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The role of non-state actors in promoting environmental justice: A comparative study of Kenya and South Africa

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Abstract With academic and institutional interest in environmental justice growing, the forthcoming efforts in this field warrant thorough analysis of the interactions between state and non-state actors. This article provides an empirical response to more critical views placing skepticism on the efficacy of achieving environmental justice through the official framework of the state and advocate for the pursuit of environmental justice "beyond" the state's designated institutions, namely various non-state actors (NSAs), such as non-governmental organizations and community based organizations. What role do NSAs have in the realization of environmental justice? This paper will provide a comparative case study to analyze this question along three key factors: the degree of social and economic capital among NSAs, the outcomes for NSAs that the alignment of the state with international environmental institutions produces, and state-capital hegemony, in Kenya and South Africa. Both nations have adopted basic environmental justice policies and have hosted sustained environmental grassroots movements working towards environmental justice objectives, with Kenya appearing to have achieved a greater legacy of success in bringing environmental justice movements to fruition. The findings reveal the crucial impacts of non-state actors' social and economic capital as well as state-capital hegemony on the success of environmental justice movements. The article also problematizes the relationship between environmental justice and sustainable development models which prioritize economic growth.

Keywords Environmental justice · Non-state actors · Social capital · State alliances · Kenya · South Africa

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Introduction

In 1982, the Democratic governor of North Carolina, James Hunt, ordered the creation of a toxic waste site for the disposal of over 32,000 cubic yards of soil that had been contaminated with highly toxic polychlorinated biphenyls (PCBs) (Banzhaf et al., 2019a; Bullard, 1993, 2000; Faber, 2008; Gordon & Freeland, 2012). The disposal of these PCBs was intended to take place in a predominantly Black community in Warren County. This decision by the government sparked protests, leading to the arrest of over 400 people and the dumping of 6,000 truckloads of contaminated soil in the designated area, amidst widespread controversy (Bullard, 1993, 2000; Foreman, 1998; Pellow, 2016; Ringquist, 1997). This instance

would become an iconic moment in the development of the environmental justice movement, which has since developed into a complex and far-reaching field of activism and scholarship all over the world (Banzhaf, 2012; Banzhaf et al., 2019a, 2019b; Cole & Foster, 2001; Mohai et al., 2009; Pellow, 2007; Pellow & Brulle, 2005; Ringquist, 2005; Westra & Lawson, 2001). In the greater context of environmental impacts, much attention has been placed on events that bear striking similarities to the Warren County incident, where the impacts of environmental threats fall disproportionately on the marginalized members of society, particularly racial and ethnic minorities, Indigenous peoples, and the poor (Anand, 2004; Baden et al., 2007; Banzhaf & Walsh, 2013; Gordon et al., 2012; Pulido, 1996; Pulido et al., 2016). The observation of these patterns and the subsequent attempts to remediate them has taken the broad title of environmental justice (EJ), with advocates seeking methods to address these disproportionate impacts and ensure equal protection from undue exposure to toxic materials for all, regardless of any social or economic distinction (Agyeman, 2014; Banzhaf et al., 2019a, 2019b; Bullard, 2000).

Historically, EJ advocates have typically turned to the state as the most likely arbiter of protection and guarantee to these ends, with much EJ activity and literature being based in and focused on the United States, where the term itself originated (Ernstson, 2013; Faber, 2008; Gordon et al., 2012; Schlosberg, 2007; US EPA, 2022). The noticeable lack of success of US EJ advocates in completing their agendas, especially in light of President Clinton's 1994 Executive Order 12,898, have caused some scholars to produce a critical evaluation, advocate for alternative methods, and stimulate attention to Indigenous interests and the role of non-state actors (NSAs) (Foreman, 1998; Noonan, 2008; Pulido & DeLara, 2018; Sigman, 2001). One strand of criticism, dubbed the critical school, places skepticism on the efficacy of pursuing EJ through the official framework of the state and advocates for the pursuit of EJ "beyond" the state's designated institutions (Pellow, 2016, 2018; Pulido et al., 2016). Another strand of critique is the rational school, which problematizes the inhibiting factors that many EJ activists seem to ignore, primarily the state's barriers to corrective or remedial action due to the lack of scientific, legal, and practical grounds (Banzhaf, 2019b; Foreman, 1998; Mohai et al., 2009; Ringquist, 1997). Yet another point of criticism emerged from the Indigenous scholars in the US whose views are more aligned with EJ movements in other parts of the world, especially in the Global South. The Indigenous critique serves as an opposition to Western conceptions of the environment and its relation to people as well as the colonial settler state which has continually threatened the livelihood and basic rights of Indigenous peoples (Gilio-Whitaker, 2019; Hernandez, 2022; Hicks & Fabricant, 2016; Hope, 2020). This article aims to provide an empirical response to these critical arguments, by specifically adding context of EJ beyond the US and throughout the Global South.

While EJ movements are and have been portrayed by the relationship between the state and NSAs, this article highlights and explores the role of NSAs and their struggles with the state and other actors. Therefore, the goal of this article is to address the following question: What role do non-state actors have in the realization of environmental justice? This paper will empirically analyze this question by offering a qualitative comparative case study along three key factors: the degree of social and economic capital among NSAs, the outcomes for NSAs that the alignment of the state with international environmental institutions produces, and state-capital hegemony, in Kenya and South Africa. Unlike the United States, both nations have adopted at least basic EJ policies and have hosted environmental grassroots movements working towards EJ objectives. However, Kenya appears to have achieved a greater legacy of success in bringing EJ movements to fruition, as evidenced by the sustained impact of local community organizations since the 1970s, its wide-reaching constitution adopted in 2010, and a recent landmark court ruling in the nation. What explains the apparent higher level of EJ successes in Kenya as compared to South Africa, despite South Africa's supposed higher level of democratization?

The results of this study underscore the crucial influence of social and economic capital and state-capital hegemony on the success of NSAs' EJ movements. Greater resources have a strong, positive impact, while an inability to circumvent state-capital hegemony shows a highly inhibitive effect on NSAs in their pursuit of EJ. As for state alignment with international environmental institutions, the results yielded largely inconclusive evidence, due

to each states' high degrees of alignment with these institutions.

The article starts with an overview of critical analyses of the EJ movement, followed by the analytical framework, which discusses potential explanatory factors on the role of NSAs in EJ. The next section presents an analysis on the engagement of NSAs in Kenya and South Africa, followed by a comparative assessment of the factors in both countries. The article concludes by highlighting the roles of NSAs and problematizing the relationship between EJ and sustainable development policies that prioritize economic growth.

Literature review

Environmental justice

EJ involves "the fair treatment and meaningful involvement of all people" (US EPA, 2022) and actions that accomplish the goal of improving environmental quality of marginalized communities within a specific territory (Schlosberg, 2007; Gordon & Freeland, 2012; Ernstson, 2013; Konisky, 2015). Early US environmental movements placed strong emphasis on the protection of the wilderness, primarily originating from the concerns of middle- and upper-class White Americans and largely excluding the environmental concerns of Indigenous communities, communities of color, and poor or working-class populations. It is observations like these that exclusion of racial minorities from the decision-making process made the EJ field highly intersectional as the natural coalescence of American environmental protectionism and the racial social justice movements of the midcentury, with environmental injustices correlating within racial minority and low-income communities (Banzhaf, 2019b; Ringquist, 1997).

While EJ studies the higher incidence of environmental degradation among these communities, the lack of adequate state protection from and punishments for instigating these hazards are also highly relevant (Bullard, 2000; Foster, 1998; Pulido et al., 2016). The EJ perspective is also a structuralist one: environmental injustices are simply another result of a system of governance rooted in institutional racism and classism. (Pellow, 2016, 2018; Pulido et al., 2016; Westra & Lawson, 2001). EJ scholars also emphasize the long-present debate of economic-environmental tradeoffs, with institutions and individuals commonly insisting that these tradeoffs are unavoidable or that environmentalism is only the elites' cause. However, environmental degradation is itself a result of highly unequal economic growth and a lack of adequate political power on the part of the marginalized (Banzhaf, 2012; Bullard, 2000; Foster, 1998; Ringquist, 1997). The political-economic system that exploits the land is the same political-economic system that exploits the people (Faber, 2008).

Looking at global issues in EJ, inequity in bargaining power is key to understanding multiple factors in the debates of international environmental policy. Analogous to elite environmentalism in the US, the Global South sees the dominant environmental paradigm as an overrepresentation of the interests of Northern governments, citizens, multinational corporations (MNCs), and nongovernmental organizations (NGOs) (Anand, 2004). For instance, in Botswana, the "greening of the state" and its embeddedness within the global economy, pushes the country to prioritize opportunities for economic growth originating disproportionately from international actors. This results in the country's wildlife sector being dominated by foreign tourism industries, via the facilitation of the domestic elite, further excluding local people and organizations from their own national environment (Mogende & Ramutsindela, 2020). Much like the analysis of the poor and minorities in the US not possessing any major method of preventing, combatting, or remedying environmental injustices, the Global South is unable to significantly sway international economies and policies to address global environmental injustices (Anand, 2004; Bullard, 2000).

Critiques of the environmental justice scholarship

While the EJ movement has grown into a persistent force, the movement is not without its share of critique, especially from the critical and rational schools of thought, as well as Indigenous scholars. The critical school, problematizes the observed assumption among EJ advocates that environmental injustice will be ameliorated by the pre-existing power structure, mainly the enacting of policy reforms by state and capital actors that aim to solve the environmental problems created by the same institutions (Pellow, 2016, 2018; Pulido,

1996, 2016; Pulido & DeLara, 2018; Smith, 2011; Holifield et al., 2010; Noonan, 2008). By appealing for action from these dominant institutions, EJ actors keep these institutions further entrenched in the same power structure which continues to cause environmental injustices. Critical scholars also maintain that the EJ movement overall has not accomplished its goal of *improving* the environmental quality of marginalized groups and argue that EJ activists are consistently unable to identify any alternative mechanism for pursuing EJ beyond the legitimate framework of the state, signifying the hegemony of the state in EJ activism (Pulido et al., 2016). These scholars call for a more radical approach in which EJ activists recognize the connection between state-capital alignment and environmental racism while pursuing methods of EJ which lie beyond the accepted state framework.

On the opposing arm of critique, the rational school of thought highlights empirical shortcomings of EJ scholarship, particularly in response to what many EJ activists assert: that minority and poor communities are more likely to experience higher rates of disease and death due to a disproportionate exposure to environmental hazards (Ringquist, 1997). While circumstantial evidence strongly indicates that minorities and the poor are suffering disproportionately due to their proximity to polluting facilities, the epidemiology cannot decisively show direct causation by the polluting facilities (Baden et al., 2007; Banzhaf et al., 2019b; Villarosa, 2020; Wing et al., 2008). Further, the rational critique emphasizes the lack of a legal mechanism for state action as a result of discriminatory *outcome*, rather than discriminatory *intent* as the impetus for state remediative action (Mohai & Saha, 2015; Mohai et al., 2009). Although, therein lies an inherent tradeoff: laws and policies based around a model of discriminatory outcome have lower barriers for government action, but they also have less clear and potentially controversial pathways for the official channels of legal justice (Depro et al., 2015; Gross & Stretesky, 2015; Konisky, 2015; Ringquist, 1997). Other concerns from the rational wing of critique expand on the difficulties of practically applying EJ at a large scale, where EJ action will require prioritization (Banzhaf, 2019b; Foreman, 1998). Although even with these efforts, the EJ movement cannot ban the siting of all polluting facilities; societies will generate pollution and that pollution will have to go somewhere (Anand, 2004).

The Indigenous voices of EJ critique not only the dominant EJ scholarship but serve as a multidimensional critique of Western conceptions of the environment, people, governance, and empire. Holistic by nature, the Indigenous critique provides opposition to the foundation of conventional Western environmentalism and stresses the interconnected nature of all people to each other and their environment, the great importance of place, as well as the fundamentally repressive omnipresence of the colonial state (Gilio-Whitaker, 2019; Hernandez, 2022; Hicks & Fabricant, 2016; Hope, 2020). Further, Western environmentalism—and by extension Western EJ—*others* the experiences of Indigenous peoples and communities of color, with Indigenous environmental perspectives considered an area of expertise rather than a fundamental aspect of US EJ or environmentalism (Hernandez, 2022). Central to the Indigenous critique is the resistance of Indigenous peoples and their fight for sovereignty against the "benevolent supremacy" of the colonial settler state, which threatens not just the environment and land but their entire ways of life (Carruthers & Rodriguez, 2009; Gilio-Whitaker, 2019; Hernandez, 2022). Thus per the Indigenous critique, EJ must incorporate a *de*colonial framework through which justice is made available by the ability of communities to speak and act for themselves (Gilio-Whitaker, 2019; Hernandez, 2022). In contrast with the critical school, the Indigenous school sees no choice but to pursue their own rights for survival beyond the framework of the settler-colonial state.

The nature and role of non-state actors

As discussed in the literature, the term 'non-state actors' (NSAs) is quite vague (see Josselin & Wallace, 2001; Wijninga et al., 2014). NSAs may include NGOs, private industry actors, religious organizations, social movements, and even violent insurgents. NSAs possess autonomy from the state and intergovernmental organizations, yet they aim to affect the political outcomes of at least one state (Marcussen, 1996; Mercer, 2002). The existence of NSAs requires the separation of the public and private spheres of life, reflecting the necessary precondition of liberal economic and political hegemony (Josselin & Wallace, 2001; Mercer, 2002). A group of NSAs with particular importance to this study are those under the category of civil society or NGOs, which are autonomous

from the institutions of the state, based on voluntary association, and having a non-profit model of operation (Bratton, 1989; Marcussen, 1996; Wijninga et al., 2014). NGOs have been argued to play conflicting roles in their relations to states: sometimes seen as supplements towards state functions while also providing problematic competition for public services, with wealthy international elites controlling much of the money supply that funds them (Mercer, 2002; Mitlin et al., 2007; Wijninga et al., 2014).

Specifically for the EJ cause, NSAs provide opposition, regulatory oversight, and rights enforcement for communities whose environments are damaged by the state or industrial activity, often due to unenforced state regulation of industrial activity (Aspinwall, 2021b; Carruthers & Rodriguez, 2009). They distribute non-material resources, such as legal, knowledge, or normative resources (Aspinwall, 2021a), as well as constitute an opposition to potentially problematic norm-setting within international institutions, which are dominated by neoliberal hegemony (Hicks & Fabricant, 2016; Hope, 2020). Additionally, NSAs form alliances with other domestic and international actors to pursue common agendas across social, environmental, and Indigenous issues (Carruthers & Rodriguez, 2009; Rodriguez, 2019).

While NSAs do not have formal power, they can still provide representation of a specific population, control a local territory, and can even have an important presence in international organizations (Nasiritousi et al., 2016; Reno, 2011; Sparke, 2013). Overall, the complexity of EJ illuminates key factors that appear to significantly impact the success of EJ movements,.

Analytical framework

Acknowledging that NSAs are incredibly diverse actors, this study gives specific attention to the role of domestic civil society actors and organizations working towards EJ, yet investigating this also requires the discussion of the impact of other NSAs including private industries and international NGOs. To analyze EJ actions in Kenya and South Africa, this article focuses on the following factors: 1) the degree of social and economic capital among NSAs; 2) the inhibition of NSAs' activities caused by the alignment of the state with international institutions; and 3) the inhibition of NSAs caused by state-capital hegemony. The impact of the accessible wealth and social networks of NSAs can be greatly deterministic on the magnitude of impact that NSAs can possibly achieve. This study treats wealth and social networks as a common pool of resources which NSAs can use to accomplish their agendas. Second, state alignment with international environmental institutions can, perhaps unexpectedly, lead to greater disharmony with local, Indigenous, and environmental organizations due to growth-friendly interpretations of development that prioritize more powerful global interests. Lastly, the inhibition of NSAs may be caused by state-capital hegemony, defined here as the strong political and economic alignment of the state's functions with the interests of private industries. State-capital hegemony may be seen as a major reinforcing power that strips the abilities of EJ activists to act on or conceive of methods of justice that lie beyond the state's framework of justice.

The study uses a qualitative comparative case analysis of Kenya and South Africa, by relying on primary and secondary sources detailing each states' political development, historical events, and environmental affairs, including articles, legal documents, direct policy statements from each state, and reports from international organizations. As Mahoney (2007) states, qualitative analysis can be used to intensely study complex social developments and to understand deviations from expected behavior. For example, South Africa's consistently higher ranking in democracy indicators above Kenya by organizations such as Freedom House (2022) could lead observers to assume that South Africa's EJ movements would experience a greater degree of success, perhaps by appealing to the state's more open institutions. Therefore, Goodrick's (2019) emphasis on the strength of causal explanation provided by comparative case studies makes this method of analysis greatly attractive for discerning why and through what mechanisms Kenyan EJ movements appear to have more success than those of South Africa.

Further, this study examines the two cases as a most-similar comparative study, citing the two countries' historical, socio-economic, and EJ policy similarities. Both states, located in Africa, were shaped by the British Empire, established as settler colonies to facilitate European migration and exploit natural resources. This system was met with resistance

from the local populations of both countries, who employed both violent and non-violent methods (Fiona & Mackenzie, 2000; Suttner, 2012). Additionally, both countries are home to highly ethnically diverse populations (Posner, 2004), and both countries also experience high rates of wealth inequality, with South Africa reported to be the most unequal economy in the world and Kenya described as highly unequal as well (Ouko, 2020). Further, ethnic characterizations, especially race, appear to play a role in the economic inequality of both nations, due to the presence of "privileged minorities" (descendants of White, Arab, and Asian settlers from the colonial era) which disproportionately dominate the business classes in both countries (Taylor, 2012). Finally, both states have enacted legal instruments which legally ensure citizen access to EJ (Articles 42, 60, 63, and 70, Constitution of Kenya, 2010; National Environmental Management Act, 1998), and both states are home to their own EJ movements and organizations. Thus, the two states pose a unique and interesting opportunity to analyze the success and failures of NSAs in EJ movements beyond the US and into the Global South.

The role of non-state actors in environmental justice

Kenya

Environmental concerns have long been a key focus and source of power for the Kenyan state, particularly during the British colonial period. Control of the environment was central to establishing control over the people, especially relating to agricultural production (Fiona & Mackenzie, 2000). Even since independence, environmental control and land access have continued to be key issues in Kenya and played a fundamental role in the country's most recent constitutional moment (Harbeson, 2012).

Social and economic capital

This article investigates two significant EJ movements in Kenya. First, the Green Belt Movement (GBM) is a grassroots movement founded in the 1970s by Wangari Maathai, a prominent actor in Kenya's civil society focusing on environmental, political, and women's issues. Maathai's GBM required significant harnessing of social capital among rural communities by word-of-mouth communication, utilizing tree planting as a civil society mobilization tactic (Hunt, 2014; Maathai, 2006; Michaelson, 1994). The GBM worked to educate the rural poor of Kenya, especially women, on connections between the environment, agriculture, maintenance of family land, and political power. The GBM held seminars to communicate the benefit of planting trees and instructed rural women on how to start tree nurseries while providing modest stipends (Hunt, 2014). Thus, the activities of the GBM had multiple impacts, including women's empowerment, accessible modes of modest income generation, access to needed material resources, and resistance to soil degradation and desertification resulting from the cash crop economy in Kenya (Hunt, 2014; Michaelson, 1994).

Maathai and the GBM possessed a mixed and broad network of support, both domestically and internationally. At the grassroots level, the GBM utilized a non-coercive, self-help model for mobilization and action, while instructive information was disseminated by the central office. Maathai also had strong connections with the National Council of Women of Kenya, and even received minor startup assistance from Mobil Oil and the Kenyan Department of Forestry (Maathai, 2006; Michaelson, 1994). Mobil Oil donated trees for planting, sponsored Maathai's events, and provided crucial funding to the early stages (Michaelson, 1994; Center for Global Awareness, 2016). Although limited, early support was crucial for the efficacy and success of the movement as the visibility of the rewards encouraged participation and increased interest in the movement. The GBM also had international support from the Norwegian Forestry Society and the UN Voluntary Fund for Women, which approved a grant of $122,700 (USD) (Maathai, 2006). This financial support increased the capacity-building of the movement, gave a sense of legitimacy and security, and enabled the GBM to expand its reach. The movement operated with strategic apoliticality in its early years, by deliberately avoiding direct involvement with political activities and focusing on environmental empowerment. Maathai's later activism also created leverage across Kenyan civil society, due to the international backlash

faced by Daniel arap Moi for any antagonism of Maathai, the GBM, or other civil society actors (Hunt, 2014). The GBM showcases the harnessed power of collective social capital and modest economic capital from a range of sources and throughout multiple scales of social organization: grassroots, national, and international. Today, the GBM boasts a total of 51 million trees planted throughout the movement's existence (The Green Belt Movement, 2022).

Another important EJ movement focuses on the developments following mass lead poisoning in an informal settlement, Owino Uhuru, in Mombasa, Kenya. Owino Uhuru is located within walking distance of an export processing zone, where the company Metal Refineries Limited (MRL) established a lead smelting and recycling plant in 2007 for the inexpensive and largely unregulated restoration of lead-acid batteries in the global market (Mwanza, 2020; Schlanger, 2018). The plant's pollution soon became a significant issue for the local community and is cited as the cause of death of 100 children and multiple plant workers by lead poisoning as of 2018 (Schlanger, 2018).

In response to the pollution and deaths, Phyllis Omido, the Center for Justice Governance and Environmental Action, community members, and other environmental activists pursued collective action via state and extra-state pathways. Omido and her supporters began organizing protests, demanding the closure of the MRL plant, and garnered significant media pressure on the government and MRL, which was instrumental in causing the plant to close in 2014 (Mwanza, 2020; Schlanger, 2018). The activists also pursued legal action, by suing the government for negligence, failure to enforce proper regulations, and violating the expansive environmental, health, and information access rights guaranteed under the 2010 Constitution of Kenya (Mwanza, 2020; Schlanger, 2018). In August 2020, the movement won their court case in a landmark decision by the High Court of Kenya, which ruled that MRL had improperly disposed of contaminated waste water and that the Kenyan National Environment Management Authority (NEMA) had failed to comply with standard procedures for completing an environmental impact assessment before the opening of the recycling plant, failed to enforce environmental regulations during the plant's operation, and even assisted MRL in its polluting procedures by falsifying official documents. In compensation for all these violations, the High Court ordered the payment of 2 billion Kenyan shillings from the industry and the state to the residents of Owino Uhuru (Mwanza, 2020). However, the fight for justice for Owino Uhuru is still ongoing, due to an appeal from the Kenyan government citing that the state should not have to pay these fines, following the "polluter pays" principle, which places complete responsibility on the polluting industries (Mwanza, 2020). While this has once again stalled justice for Owino Uhuru, Phyllis Omido and her network have once again taken to protest against this action and demand justice, with the final result of this episode still forthcoming (Ruth, 2022).

Alignment with international environmental institutions

Kenya's post-colonial history has followed a trajectory highly aligned with international environmental institutions. The government of Kenya inherited the colonial mode of environmental conservation: the establishment of protected areas of land which purposefully separates humans from wildlife. Know as "fortress conservation," this technique assumes that biodiversity conservation is best achieved through isolation from human contact, except for sanctioned activities in tourism and scientific research. Importantly, it also assumes that Indigenous or community uses of natural resources are inherently irresponsible and unsustainable (Domínguez & Luoma, 2020). Many of the world's leading organizations still condone fortress conservation and advocate for the expansion of protected areas, including the United Nations Environment Programme (UNEP) and the World Wildlife Fund (WWF) (UNEP, 2019; WWF, 2022).

In the twenty-first century, the alignment of the Kenyan state with international environmental institutions can be evidenced by analyzing a variety of factors. First, the country still practices fortress conservation, with instances of Indigenous separation from land by the state taking place as recently as 2009 (Domínguez & Luoma, 2020). Further, Kenya has six of its national parks, the second highest number of biosphere reserves on the African continent, registered in the African Biospheres Reserves Network under the UNESCO, which aims to globally align efforts in sustainable development and wildlife

conservation (UNESCO, 2019). Further, the UNEP, itself, was chosen to be located in Nairobi in 1972, a decision which came after a collective push from developing countries for more access to international decision making and more international governing bodies to be located outside of Europe or the US (Ivanova, 2007). Thus, while possibly indicative of alignment with international institutions, the citing of UNEP in Nairobi was also part of a push for better global representation of the Global South.

Kenya also hosts a dense presence of NGOs which rely on funds mostly from international donors. The Government of Kenya's Non-Governmental Organizations Coordination Board provides detailed information regarding the country's NGO sector and reports that in the Kenyan fiscal year 2018–2019, 88% of NGO funds came from international donors (Government of Kenya, 2019). While there is a great diversity in the sectors that NGOs work in, environmental and wildlife NGOs make up a major constituency of this population, with environmental NGOs comprising the 9th largest NGO sector in Kenya, using 3.4 billion Kenyan Shillings (about 29 million USD) in one year (Government of Kenya, 2019).

Kenya's economic policies also show a high and purposeful degree of alignment with international environmental institutions. The Green Economy Strategy and Implementation Plan (GESIP) developed by the Ministry of Environment thoroughly details the Kenyan government's vision for environmentally conscious economic growth from 2016–2030 which is fundamentally rooted in growth-friendly interpretations of sustainable development (GESIP, 2016). The plan fully equates the achievement of sustainable development with implementation of the "Green Economy" in Kenya and was created with the support of multiple international organizations, including UNEP, the African Development Bank, the Danish International Development Agency, the WWF, and the Deutsche Gesellschaft für Internationale Zusammenarbeit (German Corporation for International Cooperation). The plan was also designed to achieve the implementation of the Paris Agreement and the UN's sustainable development goals (GESIP, 2016).

Despite all the evidence of alignment with international environmental institutions shown above, Kenya's domestic environmental politics are still complex. This, in large part, is due to the establishment of community land rights under the 2010 Constitution, which are just one outcome of decades of civil society activism, protest, and democratization in the country (Article 63, 2010; Harbeson, 2012). Land rights and tenure have long been a contentious topic in Kenyan politics, and it is within this context that the 2010 Constitution, with its provisions for community land rights, was finalized with a two-thirds approval by popular referendum (Harbeson, 2012). In 2021, the Rights and Resources Initiative estimated that about 69% percent of Kenyan land is community land (RRI, 2021). Also, to their credit, the Government of Kenya's GESIP policy aims to achieve socially-equitable sustainable development. Thus, with these significant milestones, time will tell whether NSAs will be able to harbor the legal momentum for land rights and EJ as an opposition to fortress-style conservationism and other environmental injustices.

State-capital hegemony

Like the Kenyan state's complex relationship with environmentalism, the state has also had a long and complex history with the interests of private capital, before and after its independence. The colonial administration divided the land in Kenya to reserve the most productive and fertile lands for White settlers who supported the material and agricultural demands of the British Empire (Fiona & Mackenzie, 2000). The colonial economic system maintained that the business interests of White, Indian, and Lebanese settlers would not be encroached on by Black capital. Even after independence private business remained a hostile sector to Black Kenyans (Taylor, 2012). In a country where the racial majority does not have access to or control over private capital, the economic elite, typically representing the minority, is naturally in an unstable position, prone to seizures or expulsions (Taylor, 2012). Thus, the alignment of interests between the state and the economic elite for self-preservation and profit—or outright theft—was a natural result of this racial and economic inequality. Businesses of racial minorities and multinational corporations crowded out the business interests of the majority, while state policies and practices ensured the lack of any meaningful economic connections or infrastructure between the economic elite and the Black majority of Kenya. Further, the strong connections between the political and business elite in Kenya

have led to infamous instances of opportunistic and apparently illegitimate mass profit, such as the Goldenberg Scandal under President Daniel arap Moi (Grynberg & Singogo, 2021; Taylor, 2012).

The actions of Kenyan NSAs demonstrate the crucial role of civil society in expanding access to environmental, legal, and land rights (Harbeson, 2012; Hunt, 2014; Michaelson, 1994). Momentum from these activists and others like them continued with the creation of the 2010 Constitution and significantly expanded Kenyans' legal rights to environmental quality and land (Harbeson, 2012). The 2010 Constitution is expansive and comprehensive in its guarantee of rights, but the enforcement of these rights still must overcome significant challenges in bureaucracy, capacity, and conflicts of interest within the government (Bosek, 2014). These challenges can be clearly seen by referring back to the Owino Uhuru settlement, where, despite winning their case, the residents have still not been compensated for the mass lead poisoning caused by Metal Refineries Limited and the state's legal malpractice (Mwanza, 2020). Much of Kenya's civil society activism has involved extra-state tactics including direct community action, civil protests, and creative use of cultural conventions, which indicate the existence of a domestic space that exists outside of an imposing state-capital hegemony (Hunt, 2014; Michaelson, 1994; Mwanza, 2020). However, the Owino Uhuru case also shows a large degree of dependence on the state for action and remediation, a potentially dangerous indicator of an encroaching state-capital hegemony in the country.

South Africa

Much like Kenya, the state of South Africa explicitly separated the population into specified areas of land based on race. As vast areas of land were reserved for White settlers or biodiversity protectionism, the Black majority living in the country was denied access to these areas as well as basic resources and services (McDonald, 2002). While South Africa's democratic transition provided hope that these environmental concerns would be rectified, the country has continued to struggle with the long-standing impacts of historical injustices and persistently drastic inequality between the different racial groups (Leonard, 2012, 2018; McDonald, 2002).

Social and economic capital

South African justice movements have a long and tortured history. The African National Congress (ANC) has played an extended role in bringing about justice for over a century, encompassing a wide variety of political alignments, including liberal, communist, trade unionist, pan-cultural, pacifist, militaristic, and neo-liberal. The major drivers, however, always remained consistent until 1994: the elimination of racist governance, apartheid, and minority rule by White South Africans (Suttner, 2012). Since 1994, the ANC has ruled by electoral consent, and while there was some civil society activity with regards to EJ throughout the 1990s, there have not been any mass environmental-social movements in South Africa, and EJ action has largely been the purview of the state (Carruthers, 2019; Leonard, 2012). Additionally, after the ANC's transition from civil society to government, many Black-led NGOs have struggled to get off the ground in South Africa, due to both a lack of financial resources and the social ties that would secure it. Thus, lackluster civil society action, inequality, and state hegemony throughout the early rule of the ANC help to explain the lack of a major framework in South African civil society that connects social and environmental issues (Khan, 2002; Leonard, 2012).

In the twenty-first century, while many of South Africa's challenges have persisted, there have been some reported successes in civil society opposition to industrial pollution in South Durban (Leonard, 2012). A groundwater contamination incident in Merebank, South Durban was caused by a leak of hexavalent chromium from a factory owned by the German multinational company, Bayer (Leonard & Pelling, 2010). This incident was followed by a state-ordered remediation process, but the process was highly contentious and marred by poor communication, low levels of community involvement, and severe mistrust. The lack of public input and noncooperation persisted between Bayer, the local government, local CBOs, external NGOs, and Merebank residents (Leonard & Pelling, 2010).

Another contentious case in Durban is the Bisasar landfill, the largest formal landfill in Africa. It was purposefully sited in an Indian South African neighborhood (Leonard, 2012). With the end of apartheid, Black South Africans newly allowed

to legally move into cities established an informal community close to the landfill, coming to partially rely on the site for material resources. The largely middle-class Indian neighborhood that surrounds the landfill has long advocated for the landfill's closure, citing health concerns, especially high rates of cancer in the neighborhood, while the impoverished informal community has advocated for the landfill to remain open, citing high unemployment and dependence on the landfill (Leonard, 2012). Differences between the formal and informal settlements were not conducive to collective mobilization. The distinctive economic classes were focused on protecting their own interests—which fell along racial lines, while wealth inequality has only become more dire (Leonard, 2012; Al Jazeera and Bauer, 2021).

Another example can be seen in the story of the Mfolozi Community Environmental Justice Organisation (MCEJO), where residents of Somkhele have been the target of violent harassment surrounding the recent assassination of local EJ activist, Fikile Ntshangase. The community organization and local rural residents have been protesting the Tendele coal mine, which activists claim to be degrading the natural landscape and polluting scarce supplies of water used for drinking, agriculture, and household use (Jaay, 2022; Koko, 2021). The mine's presence has been marred by dubious incidents of violence and intimidation, and demands that residents vacate their homes, which residents interpret as being caused by their opposition to the mine. The intimidation had real impacts. Residents were fearful to speak out or act against the mine's activities and have been reported to accept propositions for relocation due to this intimidation (Koko, 2021). Yet, the MCEJO and other community organizations following the failed appeal to the Minister of Mineral Resources and Energy in 2018 launched a court battle that in May of 2022 culminated in Pretoria High Court judge Noluntu Bam setting aside a license to Tendele to extend its mine (Schneider, 2022). While this mine is the only major employer in the area and the judge was pushing for a pragmatic resolution directing the Minister to reconsider the matter on appeal, the activist argued that their constitutional rights to a healthy environment and property had been undermined. Thus, while EJ has a home in South Africa, post-apartheid market-driven development has created deep inequalities which impede the formation of mass social networks for collective mobilization among NSAs.

Additionally, these cases demonstrate the propensity of businesses to violate land rights, reach deals with elites without receiving informed assent, and breed conflict in poor rural communities. The continuing transformation of the land-based African political economy since the start of the twenty-first century and the protracted crisis of the world capitalist system has produced a new wave of accumulation by land dispossession (Moyo et al., 2013). The colonial legacy on land is still dictating, to a large degree, the way land is administered, as unsuccessful attempts to decolonise land governance lead to land and environmental challenges that are shaped by colonial social engineering (Moyo, 2008). The fundamental issues for the land-based, anti-colonial movements is that while land itself is a fixed resource, the relations around it are fluid and affected by many factors including the changing forms of land tenure, economic growth, environmental conditions, and the social and economic objectives in society.

Alignment with international environmental institutions

The great irony of environmental conservation in South Africa lies in the observation that the flora and fauna of South Africa were considered more important by the environmental institutions under colonialism and apartheid than were the native people of South Africa. Like the rest of the continent, South Africans were separated from large swaths of land for purposes of biodiversity conservation (McDonald, 2002). Black South Africans were treated as migrants on their own land, pushed into small patchworks of land, and required to carry passbooks for travel inside the country (Suttner, 2012). These moves also served the apartheid regime's goals of political and economic disempowerment of the majority. Ensuing poverty and overpopulation in these areas only exacerbated the environmental degradation (Khan, 2002). Today, much of the same lands set aside for colonial biodiversity conservation constitute South Africa's national parks. In this aspect, South Africa remains well aligned with international environmental institutions that support the creation and expansion of protected areas that separate humans from wildlife. Under the UNESCO African Biosphere Reserves

Network (2019), South Africa today has 10 national parks registered in the network—the highest of any African country.

Looking at South Africa's national policies and their comparative alignment with growth-friendly interpretations of sustainable development from international environmental institutions reveals somewhat complex findings. On one hand, policies such as the National Development Plan 2030 list multiple goals that express an alignment with sustainable development via economic growth. These instances include the Plan's specific mention of broad goals like increased employment, incomes, and productivity, as well as faster economic growth for the nation, responsible participation in the global economy, and increased regional economic cooperation. These goals are balanced with broad goals for environmental sustainability, climate resiliency, and a low-carbon economy by 2030 (NDP, 2012). Further commitment to the green economy can be seen in South Africa's signature and ratification of the 2015 Paris Agreement (Republic of South Africa, 2016). Additionally, a novel UNEP program that aims to measure the progress of green economies recorded significant progress in South Africa's implementation of their green economy (PAGE, 2020). On the other hand, a separate Green Economy Policy Review by the UNEP reports that, while some of South Africa's policies are in alignment with the UN's Sustainable Development (particularly industrial policy), there exists a gap between the declaration and implementation of sustainable policies (UNEP, 2020).

While South Africa appears willing to align its policies with international environmental institutions in many instances, the consistency of this alignment is uneven. Importantly, opposition to the country's alignment with international environmental institutions includes instances of land restitution that the governing board of South Africa's national parks (SANP) has attempted since the end of apartheid. Some of these instances include co-management schemes set up between the SANP and the populations that were separated from land that is currently parks. These concessions by the state are more representative of the "unfinished revolution" of the anti-apartheid struggle and are the product of the democratic state's lingering compromises with the apartheid regime (Cock & Fig, 2000). The unfinished revolution is notably visible in the stark racial contrasts of land ownership and control in the country, where a 2017 audit by the government found that—despite making up less than 10% of the population—72% of fertile land in South Africa is owned by Whites (Republic of South Africa, 2017). The historical alignment of environmental improvement with economic growth goes hand in hand with poverty, exclusion, and environmental degradation in South Africa.

State-capital hegemony

Lingering structures of apartheid have been perpetuated by the macroeconomic policies of the ANC (Hallowes and Butler, 2002; Leonard, 2012; Carruthers, 2019). The ANC-dominated government pursued broad initiatives aimed at building business opportunities within the state, including the Black Economic Empowerment (BEE) policies which were the hallmark of South Africa's second president, Thabo Mbeki (Bowman, 2019; Suttner, 2012). Since economic elites composed of racial minorities occupy a naturally precarious position in a country politically dominated by the racial majority (Taylor, 2012), a transition from apartheid that would not result in the immediate mass exodus of White South Africans required negotiation and collaboration between the ANC and the White economic elites. Thus, in order for the ANC to successfully seize control of the government, the ANC also had to ensure capital that it could serve as a partner for their interests by building business in the country (Bowman, 2019; Southall, 2008). The creation of Black capital by BEE policies throughout the Mbeki era necessitated that Black capital had to be generated by the participation of Black South Africans in White capital (Southall, 2008). There are a multitude of prominent ANC figures who have transitioned between the public and private spheres of South Africa, some with significant support from Afrikaner capital.

Unfortunately, BEE initiatives have not shown to generate the widespread transformation and wealth generation within the South African economy that was hoped (Bowman, 2019). Nonetheless, there has been economic growth in South Africa since the ANC's rise to power, including the growth a Black middle class and Black economic elite (Sguazzin, 2021). South Africa's post-apartheid era has also seen a rapid integration with the global economy (Bowman, 2019), leading the

ANC to pursue a "selective" market-friendly strategy of economic growth, prioritizing the growth of Black elite businesses via integration with global capital, while at times maintaining high distrust of White South African capital (Seekings & Nattrass, 2011). Still, the South African economy is White-dominant, Black South Africans do not own more than 50% of any sector despite comprising 90% of the population (Joseph, 2021). Further, wealth inequality has remained virtually stagnant since the end of apartheid, with the top 0.01% of the richest South Africans holding more wealth than the bottom 90% of South Africans (Chatterjee et al., 2022). Thus, a minority still rules South Africa, although it is now an economic elite composed of White, Black, and foreign-owned capital (Joseph, 2021).

A high degree of alignment exists between state and capital interests in South Africa, though it has been notably complex and altered by the nation's contentious racial and wealth inequalities. The imposition of a strong state-capital hegemony may help explain Leonard's (2012) and Carruther's (2019) observations of the general lack of social awareness of civil society's role in EJ. This would also help to explain why the state has been the primary vehicle of EJ since South Africa's democratization with the little civil society that has organized for EJ dependent on a state that it does not fully trust (Khan, 2002; Leonard & Pelling, 2010). Further, the fact remains that civil society in South Africa largely lacks a broad, coherent movement for EJ. The majority of protests throughout the democratic era, including those in the wake of Jacob Zuma's arrest, have been mostly about a lack of basic needs including access to water, housing, and electricity (Leonard, 2012; Al Jazeera and Bauer, 2021). Addressing the lack of basic needs, a non-capitalist driven growth may aim to achieve a socially or environmentally equitable growth, potentially alleviating environmental injustices. Nonetheless, resource exploitation and unequal distribution of wealth and political power are persistent challenges and will continue to impact environmental justice movements and their capacity.

Discussion of findings

This comparative study investigated the factors which impact the success of NSAs in EJ movements. There is much evidence to suggest that NSAs in Kenya have had greater success in pursuing EJ than NSAs in South Africa due to stronger resources in social capital. Wangari Maathai's GBM, civil society's role in dramatically expanding constitutional rights to land and environmental quality, and the successes of the Owino Uhuru community (albeit incomplete at the time of writing) all indicate the successful harnessing of social capital by NSAs to pursue EJ. As advocated by the critical and Indigenous philosophies, actors of the GBM did not aim to cause action through or by the state but by strategically apolitical, community-based action to pursue broad environmental goals, while the actors of the Owino Uhuru case rallied their social networks and resources via successful community activism, protest, media pressure campaigns, and legal strategies. These instances of social capital harnessing include the leveraging of social networks at the community, national, and international levels, and involving economic capital for their operations, often in modest amounts (Maathai, 2006).

On the other hand, NSAs in South Africa may have had less success in EJ due to the presence of many different social and economic barriers, including an endemic lack of wealth among the South Africans most affected by environmental injustices, a lack of funding for Black-led NGOs, weak capacity of civil society, a weak social network among NSAs at a variety of levels, a lack of collective mobilization, a lack of collaboration between different social groups and economic classes, and even violence and intimidation. Crucially, NSAs pursuing EJ in South Africa are also up against a greater chasm of economic inequality, in part due to the lingering economic structures of apartheid but also as a result of newer yet unequal economic growth spurred by domestic policies and global capital (Bowman, 2019; Southall, 2008). Thus, South Africa's economic growth has created profound separation between economic classes, thereby impeding the development of mass social networks between them (Leonard, 2012). Social capital and the relative power of Kenyan NSA's economic capital appear to be strong explanations for why NSAs in Kenya may have more success in EJ than South African NSAs.

While this study still maintains that EJ movements have seen more success in Kenya, both Kenya and South Africa throughout their histories have exhibited a high degree of alignment with international environmental institutions. This fact is evidenced by each nation's respective alignment of domestic

environmental policy with international conventions of fortress-style wildlife preservation and growth-friendly interpretations of sustainable development. Striking a unique balance between Indigenous EJ perspectives and a colonial state framework, there exist some institutional oppositions to international environmental alignment in both countries. In Kenya, this is represented by community land rights guaranteed under the 2010 Constitution (Harbeson, 2012). In South Africa, this is represented by some modest restitution of Indigenous land originally seized by the national park system (Cock & Fig, 2000). Additionally, for South Africa, there purportedly exists a gap in the country's sustainable policies as compared to its economic and industrial policies reported by international environmental institutions' evaluations of South African policies (UNEP, 2020). Thus, along with modest opposition to international environmental institutions, South African environmental policies are reported to be inconsistent with environmental action in the nation.

Still, with international environmental institutional alignment relatively high in both countries, this factor does not help to clearly explain why Kenyan NSAs appear to have had more success than South African NSAs. NSAs working towards EJ in Kenya are not universally successful, as is evidenced by the latest developments regarding the Owino Uhuru community (Mwanza, 2020). Regardless of South Africa's policy inconsistencies, the state still has remarkably high barriers for EJ NSAs to overcome, seen in the nation's drastic inequalities in wealth and land ownership (Sguazzin, 2021). The World Bank (2022b) tracks South Africa as the most unequal country in the world, with a Gini coefficient of 76. Race remains a significant determinant in South Africa, contributing 41% to income inequality. The top 10% of South Africans control 80% of financial assets. Highly skewed ownership of resources, including land, exacerbates inequality, with White people owning 72% of total farms and agricultural holdings by individual landowners, while Africans own only 4% of land (South African Government, 2024). Comparatively, Kenya is a leading economy in East Africa, and the country's Gini coefficient is half of South Africa's at 38 (World Bank, 2022a). However, despite strong economic growth, poverty continues to impact the lives of millions of people. "The richest 10% of people in Kenya earned on average 23 times more than the poorest 10%" (Oxfam, 2024). In contrast to South Africa, 69.1% of Kenya's land area is community-owned (RRI, 2021). Thus, these factors may help to explain each countries' continued struggle with issues pertaining to EJ.

In Kenya there have been multiple incidents of state-capital collusion crowding out interests of the country's majority, through prioritization of racial minority businesses or illegitimate profits (Grynberg & Singogo, 2021; Taylor, 2012). Still, the study shows that Kenyan NSAs appear more able to perceive extra-state methods for securing EJ. The GBM utilized a remarkable model that allowed low-effort reproduction by local communities, even in the absence of official GBM members. Even within a repressive political environment, Kenya's GBM and its strategic apoliticality allowed it to pursue EJ objectives without heavy reliance on or opposition from the state (Michaelson, 1994). Addressing the legal pitfalls emphasized by the rational critique of EJ, civil society groups have demonstrated key roles in the nation's democratization, including the implementation of a new constitution, which dramatically expanded environmental and community land rights (Harbeson, 2012). Critically-aligned techniques used by Kenyan NSAs include the successful use of pressure campaigns on powerful actors, by way of protest, media pressure, and a civil society presence that counters state-capital hegemony (Hunt, 2014; Mwanza, 2020).

South Africa, on the other hand, appears to exhibit major influence from state-capital hegemony that strips the ability of civil society to conceive of extra-state methods for pursuing EJ, as claimed by critical EJ scholars. While the anti-apartheid movement utilized radical philosophies and extra-state strategies for initiating mass social change in the country, these radical actors were ultimately absorbed by the apartheid state (Suttner, 2012). Although negotiations between the ANC and the apartheid regime were necessary for keeping the country together and preventing further chaos, this may have also brought the end of mass social movements in the country. Since the end of apartheid, the literature reports a strong degree of alignment between the ruling ANC and South African business, both foreign and domestic (Southall, 2008; Seekings & Nattrass, 2011; Bowman, 2019). Additionally, the absorption of the ANC into the state exacerbated the withering away of South

Africa's militant civil society (Suttner, 2012). It was this absorption that transformed the nation's largest and most well-known civil society organization into a political party, leaving in its place a void that has certainly witnessed NSA activism. Thus, an overbearing state-capital hegemony would help to explain NSAs' consistent expectations for state correction of South Africa's continued legacies of apartheid, economic inequality, and environmental injustices, a key tenet of the Indigenous perspective of EJ. Compared with the EJ record of Kenya, sidestepping or even overcoming state-capital hegemony appears to play a strong, causative role in the nation's success in EJ when compared to South Africa.

Conclusions

This study illuminated that NSAs with greater resources in social and economic capital and ability to overcome or sidestep state-capital hegemony are more likely to be successful in their pursuits of EJ. Additionally, while inconclusive, a high degree of alignment with international environmental institutions may contribute to further conflicts due to environmental injustices. The results of the comparative case study in Kenya and South Africa appear to support each of these claims.

The findings also give credence to the arguments laid out by the critical and Indigenous critics of EJ. Although NSAs in Kenya did at times receive assistance from the state, the findings show the supreme importance of a Kenyan civil society spurred by self-determination in the pursuit of EJ and their livelihoods, with positive results often due to the strategies and drive of a fiercely dedicated civil society. Meanwhile for South Africa, an overbearing state-capital hegemony appears to greatly inhibit the formation and action of an inclusive and ambitious civil society. Therefore, NSAs, in the form of an expansive and united civil society, play a crucial and immovable role in the pursuit of EJ. At the same time, these results also suggest that there is still room, or even a great benefit, for the existence and participation of the state in this pursuit. As states offer access to vast resources and mechanisms of power, highly active and organized NSAs may offer intimate channels of communication for underrepresented populations. Thus, a strategic NSA-state alignment on EJ may prove greatly beneficial for both sectors while simultaneously countering the development of state-capital hegemony over the environment.

Another interesting note for further study may also be the impact of NSA-capital alignment, as was seen in the support of the GBM by Mobil Oil and international organizations (Maathai, 2006). Early support may provide paid incentives to the participants and boost visible value in the community because resources create tangible results in the lives of families and communities. Ultimately, this may increase public consciousness and encourage people to question the reasons behind their circumstances: "these 'consciousness raising' activities … lie at the heart of social transformation" (Michaelson, 1994, 552).

The findings also point to the importance of the role of sustainable development policies in EJ. Kenyan and South African sustainable development policies uniformly adhere to the assumption that development can only occur in tandem with economic growth (NDP, 2012; GESIP, 2016), thereby placing grave importance on the equation of poverty eradication, environmental conservation, and the generation of wealth. While aiming to spur equitable and sustainable economic growth, wealth accumulation via entry into the dominant economic structures leaves in place the power structures which are responsible for inequality and environmental degradation in the first place (Hallowes & Butler, 2002; Hope, 2020). This relationship can be observed throughout the scope of national to international development, as nominally progressive and ecofriendly national administrations align themselves with international norms of environmental conservation, sustainable development, and economic growth entrenched within global capital, resulting in the prioritization of expanding extractive industries as well as the separation of people from their environment (Hope, 2020; Leonard, 2018; Mogende & Ramutsindela, 2020).

This study holds that all advocates of justice, whether social, economic, or environmental, must acknowledge this phenomenon if any methods of justice are to be truly transformative and beneficial for the populations that they aim to serve. The findings above serve to expand the understanding of EJ, its relationship with sustainable development, and its utility outside the US and throughout the Global South.

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