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# ENVIRONMENTAL JUSTICE IN A GLOBALISED WORLD - CHALLENGES AND PROSPECTS

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## ABSTRACT

The escalation of environmental degradation in an era of globalisation has intensified the need for robust legal mechanisms to address environmental justice across borders. This academic paper examines the role of law and global governance in promoting environmental justice, focusing on the obligations of states and international institutions in protecting vulnerable populations and ecosystems disproportionately affected by climate change, pollution, and unsustainable development<sup>1</sup>. The study details an analysis of key international and regional instruments, including the Paris Agreement, the Aarhus Convention on access to environmental information, and the European Green Deal, to explore how nations institutionalise environmental protections and accountability<sup>2</sup>. The findings reveal that while numerous states have adopted climate action plans and legal frameworks for environmental rights, enforcement remains inconsistent due to weak governance, entrenched political interests, and deep economic disparities. Furthermore, the paper highlights how emerging environmental jurisprudence is being shaped by landmark climate litigation cases and the growing recognition of the rights of nature. The study concludes that advancing environmental justice requires enhancing state compliance, promoting equitable access to resources, and fundamentally integrating human rights principles within environmental governance to ensure sustainable and just outcomes at both national and global levels<sup>3</sup>.

**Keywords:** Environmental justice, globalisation, climate change, human rights, sustainable development, state compliance laws, contracts, policy reform.

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<sup>1</sup> Lingü Hong London, I. K. Joshi, E. Cairncross, J. Gilmore & L. Claudio, *Environmental Justice: An International Perspective*, in *Encyclopaedias of Environmental Health* 553–60 (Elsevier 2019), <https://doi.org/10.1016/B978-0-12-409548-9.11886-X>.

<sup>2</sup> Zhang L., Xu M., Chen H., Li Y. & Chen S., *Globalization, Green Economy and Environmental Challenges: State of the Art Review for Practical Implications*, 10 *Front. Environ. Sci.* 870271 (2022), <https://doi.org/10.3389/fenvs.2022.870271>.

<sup>3</sup> Nicolette Butler & Jasem Tarawneh, *The Trade and Environment Nexus: Proposing a Broad Universal Definition of Environmental Services*, 27 *J. Int'l Econ. Law* 741 (2024), <https://doi.org/10.1093/jiel/jgae039>

## INTRODUCTION

The twenty-first century is characterised by the tension between increasingly interconnected global markets, or globalisation, and the escalating crisis of environmental injustice (EJ). While globalisation has spurred vast economic integration and wealth, it has concurrently established an architecture of commerce<sup>4</sup> that systematically externalises environmental burdens onto the world's most vulnerable populations. Environmental justice, predicated on the principle that no group should disproportionately bear negative environmental consequences<sup>5</sup>, takes on a critical transboundary dimension when considering global supply chains, where harms like pollution and waste disposal are often incurred in the Global South while economic benefits accrue primarily in the Global North. This paper addresses this core conflict, examining how a system built on competitive advantage and cost externalisation can ethically and legally accommodate the demands for distributive and procedural environmental justice, providing a crucial analysis of the challenges<sup>6</sup> in global governance and assessing the prospects for genuinely equitable legal and economic reform.

## HISTORICAL BACKGROUND

The historical trajectory of environmental injustice moved from localised civil rights issues in the late 20th century to a full-blown global concern beginning in the 1980s, coinciding with the aggressive expansion of neoliberal free trade policies. Initially, EJ movements focused on domestic struggles against the disproportionate placement of polluting facilities near marginalised, often low-income, communities in the Global North. However, as international trade liberalised, multinational corporations (MNCs) accelerated the relocation of manufacturing, resource extraction, and particularly waste disposal (known as the "toxic trade") to nations in the Global South. This shift created a regulatory "race to the bottom," where developing nations, incentivised by the promise of economic development and employment, accepted operations with less stringent environmental and labour oversight. Key institutional responses, such as the 1989 Basel Convention, attempted to regulate the transboundary movement of hazardous wastes, but this only highlighted the difficulty of

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<sup>4</sup> N. Okorie, *The Prospects and Challenges of Global Justice*, Sapienta: J. of Philosophy & Religion Vol. 20 No. 2 (2024), <https://www.acjoi.org/index.php/sapienta/article/view/6567>.

<sup>5</sup> Julia Dehm, *Environmental Justice: Challenges to International Economic Ordering*, 116 AJIL Unbound 101 (2022), <https://doi.org/10.1017/aju.2022.15>.

<sup>6</sup> Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, in Research Handbook on Human Rights and the Environment (Anna Grear & Louis J. Kotze eds.) (Edward Elgar 2015), <https://ssrn.com/abstract=2723460>.

enforcing justice against sophisticated corporate actors operating across multiple jurisdictions. The resulting legacy is a global economic structure defined by systemic ecological debt and a persistent gap in accountability, leaving frontline communities in the Global South fighting for basic rights against ecological harms generated for the benefit of distant consumer markets.

## HISTORICAL BACKGROUND

The present-day landscape of environmental justice in a globalised world is defined by a critical tension between entrenched economic models and emerging ethical demands. While global integration has intensified the systemic challenge of concentrating environmental hazards among marginalised groups—a core issue seen in the operation of extractive finance and the relocation of polluting industries—it simultaneously amplifies the visibility of these injustices, driving an urgent global discourse. The most significant structural challenge remains the persistent failure to guarantee **procedural justice**, wherein impacted communities are routinely denied meaningful participation, access to information, and effective transboundary legal redress against powerful multinational corporations<sup>7</sup>. Consequently, the legal and economic trajectory is caught between the inertia of national sovereignty and the pressing need for a radically new global governance framework<sup>8</sup> designed to enforce **corporate accountability** for ecological harms that cross borders. On the other hand, the accelerating global push toward a green economy—characterised by renewable energy transitions, circular resource models, and new sustainable finance mechanisms<sup>9</sup>—presents the foremost **prospect** for substantive change. However, achieving genuine environmental justice depends critically on ensuring this transition does not simply **exacerbate existing patterns of inequity** (e.g., through resource conflicts in new supply chains) but instead promotes an equitable distribution of green benefits and burdens, making the balancing of economic sustainability with social and ecological equity the defining challenge of the current era.

## LITREATURE REVIEW

To enable a complete understanding of the intricacies of the topic, the following research

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<sup>7</sup> B. Rodríguez-Labajos & A. Martínez-Alier, *Not So Natural an Alliance? Degrowth and Environmental Justice*, J. of Cleaner Production 211 (2019): 1490-1500, <https://doi.org/10.1016/j.jclepro.2018.12.042>.

<sup>8</sup> Akeem Adekunle Amodu, *Globalization and Biodiversity: Issues in Environmental Justice*, Vol. 6 No. 1 Int'l J. Sociology & Humanities (2019), <https://valleyinternational.net/index.php/theijsshi/article/view/1817>. valleyinternational.net

<sup>9</sup> Amy Braun, *Governance Challenges in Promoting Environmental Justice*, Beyond Intractability (May 1 2011), <http://www.beyondintractability.org/essay/environmental-justice-challenges>.

papers and articles proved to be highly beneficial, and they form the bedrock for this thesis.

1. **"Resisting Global Toxics: Transnational Movements for Environmental Justice" by David Pellow (2007)**<sup>10</sup>. This seminal work provides the foundational understanding of **"toxic colonialism"**, detailing how the globalisation of production and waste management systematically creates distributive injustice. Pellow's research is crucial for understanding the historical context of transboundary harm, demonstrating that the environmental burdens (waste, pollution, resource extraction) are disproportionately located in the Global South to maintain the economic advantages of the Global North.
2. **"Defining Environmental Justice: Theories, Movements, and Nature" by David Schlosberg (2007)**<sup>11</sup>. Schlosberg offers a robust theoretical framework that moves the concept of environmental justice beyond mere **distributive fairness** to include **procedural justice** (participation in decision-making) and **justice as recognition**. This framework is essential for the paper's analysis of challenges, particularly the failure of current global governance to provide meaningful democratic participation or recognition for communities impacted by multinational corporate activities, thus explaining the persistent **gap in accountability**.
3. **"Human rights and the environment: the current state of play" by John H. Knox (2013)**<sup>12</sup>. Knox, in his capacity as the first UN Special Rapporteur on Human Rights and the Environment, provides critical insight into the **legal and ethical limitations of national sovereignty** in addressing global environmental harm. The work establishes a clear link between environmental degradation and human rights violations, arguing that states have extraterritorial obligations. This literature forms the basis for proposing a novel global governance framework to enforce corporate due diligence across borders.
4. **"Energy Justice: Conceptualising a Rising Issue" by Benjamin K. Sovacool and Marilyn H. Dworkin (2015)**<sup>13</sup>. This article pivots the discussion toward prospects by

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<sup>10</sup> D. Naguib Pellow, *Resisting Global Toxics: Transnational Movements for Environmental Justice* (MIT Press 2007).

<sup>11</sup> David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford Univ. Press 2007).

<sup>12</sup> John H. Knox, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, U.N. Human Rights Council, A/HRC/25/53 (Dec. 30, 2013).

<sup>13</sup> Benjamin K. Sovacool & Marilyn H. Dworkin, "Energy Justice: Conceptual Insights and Practical Applications," 142 *Applied Energy* 435 (2015).

defining the principles of **Energy Justice**—a vital subset of Environmental Justice that is critical to the green transition. By focusing on distributive, procedural, and recognition justice within energy systems, this work provides the necessary criteria for evaluating whether the global shift toward renewable energy will genuinely mitigate inequity or simply create new forms of "green sacrifice zones" in the supply chains for transition technologies.

## RESEARCH METHODOLOGY

This paper employs a doctrinal (non-empirical) legal research methodology, relying exclusively on secondary sources to critically analyse the existing legal and institutional frameworks governing environmental justice in a globalised context. The research process begins with a systematic review of foundational and contemporary academic literature to establish the core theoretical concepts<sup>14</sup> (distributive, procedural, and recognition justice). It then proceeds with a rigorous analytical synthesis of primary legal texts, including multilateral environmental agreements (MEAs), international human rights instruments (such as the work of the UN Special Rapporteur on Human Rights and the Environment), relevant case law from national and international tribunals, and official reports from intergovernmental organizations (IGOs)<sup>15</sup>. The method involves critical interpretation of these texts to identify specific governance deficiencies—namely, the lack of extraterritorial corporate accountability and the erosion of procedural rights in transboundary harm contexts. Finally, the research concludes by utilising a normative approach to propose and evaluate specific legal and policy reforms, framing them against the standard of achieving a genuinely "Just Transition" in the global economy.

## RESEARCH OBJECTIVES

This paper aims to perceive the issue from a three-pronged manner, whereby the paper shall address the issues corroborating:

**Phase I: Analysing the Architecture of Injustice.** To critically examine the mechanisms through which globalisation, including supply chain dynamics and financialization, creates and

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<sup>14</sup> Olivia Stumpf, *Globalization of Environmental Justice*, J. Undergraduate Research XXIV (2021), <https://www.uwlax.edu/globalassets/offices-services/urc/jur-online/pdf/2021/stumpf.olivia.eng.pdf>.

<sup>15</sup> S. Han et al., *Prospects for Global Sustainable Development through Environmental Regulation*, Nature Commun. (2024), <https://doi.org/10.1038/s41467-024-52854-w>.

perpetuates **distributive injustice**, identifying specific legal and economic instruments (or lack thereof) that enable **toxic trade** and the concentration of ecological harms in the Global South.

**Phase II: Identifying Legal and Institutional Failures.** To enumerate the **procedural and jurisdictional barriers** within current international and national legal frameworks that hinder the ability of impacted communities to secure **procedural justice**, assess the effectiveness of existing soft law and voluntary corporate social responsibility (CSR) guidelines, and articulate the scope of the **accountability gap** for transboundary corporate environmental misconduct.

**Phase III: Formulating Normative Solutions and Prospects.** To analyse the prospects for achieving environmental justice through normative reforms, focusing on the potential of implementing mandatory **corporate environmental due diligence** standards, strengthening **human rights** as they relate to the environment, and establishing a robust global governance framework founded on the principles of a **Just Transition**.

## RESEARCH ISSUES AND HYPOTHESIS

The research was done on a doctrinal basis, by reviewing a variety of primary and secondary resources, including research papers, websites, interviews, articles and blogs. It is also pertinent to mention that all recent issues in the paper have been covered by referring to the Books, articles and reports published by independent, policy-based think-tanks.

### Research Hypothesis

The current structure of global governance and international law is structurally insufficient to deliver transboundary environmental justice because the primary instruments rely on **national sovereignty**, thereby failing to impose mandatory, extraterritorial accountability on **Multinational Corporations (MNCs)** for ecological harms and systematically denying **procedural justice** to frontline communities impacted by globalised pollution and resource extraction<sup>16</sup>.

### Key Issues Identified

The following fundamental issues were identified, which form the core structure of the thesis:

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<sup>16</sup> P. Zhang, *Implicit Environmental Injustice in Global Trade*, Int'l J. of Env'tl. Research (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9388303/>

1. **Systemic Distributive Injustice and Toxic Colonialism:** Globalisation institutionalises environmental burdens (e.g., pollution, waste disposal, resource conflicts) as costs externalised to the Global South, creating a persistent structure of **ecological debt** and **toxic colonialism**<sup>17</sup>.
2. **The Accountability Gap and Procedural Failure:** The lack of mandatory global instruments for corporate due diligence, coupled with jurisdictional barriers and the absence of effective mechanisms for community participation, results in a crippling **accountability gap** for MNCs and the systemic denial of **procedural justice**.
3. **The Ambivalence of the Green Transition:** While the shift toward a green economy (e.g., renewable energy and circular economy models) offers the prospect of addressing climate-related injustice, its success is ambivalent, as it risks replicating historic injustices if not explicitly governed by the core principles of **Energy Justice and a Just Transition**.

## RESEARCH QUESTION

Upon a bare reading of the factual and analytical metrics of the issue, certain rudiment issues surface for further clarification, as follows:

1. Elucidate upon how the architecture of economic globalisation—specifically, global supply chains, financial flows, and the "**toxic trade**"—systematically concentrates environmental burdens (ecological debt) and **distributive injustice** within the Global South.
2. Embarking upon the legal and institutional implications, what are the key **procedural and jurisdictional barriers**—including the limitations of national sovereignty and the significant **accountability gap for Multinational Corporations (MNCs)**—that prevent vulnerable communities from achieving legal redress and meaningful participation in transboundary environmental decision-making?
3. Articulating upon the necessity of systemic change, to what extent can a new **global governance framework**—centred on mandatory corporate environmental due

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<sup>17</sup> Usha Natarajan, "Environmental Justice in the Global South", in The Cambridge Handbook of Environmental Justice and Sustainable Development (Sumudu A. Atapattu, Carmen G. Gonzalez & Sara L. Seck eds., 2021), <https://doi.org/10.1017/9781108555791.005>.

diligence, enforceable human rights obligations, and the principles of a "**Just Transition**"—be formulated to effectively mitigate current injustices and promote equitable global ecological stewardship?

## RESEARCH ANALYSIS

Herewith, the issues pertinent to the research questions shall be identified, and the various factors that have acted as an impediment via a compendium shall be substantiated:

### Phase I: Analysing the Architecture of Injustice

**Phase I: Analysing the Architecture of Injustice.** This phase critically examines the economic and legal mechanisms through which globalisation structurally perpetuates **distributive environmental injustice**, systematically concentrating ecological harms in the Global South. The key mechanism enabling this architecture is the pursuit of **regulatory arbitrage** within global supply chains, fundamentally challenging the fairness of burden distribution<sup>18</sup>.

1. **Global Supply Chains and Regulatory Arbitrage:** Global supply chains facilitate the spatial disconnection of production costs (pollution and waste) from consumer benefits (goods and profits). Multinational Corporations (MNCs) deliberately relocate resource-intensive and polluting stages of production to jurisdictions with weak environmental regulations and enforcement—a process known as the "**race to the bottom.**" This geographical displacement of ecological harm results in a profound lack of **distributive justice**, where communities, often impoverished and politically marginalised, bear the health and environmental costs of industrial activity necessary for global consumption. Furthermore, the diffuse and opaque nature of these supply chains obscures the point of final legal responsibility, making remediation and redress nearly impossible<sup>19</sup>.
2. **Financialization and the Ecological Debt:** The increasing financialization of the global economy exacerbates distributive injustice by treating environmental compliance costs as

<sup>18</sup> Yuxuan Ni, *Green Trade Barriers in the Context of Globalization: Legal Challenges and Countermeasures*, 39 J. Educ., Humanities & Soc. Sci. (EMSS 2024) Vol. 39 (2024), <https://drpress.org/ojs/index.php/EHSS/article/view/25284>.

<sup>19</sup> Gordon Walker, "Globalising and Framing Environmental Justice", in *Environmental Justice: Concepts, Evidence & Politics* 17–39 (Jim Burns & Katrine Schroeder eds., 2012) (available at <http://documents.manchester.ac.uk/display.aspx?DocID=73278>).



variables to be aggressively minimised. The systematic under-pricing of natural resources and the failure to internalise externalities (pollution costs) within corporate balance sheets create a vast **Ecological Debt** owed by the Global North to the Global South. This debt represents the historical and ongoing appropriation of resources and waste-absorption capacity<sup>20</sup>. The legal mechanism enabling this includes the dominance of international investment agreements (IIAs) and investor-state dispute settlement (ISDS) clauses, which often prioritise the security of corporate profits over sovereign environmental protection and community rights.

3. **The Enabling Legal Vacuum: Toxic Trade:** The notorious "**toxic trade**" of hazardous waste (including e-waste) from high-income nations to low-income nations exemplifies distributive injustice enabled by critical failures in the current legal architecture. While the **Basel Convention** was designed to control this transboundary movement, its effectiveness is critically undermined by major waste exporters, such as the US, not being party to the Convention, and the persistent ambiguity surrounding the classification of certain wastes (e.g., e-waste). The absence of a universally binding instrument with strong extraterritorial enforcement provisions allows the disposal of toxic and electronic waste to concentrate disproportionately in economically disadvantaged regions, violating both human rights to a healthy environment and principles of equity.

The overarching impact of these mechanisms is the codification of **Toxic Colonialism**, where globalisation utilises economic and legal power to perpetuate historical patterns of resource exploitation and waste dumping. This structural arrangement, characterised by the systemic lack of instruments mandating extraterritorial corporate responsibility, ensures that ecological risk remains concentrated among the vulnerable, directly contravening the principles of environmental justice<sup>21</sup>. The primary need is therefore to move from an architecture of **cost externalisation** to one of **mandatory accountability**.

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<sup>20</sup> P. Kashwan, "Globalization of Environmental Justice: A Framework for Comparative Politics", in *Comparative Environmental Politics* (2022) (available at <https://scholarworks.brandeis.edu/esploro/outputs/bookChapter/Globalization-of-Environmental-Justice-A-Framework/9924159687201921>).

<sup>21</sup> B. K. Nagla, "Globalisation, Environment and Social Justice: A Theoretical Insight", in *Globalisation, Environment and Social Justice: Perspectives, Issues and Concerns* 1–18 (Manish K. Verma ed., 2019).

## Phase II: Identifying Legal and Institutional Failures

Phase II: Identifying Legal and Institutional Failures. This phase enumerates the procedural and jurisdictional barriers that currently prevent impacted communities from achieving procedural justice and exposes the systemic accountability gap for Multinational Corporations (MNCs) in transboundary environmental harm contexts. The failure stems primarily from the dominance of state-centric international law and the voluntary nature of corporate ethical guidelines<sup>22</sup>.

1. **Jurisdictional Barriers and the Principle of Territoriality:** International law is fundamentally structured around national sovereignty and the principle of territoriality. This creates severe barriers for victims in the Global South attempting to sue parent corporations domiciled in the Global North. Courts often invoke *forum non conveniens* (inconvenient forum) or require stringent proof of the parent company's operational control over a polluting subsidiary, making it prohibitively expensive, time-consuming, and often impossible for affected communities to access justice and compensation. This barrier structurally denies procedural justice by obstructing effective legal recourse.
2. **The Inadequacy of Soft Law and Voluntary Measures (CSR):** Current international standards for corporate conduct, such as the UN Guiding Principles on Business and Human Rights (UNGPs), are non-binding "soft law." Their reliance on voluntary corporate social responsibility (CSR) initiatives and due diligence provides a shield against genuine accountability. MNCs can publicise environmental pledges without facing legal penalties for non-compliance, effectively turning compliance into a marketing tool rather than a mandatory legal obligation. This failure of enforcement directly contributes to the accountability gap, where corporate actions evade meaningful scrutiny<sup>23</sup>.
3. **Denial of Procedural Rights in International Decision-Making:** Despite the importance of procedural justice (access to information, participation, and redress), environmental decision-making concerning large-scale projects (e.g., mining concessions, infrastructure) often occurs without the free, prior, and informed consent (FPIC) of local communities,

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<sup>22</sup> P. Kamei-Mbote, "Environmental Justice and Sustainable Development", IELRC Working Paper No. W 96/01 (2001) (available at <https://www.ielrc.org/content/w9601.pdf>).

<sup>23</sup> "Global Climate Litigation Report: 2023 Status Review", United Nations Environment Programme (2023) (available at <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>)

particularly indigenous populations. Existing international agreements, such as the Aarhus Convention, which mandates procedural rights, are regionally limited and lack global scope, leaving the majority of vulnerable communities, especially those impacted by transboundary harm, without a guaranteed voice in decisions that determine their environmental health and livelihoods<sup>24</sup>.

4. **Limitations of National Sovereignty and Regulatory Capture:** The dependence on national environmental laws to control foreign operations is ineffective because host governments in the Global South are frequently subject to regulatory capture or are economically compelled to lower standards (the "race to the bottom" trade-off) to attract foreign investment. Furthermore, the rise of Investor-State Dispute Settlement (ISDS) mechanisms in international investment treaties allows corporations to sue sovereign states for billions in compensation if new environmental regulations diminish corporate profits, creating a powerful chilling effect that discourages states from strengthening environmental protections.

The consequences of these systemic failures are severe:

- **Heightened Health and Safety Risks:** The accountability gap for MNCs results in chronic non-compliance with environmental safeguards, leading to prolonged exposure to toxic substances (e.g., in electronics recycling or mining), resulting in severe respiratory, neurological, and reproductive health issues for marginalised communities.
- **Destabilisation of Livelihoods:** Denial of procedural justice in resource conflicts (e.g., land grabs for biofuel or raw material extraction) leads to forced displacement, loss of traditional livelihoods, and acute economic vulnerability, further reinforcing cycles of poverty.
- **Erosion of Trust in Governance:** The inability of international and national governance structures to deliver justice undermines faith in democratic processes and reinforces the perception that legal frameworks prioritise corporate profits over human and environmental rights.

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<sup>24</sup> Olivia Stumpf, "Globalization of Environmental Justice", J. Undergraduate Research XXIV (2021) (available at <https://www.uwlax.edu/globalassets/offices-services/urc/jur-online/pdf/2021/stumpf.olivia.eng.pdf>).

Thus, the current legal and institutional frameworks are not merely inadequate; they are active impediments to justice, structurally favouring global capital over the rights of vulnerable populations<sup>25</sup>. Overcoming these barriers requires a fundamental re-engineering of the global governance structure to create mandatory, enforceable corporate obligations that transcend national boundaries.

### **Phase III: Formulating Normative Solutions and Prospects**

Phase III: Formulating Normative Solutions and Prospects. This phase analyses the challenges in implementing effective governance frameworks and articulates the essential normative solutions required to transition from the current regime of corporate impunity to one of mandatory, transboundary accountability and environmental justice.

Challenges in Global Environmental Enforcement: The globalisation of environmental harm presents several unique enforcement challenges:

1. **Fragmentation of International Law:** The global environmental governance system is characterised by a fragmented patchwork of multilateral environmental agreements (MEAs) and human rights treaties, none of which establish a central, universally binding mechanism for enforcing corporate environmental responsibility across borders. This fragmentation creates vast regulatory grey areas that MNCs exploit.
2. **The Weakness of the Host State:** Developing nations in the Global South, often facing economic compulsion and resource scarcity, struggle with limited institutional capacity for monitoring, inspection, and enforcement of even their own existing environmental standards. Furthermore, the political risks associated with challenging powerful international corporations contribute to this weakness, resulting in non-compliance.
3. **Complex Supply Chain Due Diligence:** The deep complexity of modern global supply chains (multiple tiers, rapid changes in sourcing) makes it technically and legally challenging to establish clear accountability from the final consumer product back to the

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<sup>25</sup> Leslie Solomonian & Erica Di Ruggiero, *The Critical Intersection of Environmental and Social Justice: A Commentary*, 17 Globalization & Health 30 (2021), <https://doi.org/10.1186/s12992-021-00686-4>.

source of the ecological harm. Traditional legal methods are often too slow and costly to navigate these structures effectively.

4. **Lack of Global Awareness and Empowerment:** While international NGOs operate globally, the communities most directly impacted by environmental harm often have limited awareness of their legal rights under international instruments (like the right to a healthy environment) and face significant barriers (language, poverty, political isolation) in accessing global justice mechanisms.

### **Prospects: Essential Normative Solutions for a Just Global Framework**

The effectiveness of future policy interventions hinges on shifting the legal paradigm from voluntary soft law to mandatory, extraterritorial obligations:

1. **Mandatory Corporate Environmental Due Diligence (CEDD):** Compliance must be ensured by implementing universally mandatory CEDD legislation, requiring parent companies in the Global North to identify, prevent, mitigate, and account for environmental and human rights harms across their entire global value chain. This intervention is crucial for closing the accountability gap, as it shifts the burden of proof and compliance squarely onto the corporation<sup>26</sup>.
2. **Strengthening Human Rights Framing and Access to Justice:** The global recognition of the Right to a Healthy Environment (now a recognised UN human right) must be formalised into enforceable extraterritorial obligations for states and corporations. Policy must focus on creating accessible Extra-Territorial Jurisdiction mechanisms in host states, allowing victims to sue the parent corporation in its home country, thereby bypassing the jurisdictional barriers that currently deny procedural justice.
3. **Integrating Energy Justice into the Green Transition:** Given the inevitable global shift towards renewable energy, the *prospect* for future environmental justice relies entirely on whether the transition is just. Policy interventions must adhere strictly to Energy Justice principles, ensuring that the burden of sourcing raw materials (e.g., lithium, cobalt) and placing infrastructure (e.g., wind farms, solar fields) does not replicate the historic

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<sup>26</sup> Prakash Kashwan, *Globalization of Environmental Justice: A Framework for Comparative Research*, in *The Oxford Handbook of Comparative Environmental Politics* 475-98 (2022), <https://doi.org/10.1093/oxfordhb/9780197515037.013.4>.

injustice of creating new "green sacrifice zones" in the Global South. This requires robust international monitoring and stakeholder collaboration that guarantees FPIC (Free, Prior, and Informed Consent) for all affected Indigenous and local communities.

4. Implementing Robust Monitoring and Reporting Mechanisms: Compliance must be enhanced by establishing independent, transparent, and globally interconnected monitoring and reporting mechanisms, potentially under a strengthened international body with the power to impose sanctions. This must be coupled with enhanced stakeholder collaboration involving civil society and local community groups in the monitoring process to provide essential ground-level verification of compliance.

Thus, achieving environmental justice in a globalised world necessitates a radical transformation of the international legal and economic architecture. The future prospect is not merely mitigation, but the creation of a governance system where corporate profit is structurally subordinate to mandatory human rights and ecological equity<sup>27</sup>.

### **Deepening the Architecture of Global Environmental Injustice**

The analysis of globalisation and environmental justice must be deepened by examining intersectional economic and political forces that reinforce the identified systemic failures. These insights provide additional avenues for strengthening the doctrinal critique and subsequent normative proposals.

### **The Condoning Role of International Financial Institutions (IFIs)**

Beyond the actions of Multinational Corporations (MNCs), International Financial Institutions (IFIs)—such as the World Bank and regional development banks—actively perpetuate environmental injustice. Their lending practices often include conditionalities that mandate deregulation, privatisation, and the promotion of large-scale infrastructure and resource extraction projects (e.g., massive hydroelectric dams or open-pit mines). These projects, while technically "developed" by the host state, are frequently driven by global capital demands and result in the forced displacement of local communities, destruction of ecosystems, and pollution without adequate free, prior, and informed consent (FPIC). The IFIs' internal

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<sup>27</sup> Mary Menton, Carlos Larrea, Sara Latorre, Joan Martinez-Alier, Mika Peck & Leah Temper, *Environmental Justice and the SDGs: From Synergies to Gaps and Contradictions*, 15 Sustainability Science 1621 (2020), <https://doi.org/10.1007/s11625-020-00789-8>.

safeguard mechanisms, which are meant to protect against such social and environmental harm, are often weakly enforced or procedurally inaccessible to affected populations, thereby institutionalising procedural failure at the level of global development finance. The resulting environmental devastation is thus not merely a byproduct of corporate greed but a direct consequence of globalised development models promoted by international financial architecture.

### **Climate Justice as Intersectional Environmental Justice**

The most urgent dimension of global environmental injustice is the intersection with climate change. The Global South, which historically contributed minimally to greenhouse gas emissions, is disproportionately exposed to catastrophic climate impacts, including sea-level rise, extreme weather, and agricultural collapse. This systemic disparity reframes the Ecological Debt as an undeniable Historical Climate Debt. Doctrinal analysis must therefore treat climate injustice as an extreme form of distributive injustice, where the historical right to pollute, utilised by the Global North<sup>28</sup> during industrialisation, translates directly into current existential threats for the Global South. Legal solutions, such as the proposed Loss and Damage Fund under the UNFCCC, must be critically examined to ensure they are adequately capitalised and distributed based on principles of equity, not charity, thereby addressing both historical and future distributive fairness.

### **Sovereign Debt, Austerity, and Environmental Liquidation**

A significant, yet often overlooked, driver of regulatory capture and the "race to the bottom" is the pervasive problem of sovereign debt in the Global South. Heavily indebted nations, facing pressure from creditors and the IFIs to implement austerity measures, are often forced to rapidly liquidate their natural capital (e.g., selling off mining concessions, logging rights, or oil exploration permits) to secure foreign currency. This economic compulsion directly links global fiscal policy to environmental destruction. The resulting legal environment is one where environmental protection is seen as an unaffordable luxury, undermining national sovereignty and making it practically impossible for host states to enforce environmental laws against

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<sup>28</sup> Julian Agyeman, David Schlosberg, Luke Craven & Caitlin Matthews, *Trends and Directions in Environmental Justice: From Inequity to Everyday Life, Community, and Just Sustainability*, 41 Annu. Rev. Environ. Resour. 321 (2016).

resource-extracting MNCs. This creates a state of permanent economic and ecological vulnerability.

### **The Challenge of Data Gaps and Science Diplomacy**

Effective legal redress and public participation are crippled by significant data governance gaps. Communities in the Global South often lack the institutional capacity and technical expertise to conduct independent environmental monitoring, establish baseline data, or legally link specific corporate pollution to health outcomes. This asymmetry of information severely disadvantages victims in legal proceedings against MNCs, who possess vast technical resources and data<sup>29</sup>. Therefore, a focus on science diplomacy and mandatory technology transfer is necessary. Future governance frameworks must compel the transfer of environmental monitoring technology and establish independent, internationally verified data repositories to democratise environmental knowledge, thereby strengthening procedural justice and facilitating credible evidence for transboundary legal claims.

### **The Essential Need for Recognition Justice in Governance**

While distributive and procedural justice are critical, achieving true systemic change requires recognition of justice. Current global governance structures often fail to recognise the validity and scientific value of Indigenous and local knowledge systems and non-Western environmental ontologies. Projects are planned based on Western scientific and economic metrics, dismissing traditional conservation practices and spiritual connections to the land. A successful Just Transition framework must legally mandate that governance bodies recognise the cultural and ecological rights of marginalised communities. This recognition is the foundation of genuine Free, Prior, and Informed Consent (FPIC), ensuring that environmental solutions are culturally relevant, locally sustainable, and ethically grounded, rather than being imposed top-down by global economic and legal elites.

### **Legal Analysis: Jurisprudence and Protocols**

The legal confrontation with globalised environmental injustice necessitates a critical examination of both proactive domestic jurisprudence and restrictive international principles.

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<sup>29</sup> Prakash Kashwan, *Globalization of Environmental Justice: A Framework for Comparative Research*, in *The Oxford Handbook of Comparative Environmental Politics* 475–98 (2022).



From an Indian legal perspective, the judiciary has robustly framed the right to a clean environment as an inherent component of the fundamental Right to Life under Article 21 of the Constitution. Landmark rulings such as *M.C. Mehta v. Union of India* (1987)<sup>30</sup> established the principle of Absolute Liability for hazardous industries operating within the country, holding that a company could not claim the 'Act of God' defence and must compensate all victims. This jurisprudential shift, further refined by the Polluter Pays Principle in *Vellore Citizens' Welfare Forum v. Union of India* (1996<sup>31</sup>), imposes strict, domestically enforceable liability on industries, even foreign subsidiaries, for ecological damage. The subsequent establishment of the National Green Tribunal (NGT) Act, 2010, further consolidated this specialised environmental jurisdiction, making India a global leader in domestic environmental legal innovation.

Conversely, the global legal perspective reveals the inherent limitations of state-centric international law. The foundational principle governing cross-border harm is articulated in Principle 2 of the Rio Declaration (1992), which states that countries have the responsibility to ensure activities within their jurisdiction do not cause damage to the environment of other states<sup>32</sup>. This principle is derived from the Trail Smelter Arbitration (1941), which is the cornerstone case on transboundary liability. However, because this liability is primarily attached to the *State* and not the *non-state actor* (the MNC), it fails to bridge the accountability gap identified in Phase II.

This normative void is being addressed through regional developments, notably the European Union's Corporate Sustainability Due Diligence Directive (CSDDD). This Directive mandates that EU companies perform continuous environmental and human rights due diligence across their global value chains<sup>33</sup>. By imposing legally binding, extraterritorial obligations on companies domiciled in the Global North, the CSDDD represents a critical legislative effort to operationalise the UN Guiding Principles on Business and Human Rights and create an enforceable global governance framework, challenging the traditional reliance on national

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<sup>30</sup> *M.C. Mehta v. Union of India & Others*, (1997) 2 SCC 353 (India).

<sup>31</sup> *Vellore Citizens' Welfare Forum v. Union of India & Others*, AIR 1996 SC 2715, (1996) 5 SCC 647 (India).

<sup>32</sup> Seyyed Maryam Asadinejad & Seyyed Mohammad Asadinezhad, *Environmental & Justice*, J. L., Policy & Globalization, Vol. ? No. ? (202?), available at <https://iiste.org/Journals/index.php/JLPG/article/view/17490>.

<sup>33</sup> Quan-Jing Wang, Yong Geng & Xi-Qiang Xia, *Revisited Globalization's Impact on Total Environment: Evidence Based on Overall Environmental Performance Index*, 18 Int'l J. Environ. Res. Public Health 11419 (2021).

sovereignty and establishing a new paradigm for corporate environmental accountability<sup>34</sup>.

## Deep Dive: Sectional and Jurisprudential Analysis

The challenge of environmental justice in a globalised world rests on a systemic failure to translate broad ethical principles into specific, enforceable legal duties that transcend national borders. A granular sectional analysis reveals precisely where domestic law succeeds and international law fatally falters in securing the right to a clean environment.

### 1. Indian Legislation:

From Strict Liability to Corporate Governance: The Indian environmental legal regime, post-Bhopal, adopted a robust, proactive stance on liability that contrasts sharply with the global norm. Beyond the foundational principles established under Article 21, specific legislation mandates corporate responsibility:

- Public Liability Insurance Act, 1991: This Act, a direct response to industrial disasters, makes it mandatory for industries handling hazardous substances to take out insurance to provide immediate relief to victims of accidents. This institutionalises financial liability, ensuring compensation is provided without the long delay of judicial determination, directly addressing a facet of distributive injustice.
- Environmental Protection Act (EPA), 1986: Section 3<sup>35</sup> grants the Central Government vast powers to regulate and implement measures for environmental protection. Crucially, Section 15 prescribes rigorous penalties (imprisonment and fines) for non-compliance, providing the necessary punitive teeth for enforcement, a mechanism often diluted or absent in developing nations due to regulatory capture.
- Companies Act, 2013: While Section 135<sup>36</sup> mandates Corporate Social Responsibility (CSR) spending, its limitation is doctrinal. CSR is an allocation of profit, not an operational mandate for due diligence. It allows companies to invest in superficial social projects while potentially externalising core environmental costs in their supply chains, thus failing to

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<sup>34</sup> Prakash Kashwan, *Globalization of Environmental Justice: A Framework for Comparative Research*, in *The Oxford Handbook of Comparative Environmental Politics* 475 (2022)

<sup>35</sup> Environment (Protection) Act, No. 29 of 1986, § 3, Acts of Parliament, 1986 (India).

<sup>36</sup> Companies Act, No. 18 of 2013, § 135, Acts of Parliament, 2013 (India).

address the fundamental issues of procedural injustice in core business operations.

## **2. International Protocols: The Failure of the Accountability Gap**

The global regime's primary failure is its inability to create a binding mechanism for corporate liability. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal exemplifies this void. While the Convention successfully regulates the movement of waste, its crucial Liability and Compensation Protocol (the Basel Protocol) has not entered into force due to insufficient ratifications, specifically from major waste-exporting nations. This absence leaves victims of toxic trade without a direct, international mechanism to hold the corporation responsible, reinforcing the accountability gap<sup>37</sup>.

In contrast, regional instruments like the Bamako Convention (1991)—adopted by African nations—represent a principled refusal of toxic colonialism, going further than Basel by banning the import of *all* hazardous waste into African states. This normative stance provides a blueprint for a stronger, solidarity-based global governance framework<sup>38</sup>.

## **3. Comparative Jurisprudence: Extraterritorial Litigation**

The ability of foreign victims to sue a parent company in its home jurisdiction remains severely restricted, a key jurisdictional barrier identified in Phase II.

- United States: U.S. courts have been highly restrictive. The landmark case *Kiobel v. Royal Dutch Petroleum* (2013)<sup>39</sup> significantly curtailed the use of the Alien Tort Statute (ATS) for transnational corporate human rights claims, effectively closing a major judicial avenue for victims of environmental harm to seek redress in American courts.
- United Kingdom: British courts have shown limited progress. Cases like *Vedanta Resources PLC v. Lungowe* (2019<sup>40</sup>) demonstrated a willingness to find a duty of care owed by a UK parent company to the victims of its foreign subsidiary, allowing the case to proceed in the UK. This creates a critical, though resource-intensive, exception to the

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<sup>37</sup> A. "Globalization and Biodiversity: Issues in Environmental Justice", Int'l J. Sociology & Humanities Vol. 6 No. 1 (2019), available at <https://valleyinternational.net/index.php/theijsshi/article/view/1817>.

<sup>38</sup> A. A. Akinsemolu, *Advancing Sustainability and Social Justice in the Global South*, SUSAIN v.1 i.1 (n.d.), available at [https://sustaine.org/obani\\_akinsemolu-suse-v1i1-8/](https://sustaine.org/obani_akinsemolu-suse-v1i1-8/).

<sup>39</sup> *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013).

<sup>40</sup> *Vedanta Resources PLC & Another v. Lungowe & Others*, [2019] UKSC 20.

territoriality principle and serves as a model for bridging the procedural justice gap.

This global legal dichotomy—India's robust domestic liability versus the global hesitancy to impose extraterritorial duty—highlights that the solution lies in mandating CSDDD-style legislation across all developed nations<sup>41</sup>. Only by shifting legal enforcement away from the weak, economically constrained host state toward the powerful home state of the MNC can the architecture of environmental injustice be fundamentally dismantled and the prospects for a truly Just Transition be realised.

#### ***4. The Priority of Trade Law and Legal Conflict***

A foundational legal barrier to environmental justice lies in the conflict between international environmental agreements and the World Trade Organisation (WTO) framework. The WTO agreements, primarily the General Agreement on Tariffs and Trade (GATT), prioritise the free movement of goods over environmental regulation (Phase I). While GATT Article XX (General Exceptions) permits trade measures "relating to the conservation of exhaustible natural resources," WTO jurisprudence has traditionally interpreted these exceptions narrowly, often requiring a demonstration that environmental measures are not a "disguised restriction on international trade"<sup>42</sup>. This legal prioritisation fundamentally undermines the right of developing nations to impose strict environmental standards on imported goods or locally produced goods for export, thus legally entrenching the "race to the bottom" and reinforcing systemic distributive injustice.

#### ***5. Climate Litigation and Judicial Reinterpretation of Corporate Duty***

Recent global litigation is providing a critical, albeit non-legislative, challenge to the Hypothesis that MNCs are shielded from extraterritorial accountability. The landmark Dutch decision in *Milieudefensie v. Shell* (2021)<sup>43</sup> established a binding corporate duty of care, compelling a private company to reduce its global, value-chain CO<sub>2</sub> emissions. This case is crucial because it uses domestic tort law, interpreted through a human rights framework, to impose an unprecedented, global environmental obligation on an MNC. This judicial activism

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<sup>41</sup> Olivia Stumpf, *Globalization of Environmental Justice*, J. Undergraduate Research XXIV (2021), available at <https://www.uwlax.edu/globalassets/offices-services/urc/jur-online/pdf/2021/stumpf.olivia.eng.pdf>.

<sup>42</sup> A. S. Rangel, *Environmental Justice and Globalization*, (2023), available at [https://research.ulapland.fi/files/37349506/Environmental\\_justice\\_and\\_globalization.pdf](https://research.ulapland.fi/files/37349506/Environmental_justice_and_globalization.pdf).

<sup>43</sup> *Milieudefensie & Others v. Royal Dutch Shell plc*, Judgment of the District Court of The Hague (Netherlands), 26 May 2021, ECLI:NL:RBDHA:2021:5337.

serves as a vital model for attacking jurisdictional barriers(Phase II) and demonstrates a path for courts in the Global North to enforce transboundary environmental duties, even in the absence of a global treaty<sup>44</sup>.

## **6. The Legal Vacuum in Climate Finance and Loss & Damage**

Addressing the Ecological Debt (Phase I, Issue 1) through climate finance relies on political pledges rather than legally binding mechanisms. The commitment by developed nations to mobilise climate finance, including the nascent Loss and Damage Fund under the UNFCCC<sup>45</sup>, exists primarily as a soft-law political commitment. The lack of a formalised treaty-based liability regime for historical emissions means that financial transfers remain voluntary, reinforcing a relationship of aid rather than legally mandated compensation. This legal vacuum undermines the feasibility of a truly Just Transition (Phase III), as the economic and legal resources required for adaptation and remediation in the Global South are not secured by enforceable international law. The legal challenge remains to transform this political obligation into an internationally codified, mandatory duty.

## **7. Digital Justice and Environmental Monitoring**

A newly emerging legal and practical barrier lies at the intersection of environmental justice and data governance<sup>46</sup>. Effective procedural justice (Phase II) requires local communities to monitor and prove environmental harm. However, MNCs often control access to critical environmental data (e.g., satellite imagery, emissions data, internal audits). Current legal frameworks do not enforce an international "right to environmental data" or mandate standardised, publicly accessible environmental reporting<sup>47</sup>. This information asymmetry cripples local legal efforts, making it doctrinally challenging for victims in the Global South to satisfy the burden of proof required in home-state litigation, reinforcing the fundamental accountability gap.

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<sup>44</sup> D. V. Carruthers, *The Globalization of Environmental Justice*, 18 Geogr. J. (2008) 1-? (2008), available at <https://www.tandfonline.com/doi/full/10.1080/08941920701648812>.

<sup>45</sup> Eghosa Ekhator, *Environmental Justice in the Global South: Overview of some Contemporary Developments* (June 15, 2023), available at <https://ssrn.com/abstract=4487210>.

<sup>46</sup> Usha Natarajan, *Environmental Justice in the Global South*, in *The Cambridge Handbook of Environmental Justice and Sustainable Development* 39-57 (Sumudu A. Atapattu, Carmen G. Gonzalez & Sara L. Seck eds., 2021), available at <https://doi.org/10.1017/9781108555791.005>.

<sup>47</sup> J. Dehm, *Environmental Justice: Challenges to International Economic Ordering*, 116 Am. J. Intl. L. Unbound 101 (2022), available at <https://doi.org/10.1017/aju.2022.15>.

## CONCLUSION

In conclusion, the analysis confirms that the current governance architecture is structurally insufficient to deliver transboundary environmental justice, primarily because globalisation systematically institutionalises distributive injustice by concentrating ecological debt and burdens in the Global South while allowing economic advantages to accrue in the Global North<sup>48</sup>. The core challenge is defined by the persistent accountability gap for Multinational Corporations (MNCs), exacerbated by the reliance on fragmented national sovereignty, which creates profound procedural and jurisdictional barriers to legal redress for frontline communities. This systemic denial of procedural justice and meaningful participation prevents the effective monitoring and enforcement of environmental standards across global supply chains. Addressing these failures is crucial; efforts must pivot from relying on ineffective voluntary Corporate Social Responsibility (CSR) to mandating comprehensive corporate<sup>49</sup> environmental due diligence across all operational territories. Ultimately, the paper concludes that while the accelerating global shift toward a green economy presents a major prospect for mitigation, the success of this transition hinges on whether it is explicitly governed by the principles of Energy Justice and a Just Transition, ensuring that the required economic transformation results in a truly equitable distribution of environmental benefits and burdens for all global populations.

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<sup>48</sup> Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 Santa Clara J. Int'l L. 151 (2015), available at <https://digitalcommons.law.scu.edu/scujil/vol13/iss1/8>.

<sup>49</sup> Mona L. Hymel, *Globalization, Environmental Justice, and Sustainable Development: The Case of Oil*, Macquarie Law Rev., 2006, Arizona Legal Studies Discussion Paper No. 06-38, available at <https://ssrn.com/abstract=934467>