

PERSPECTIVE

Judiciary independence: Why should conservation ecologists care?

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Abstract

We discuss the impact of democratic political governance systems on ecological and conservation research, education, and practice, focusing on radical proposed changes to the judicial system in Israel. This judicial reform has already begun to restrict academic freedom and environmental laws, adversely affecting regulatory actions. We are concerned about the weakening enforcement of environmental laws, increased power to polluting industries, future defunding of ecological research and nature conservation programs, reduced cross-border collaborations in ecological research, and restrictions on the academic teaching of ecology and evolution. Concerns related to Israel's unique biodiversity are particularly pressing in light of the constant threats from a rapidly growing population, high development pressures, and frequent military actions. International experience suggests that weakening judicial oversight of government actions in other countries is generating similar threats on a global scale. Therefore, ecologists and conservation biologists should actively be involved in the protection of liberal democracies and judicial independence.

KEYWORDS

conservation, democracy, ecological research, evolution, Israel, judicial revision

1 | INTRODUCTION

We discuss the premise that a strong and independent court system is essential for sustaining ecological research, education, and environmental policy implementation. We focus here on recent political developments in Israel to illustrate this claim. Court independence protects the system of justice from improper pressures from the government and the private sector. Sovereign selection of judges and legal advisors, the power to legally review parliamentary and

government actions, and the authority to address public appeals regarding these actions are key elements of judicial independence (Hamilton, 1788; Linzer & Staton, 2015; Moliterno & Čuroš, 2021). The intended Israeli judicial transformation, which aims to limit these aspects of independence, would fundamentally change the judicial system and the balance of powers. It is presented as a long-overdue judicial reform by the present government, while its opposition views it as an evisceration of critical institutional and normative safeguards that preserve democratic

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decision-making (Israel Democracy Institute, 2023). The changes were initiated in January 2023 and continue despite an ongoing war. As part of this process, several recent bills passed by the Israeli parliament, and others in various stages of legislation, aim to weaken the court system, giving greater power to the central government (Roznai et al., 2023). The independence of the judicial branch of government is particularly significant in Israel because Israel lacks a formal written constitution, has a one-house parliament, and has limited separation of powers between the legislative and executive branches. As a result, most checks and balances on the legislature and the government are provided by the judicial branch. The independence of this branch is now being threatened (Sattath, 2023).

Similar changes in governance have been proposed or already implemented in other countries (see Section 4; Boryslavska, 2021; Council of Europe, Venice Commission, 2022; Court of Justice of the European Union, 2023). The proposed Israeli judicial changes are part of a global phenomenon, which holds repercussions for all aspects of life, including national security (Baruch & Yosef, 2023), the economy (Bebchuk, 2023), higher education (Albin et al., 2023), public health (Kamin-Friedman et al., 2023), and human rights (The United Nations Human Rights Commission, 2023). Here, we consider the implications of these changes for basic and applied ecology, evolutionary biology, conservation biology, and environmental protection (Figure 1). We argue that court independence is essential to civil society: to protect natural ecosystems and environmental rights through legal actions, defend intellectual freedom,

ensure pluralistic higher education, and promote international collaboration needed for ecological research to thrive.

The adverse impact of the proposed changes to the judicial systems is particularly troubling in view of Israel's being a hotspot of biodiversity (Nevo, 1995). Israel is at a biogeographic crossroads between Europe, Africa, and Asia, with a sharp climatic gradient over relatively short distances, and it is a major seasonal bird migration route (Frumkin et al., 1995). This unique biogeographic position makes it a natural ecological laboratory. Its unique biodiversity is already threatened by a rapidly growing population, high development pressures, and military activities (HAMAARAG, 2022, 2023). With diminished legal control, natural resources will be at a much greater risk.

2 | IMPACTS OF THE ISRAELI LEGAL CHANGES ON ECOSYSTEMS AND ENVIRONMENTAL RIGHTS

There are more than 140 proposed laws currently directed at limiting the Supreme Court's authority to review administrative decisions.¹ Although none focus specifically on exempting environmental issues from judicial review, many administrative decisions are designed to protect ecology and the environment. Such major legal changes will likely compromise the conservation of natural habitats and ecosystems, the protection of biodiversity, and the mitigation of ecological threats (pollution, invasive species, climate change, etc.), with negative impacts on human well-being and health.

We illustrate our concerns by discussing four bills that are particularly relevant to conservation and environmental protection. The first bill, below ("Amendment of the *Basic Law: The Judiciary*"), passed in parliament in July 2023, before ultimately being overturned in January 2024 by Israel's Supreme Court (Boxerman, 2024). Nonetheless, the parties in the present government seek alternative administrative actions to weaken the judicial branch and the rule of law, by passing additional laws with comparable provisions (Ashkenazi & Benvensiti, 2024). The remaining three bills are in various stages of legislation, even during an ongoing war.

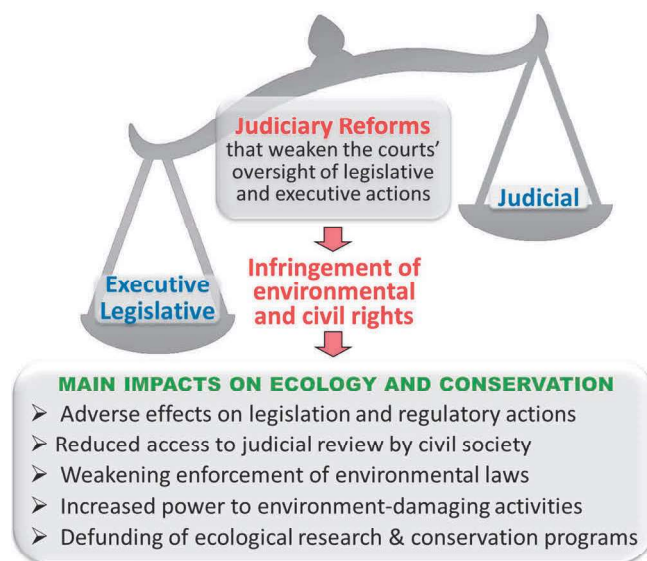


FIGURE 1 Key adverse effects of weakened judiciary systems on ecology and conservation.

2.1 | Amendment of the *Basic Law: The Judiciary*, to discontinue the 'clause of reasonableness' as a basis for public appeals against government decisions²

Traditionally, Israeli courts have been empowered to review and strike down government actions that rely

upon unreasonable interpretations of the law or act against public interest. This amendment thus curbs the court's ability to prevent arbitrary use of governmental power. Although Israel's Supreme Court ultimately repealed this bill (Fuchs, 2024), the present government continues to delay the appointment of judges in an effort to limit judicial discretion in administrative decisions.

In the environmental context, over the years, the clause has emerged as an essential tool for the protection of environmental quality, ecosystems and public health. Up to now, the general public was able to bring concerns about the way the executive branch was managing the country's natural resources. Accordingly, there have been several cases over the years in which intervention by Israel's Supreme Court proved critical to protecting biodiversity and the environment. Some examples are instructive: In 1990 a court order halted construction of 47, 180-foot radio transmission antennas for the *Voice of America* until a thorough evaluation of the risk to migrating birds was completed. Ultimately, the delay led to cancellation of the project (De-Shalit & Talias, 1994). More recently, the Supreme Court intervened to prevent a major residential project in Jerusalem that did not take into account the effect on the endemic gazelle population (Adam, 2016). The court also stopped construction of a new neighborhood alongside the Mediterranean coast due to concerns about soil contamination (Ansenberg & Marom, 2024). A court decision expedited the publication of regulations limiting the use of polyfluoroalkyl substances (PFAS) in consumer products, given their harmful impact on stream biota (Infospot, 2023). In two other cases, The Society for Protection of Nature in Israel, the country's largest conservation organization, has turned to the Supreme Court to prevent gas exploration at sea due to concerns of marine contamination (Surkes, 2020), and to protect birds from wind turbines (SPNI, 2024). The central role of the court in protecting local ecology was meaningful enough to make its way into the mass demonstrations against the legal reform where one slogan chanted by protesters declared: "Without Reasonableness, there is no environment" (Tal, 2023).

The 'clause of reasonableness' provides not only a legal brake to administrative governmental decisions that contradict conservation laws but also allows the court to stop government actions when the decision-making procedure was illegal. For example, a 2005 Supreme Court ruling requires that planning authorities examine alternatives before approving development plans in environmentally sensitive areas (9409/05 Adam Teva V'Din v. Government Committee for Accelerated Housing).

2.2 | Government appointment of the legal advisors to the parliament and ministerial offices³

This bill aims to change the status of ministerial legal advisors from being independent authorities to being politically appointed counsels with no binding authority upon the government and its ministers (Keller-Lynn, 2023). This move, criticized by the International Bar Association (Aldama, 2023), will affect environmental decision-making processes, because legal advisors participate in planning government projects and policy. On two occasions, for example, the Ministry of Environmental Protection appealed already approved development plans in the environmentally-sensitive Betzet beach and Timna Valley (MoEP, 2024). Politically appointed legal advisors, who can be removed from office if they do not 'deliver the goods,' would be in a weak position to prevent initiatives and decisions that are damaging to the environment.

2.3 | Restricting the public's access to the courts by limiting Israel's traditionally liberal standing for the public to petition government actions that harm the environment⁴

Israeli Supreme Court precedents for decades have been very liberal about "standing," recognizing the right to appear before the court to represent the public, including those without means, awareness, or ability to stand up for their rights. Nature has no 'voice' of its own. The 'right to stand' thus allows non-governmental organizations and the public at large to appeal to the court when the government unlawfully harms environmental interests (Stone, 2010). Such appeals often work to curb environmentally destructive actions. Environmental organizations fight against powerful forces— influential economic interests, polluting energy companies, and other large corporations. The ability of environmental experts to have their day in court will narrow without the "right to stand." For instance, public interest litigation has protected disadvantaged communities from exposure to cement emissions, hazardous waste sites, sewage pollution and noise nuisances (Marom-Albeck & Tal, 2000).

2.4 | Increased power of parliament to override Supreme Court rulings with a simple majority⁵

This bill aims to give the parliament the last say regarding the interpretation of laws and their compatibility with basic civil rights. The bill would grant the ruling parties

in parliament considerable control over the judiciary. It creates the risk of parliament acquiescing to narrow, short-term interests and strong market forces by overturning the restraining rulings of the Supreme Court. Devastating violations of environmental rights in Israel may follow, limiting the protection of, and public access to, common goods such as clean air, water, and other ecosystem services (see examples Surkes, 2020 and Marom-Albeck & Tal, 2000 in sections 2.1, and 2.3, respectively).

3 | IMPACTS OF THE LEGAL CHANGES ON RESEARCH AND EDUCATION IN ECOLOGY

3.1 | Independence of research and teaching

Freedom of speech is a fundamental principle that enables scientists to conduct independent research without fear of censorship or retribution. For ecologists, such censorship may include (a) the ability to challenge existing theories and advance new ideas; (b) to critically examine ecological scientific methods to ensure the accuracy and validity of results and conclusions; (c) to identify and critique ecologically egregious initiatives and advance sound solutions to environmental problems; (d) to raise ethical concerns and address environmental injustices; and (e) to ensure that scientists can communicate their findings to the public and policymakers, contributing to informed, evidence-based decision-making processes. In the absence of strong checks and balances of the court, the government can dictate research directions, not only through budget allocation but also by appointing political and non-professional heads of research organizations and governmental advisory committees while ignoring experts' opinions and criticism.

The weakening of the courts also limits critical independent review of educational materials proscribed by the government. The threat to the teaching of evolution is a particularly concerning example. In Israel, some religious parties in the current government reject the teaching of evolution (Pear et al., 2020; Pew Research Center, 2016). Similar objections were voiced by creationists, for example, in the US in the Scopes Monkey Trial of 1925 (Israel, 2004). Consequently, although it is a compulsory high-school biology subject (Siani & Yarden, 2022), many teachers do not teach evolution to avoid controversy. In addition, the government is aiming to attain political control over the Council for Higher Education, an independent body (by law) that oversees academic planning and funding allocation. This includes university programs in ecology, conservation, evolution, and environmental sciences. With government

control over university curricula, teaching and research of evolution might become restricted or banned at the university level as well. Similar trends have been reported in other countries (see Section 4; Aptyka & Großschedl, 2022).

3.2 | International collaboration and research funding

Ecology requires the integration of different disciplines, such as mathematics, biophysics, biochemistry, geology, and climate science. As such, it requires a high level of collaboration between disciplines and among researchers from different institutions and countries. Furthermore, ecological research requires long-term cooperation and funding to address patterns and processes occurring over large spatial or temporal scales. Similarly, applied ecological efforts, including management of natural resources, conservation, and sustainable agriculture, require cooperation among researchers from many different countries, including governmental and non-governmental organizations.

Academically, Israel has advanced research in ecology and environment and has shared these resources with collaborating institutions regionally and worldwide. This capacity is important to maintain. The proposed judicial reform is expected to severely diminish the independence, status, recognition, and prestige of Israeli research in multiple ways: a shift to an increasingly centralized government with a weak judiciary branch would discourage international organizations from allowing the participation of Israeli scientists and from funding joint research programs with Israel. As an example, the academy in Hungary, a country that recently went through a similar loss of democratic institutions and academics (Gall, 2020), experiences a reduced ability to participate in international and European programs (EUR-Lex, 2022). Restricted academic freedom therefore would deter international scientists from collaborating with Israeli academics and will trigger a brain drain of Israeli ecology scientists and practitioners.

4 | GLOBAL RELEVANCE: THE ENVIRONMENTAL IMPACTS OF WEAKENING DEMOCRATIC INSTITUTIONS

The threat to the independent judiciary occurring in Israel is by no means unique. Based on multiple metrics, democratic institutions have deteriorated globally in recent years (Herre, 2022). Many countries have already witnessed a softening or elimination of laws protecting the environment, along with enfeebled implementation.

For instance, the Bolsonaro administration in Brazil (2019–2022) introduced institutional and legal changes that restricted participatory decision-making on environmental issues, resulting in heavy deforestation of the Amazon (Menezes & Barbosa Jr., 2021). Illegal logging and land grabbing, along with the associated release of carbon emissions, have become commonplace, and there is little that citizens can do to induce government to enforce the law (Gatti et al., 2023).

Since 2010, Hungarian Prime Minister Viktor Orbán has choreographed a steady erosion in the independence of the nation's judiciary, with the government exerting control over the courts, along with other democratic institutions and universities (EUR-Lex, 2022; Gall, 2020). The result was a dramatic curtailment of public participation in environmental decisions, making it extremely difficult for NGOs and citizens to challenge environmentally harmful projects (Kovács & Patak, 2021). For example, despite concerns about the environment, the construction of dams as part of flood control efforts led to considerable deforestation and ecological damage to riparian zones. Meaningful public consultation or independent environmental assessments would have reduced these adverse effects (Buzogány et al., 2022).

In Poland, the ruling Law and Justice (PiS) party introduced judicial reforms that reduced the independence of the judiciary. The changes were sufficiently profound to raise concerns from the European Union of violations of the rule of law (Smith, 2021). Lacking a framework in which public interest advocates could present their positions, real estate developers wreaked havoc on local parks and flora. For example, Białowieża Forest, one of Europe's last primeval forests, has sustained extensive damage due to clear-cutting (Żuk & Żuk, 2020). Ultimately, the European Parliament sent a fact-finding mission to evaluate the damage and explore its connection to Poland's political culture (European Parliament, 2022).

Critics also highlight the erosion of judicial independence and curtailment of civil liberties in India during the tenure of Prime Minister Narendra Modi, which has produced a host of environmental consequences (Dutta & Nielson, 2021). Seemingly minor procedural revisions can have dramatic implications. For instance, recently, the Indian government took steps to limit the scope of public interest litigation and freedom of information, striking what has historically been a crucial tool for environmental protection (Bhattacharya, 2023). Similarly, sweeping government-initiated amendments in 2021 to the 2002 Biodiversity Act, and again in 2023 to the 1980 Forest Conservation Act in India, greatly reduced environmental protection from development and exploitation (Gupta, 2023; Saldanha, 2023).

In Turkey, an autocratic central government seeks increasingly consolidated power. President Recep Tayyip

Erdogan has assailed civil society and media freedom, placing restraints on the independence of the judiciary. It did not take long for the effects of such political changes to manifest environmentally. With no watchdogs to ask critical questions, the government continues to aggressively pursue hydropower projects in ecologically sensitive areas, such as the construction of dams in the Munzur Valley (one of Turkey's largest protected natural areas) notwithstanding the clear opposition from local communities and environmentalists (Benanav, 2015). Marmara Lake, a sprawling 45 km² habitat, was ravaged by one water development initiative, leading to the extirpation of entire fish populations and thousands of migratory birds (Smith, 2023). A new "Canal Istanbul" project has raised serious environmental concerns that it might not only displace thousands of people, but also imperil the city's tenuous water supply and harm ocean life. In this case, a framework was lacking for public representatives and civil society to articulate their demand for independent environmental assessments, and so none were conducted (Farooq, 2018).

In short, the decline in democratic norms and engagement of civil society that so many countries are experiencing is quickly reflected in a parallel retreat in environmental quality with long-term consequences.⁶

5 | CONCLUDING REMARKS

Independent judiciaries certainly do not guarantee effective environmental protection. Nonetheless, robust liberal democracies that protect civil rights and encourage civic activism by offering liberal access to a country's courts and judicial review of executive branch actions, provide a critical balance to the economic pressures, which often motivate government leaders to pursue myopic policies of short-term profits at the expense of long-term ecological health and ecosystem services. During its 76-year history, Israel has forged an impressive course of conservation and environmental protection (Tal, 2002). As democratic norms decline—so will the country's environment.

The weakening of democracy worldwide exacerbates existing threats to ecology and conservation on a global scale. With this Perspective article, we hope to raise awareness of this problem and fuel international critique of the links between independent court systems and ecological research, education, and environmental policy (summarized in Figure 1). Environmentalists have many issues at hand and justifiably feel that they have a "full plate." Nonetheless, if they are to be successful, ensuring the future of liberal democracies is an objective they cannot ignore.

AUTHOR CONTRIBUTIONS

TK initiated the writing of the manuscript. TK, MC and MS wrote the first draft. All authors contributed substantially to revisions.

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CONFLICT OF INTEREST STATEMENT

The authors declare they have no conflict of interest.

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ENDNOTES

¹ <https://www.ynet.co.il/news/article/byensl9gn>.

² Basic Law: The Judiciary (Amendment No. 3), 2023 (enacted, July 26, 2023) Sefer HaChokim 3066, p. 548, https://fs.knesset.gov.il/25/law/25_Isr_2997865.pdf.

³ Proposed Basic Law: The Government (Amendment—Judicial Review Regarding the Acceptability of an Appointment) Proposed Law, 10/2002, 953, Submitted for review, March 15, 2023, <https://main.knesset.gov.il/activity/legislation/laws/pages/lawbill.aspx?t=lawsuggestionssearch&lawitemid=2200701>.

⁴ Proposed Basic Law: The Judiciary (Amendment No. 4), Judicial Review Regarding the Legal Validity of a Law, p/2313/25, first reading passed on March 14, 2023, <https://main.knesset.gov.il/activity/legislation/laws/pages/lawbill.aspx?t=lawsuggestionssearch&lawitemid=2201660>.

⁵ Proposed Basic Law, Human Dignity and Liberty (Amendment—Validity of a Law that Violates a Constitutional Protection) p/25/1561 (Submitted for review January 16, 2023), <https://main.knesset.gov.il/activity/legislation/laws/pages/lawbill.aspx?t=lawsuggestionssearch&lawitemid=2196131>.⁶

⁶ Note added in proof: Recent rulings by the federal government of the USA circumvent regulations protecting vulnerable pristine habitats, for example by allowing the administration to expedite permits for oil and gas drilling on public lands (Declaring a national energy emergency, Executive order, January 20, 2025; <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/>). Such rulings are likely to have devastating effects on conservation and nature protection in the US.

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