition justice—within the regulatory system to ensure comprehensive protection of marginalized communities' rights. It also highlights the critical role of NGOs in promoting EJ principles and advocating for those who are most impacted by environmental

injustices. Moreover, the findings contribute to a broader understanding of how EJ concepts interact with regulatory systems and offer valuable lessons for promoting environmental and social justice worldwide.