

FROM POLICY TO PRACTICE: PROJECTING THE IMPLEMENTATION AND IMPACT
OF THE ENVIRONMENTAL RACISM ACT IN COMBATING ENVIRONMENTAL
RACISM IN CANADA

by

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Dalhousie University is located in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq. We recognize that African Nova Scotians are a distinct people whose histories, legacies and contributions have enriched that part of Mi'kma'ki known as Nova Scotia for over 400 years. We are all Treaty people.

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DEDICATION

To my beautiful children Atarah, Athalie and Aatami, whose unwavering love and boundless energy have been my constant source of inspiration and motivation throughout this journey.

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ABSTRACT

This thesis examines environmental racism in Canada, focusing particularly on the legislative response through the Environmental Racism Act. In Canada, communities such as Africville and Lincolnville have long suffered from the impacts of environmental racism, facing greater environmental health risks due to historical and structural inequalities. Through an analysis of the Environmental Racism Act, this research explores how the Act seeks to address these disparities by proposing a national strategy that integrates the principles of environmental justice. The study assesses the Act's potential effectiveness in rectifying the inequities faced by marginalized communities by comparing it with select existing federal and provincial environmental laws including the Canadian Environmental Protection Act and the Impact Assessment Act. Additionally, the thesis evaluates the anticipated implementation challenges and the broader implications of the Environmental Racism Act within the framework of international environmental justice movements.

LIST OF ABBREVIATIONS USED

IAA-	Impact Assessment Act
CEDAW-	Convention on the Elimination of All Forms of Discrimination Against Women
CEPA-	Canadian Environmental Protection Act
EGSPA-	Environmental Goals and Sustainable Prosperity Act
EAR-	Environmental Assessment Regulations
ERA-	Act Respecting the Development of a National Strategy to Assess, Prevent and Address Environmental Racism and to Advance Environmental Justice
ICERD-	International Convention on the Elimination of All Forms of Racial Discrimination
ICJ-	International Court of Justice
NDC-	Nationally Determined Contributions
UNDRIP-	United Nations Declaration on the Rights of Indigenous Peoples
UNGA-	United Nations General Assembly
UNSDG-	United Nations Sustainable Development Goals

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I bow in deep reverence to God Almighty, Jehovah, my Creator, the giver and sustainer of life. Through the lonely nights, the sorrowful moments, and even in times of sickness, His hand has always been upon me, guiding and sustaining me. When the path seemed impossible, He made everything perfect in His time, and for that, I am eternally grateful.

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Chapter One: Introduction

1.1 Brief Background

In several nations, environmental policies intended to protect the health of the public and the environment often overlook the invisible boundaries that separate privilege from disenfranchisement.¹ This results in a troubling reality where marginalized communities are routinely exposed to hazardous pollution and inadequate living conditions.² This troubling pattern exemplifies environmental racism. Environmental racism occurs when environmental policies, practices, or directives disproportionately impact or disadvantage individuals, groups, or communities based on race or color.³ This phenomenon is not always intentional but often results from systemic inequalities and historical patterns of discrimination.⁴ The term environmental racism was coined during the 1982 struggle by United States Black civil rights leader, Benjamin Chavis in response to the toxic waste landfill in Warren County.⁵ This landfill was scheduled for construction in predominantly African American areas.⁶ These struggles brought national attention to the issue of racial disparities in the placement of environmentally hazardous waste sites.⁷ In Canada, one of the novel ways government has sought to address these racial disparities is through anti-environmental racism legislation such as The Act respecting the development of a national

¹ Examples of such nations include the United States of America (USA), Canada, Brazil and South Africa where environmental burdens are often borne by the most vulnerable populations. See also the general works of Robert D Bullard, *Growing Smarter: Achieving Livable Communities, Environmental Justice, and Regional Equity* (Massachusetts: MIT Press, 2007) at 1-23; Michael Edelstein, *Contaminated Communities: Coping with Residential Toxic Exposure* (Oxfordshire: Routledge, 2018) at 34-62.

² Bullard *Ibid* at 1-23; Edelstein *Ibid* at 34-62.

³ Ingrid RG Waldron, *There's Something in the Water: Environmental Racism in Indigenous & Black Communities* (Nova scotia: Fernwood Publishing, 2021) at 20-32.

⁴ Dorceta Taylor, *Toxic communities: Environmental racism, industrial pollution, and residential mobility* (New York: New York University Press, 2014) at 33-46.

⁵ Joan Martínez-Alier, "The United States: The Cradle of Environmental Justice Against Environmental Racism" in José Esteban Castro & Tom Perreault, eds, *Land, Water, Air and Freedom* (Massachusetts: Edward Elgar Publishing, 2023) at 535-537, 556; Etsuko Kinefuchi, "Environmental Racism and Environmental Justice in North America" in Ariel C Armony & Gregory C Chin, eds, *The Palgrave Handbook of Global Sustainability* (New York: Springer International Publishing, 2023) at 1074-1090.

⁶ Martínez-Alier *Supra* note 5 at 535-537, 556; Kinefuchi *Supra* at 1074-1090.

⁷ Martínez-Alier *Supra* note 5 535-537, 556; Kinefuchi *Supra* at 1074-1090.

strategy to assess, prevent and address environmental racism and to advance environmental justice herein the Environmental Racism Act.⁸

1.2 Environmental Racism and Its Significance in Canada

In this light environmental racism is a form of systemic injustice where racialized and minority communities disproportionately bear the environmental and health hazards of pollution and industrial activities.⁹ It is a concept that identifies the systematic practice of placing polluting industries, hazardous waste facilities, and substandard infrastructure in communities populated predominantly by racial minorities and Indigenous peoples.¹⁰ Authors such as Bullard go further to note that environmental racism can be intended or unintended and can also include restrictive and exclusionary practices that limit the participation of people of colour in commissions, regulatory bodies and decision-making boards.¹¹

These limitations significantly contribute to these communities' disproportionate exposure to environmental risks, as their lack of political influence often leaves them unable to prevent their neighbourhoods from becoming dumping grounds for toxic waste and industrial pollution.¹² This disparity stems from a legacy of structural inequality, where historical segregation, discriminatory policies, and economic disenfranchisement have concentrated environmental burdens in marginalized areas.¹³ This legacy of structural inequality manifests across various nations, including Canada.

⁸ *Act Respecting the Development of a National Strategy to Assess, Prevent and Address Environmental Racism and to Advance Environmental Justice*, SC 2023, c 27 (herein the ERA). This thesis would like to bring to the attention of the reader the evolving legislative status of the ERA during the period of writing this thesis. At the outset of this research, the ERA had moved to consideration in committee, which was completed on May 7, 2024. The ERA then progressed to the third reading and to receive royal assent on June 13, 2024, and June 20, 2024, respectively. This dynamic legislative process posed challenges in maintaining consistency and accuracy in the analysis and wording related to the ERA.

⁹ Kaitlyn Mitchell & Zachary D'Onofrio, "Environmental Injustice and Racism in Canada: The First Step Is Admitting We Have a Problem" (2016) 29 *J Env'l L & Prac* at 307, 320; Ingrid RG Waldron, *There's Something in the Water: Environmental Racism in Indigenous & Black Communities* (Fernwood Publishing, 2021) at 20-22.

¹⁰ D'Onofrio *Ibid* at 307, 320; Waldron *Ibid* at 20-22; Robert D Bullard, ed, *Confronting Environmental Racism: Voices from the Grassroots* (South End Press, 1993) at 15-40.

¹¹ Robert D Bullard, "The Threat of Environmental Racism" (1993) 7:3 *Nat Resources & Env't* 23 at 23.

¹² Bullard *Ibid*.

¹³ Bullard *Supra* note 11 at 23. See also Robert D Bullard, "Decision Making" in Laura Westra & Bill E Lawson, eds, *Faces of Environmental Racism: Confronting Issues of Global Justice* (Rowman & Littlefield, 2001) at 3-26; Luke W Cole & Sheila R Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*, vol 34 (NYU Press, 2001) at 34-50.

Marginalized communities in Canada, especially those of Indigenous and racialized backgrounds, are also disproportionately exposed to harmful pollution and substandard living conditions.¹⁴ This systemic injustice stems from overlooking the invisible boundaries that separate privilege from disenfranchisement in environmental policies.¹⁵ These communities bear the brunt of environmental and health hazards, exemplifying the detrimental effects of environmental racism. Notable examples of communities that are particularly impacted by environmental hazards include African Nova Scotian communities like those in the Halifax communities of Africville and Lincolntonville areas in Guysborough County.¹⁶ To illustrate the Environmental Racism Act's impact more concretely, and for the sake of scope and brevity, this thesis will focus on the Act's implications at the federal level and in Nova Scotia, the selected province for this study. Nova Scotia is home to some of Canada's most notable cases of environmental racism, particularly in communities such as Africville and Lincolntonville.¹⁷

The disproportionate harm and exposure to greater environmental hazards that these communities face compared to other neighbourhoods is not only significant to the discussion around environmental racism in Canada but is also pertinent when considering the placement of harmful industries.¹⁸ For example, an infectious disease hospital and an abattoir were built near Africville, leading to severe environmental and health consequences for its residents.¹⁹ Thus, it is

¹⁴ M Mascarenhas, *Where the waters divide: Neoliberalism, white privilege, and environmental racism in Canada* (Lexington Books: Lanham 2012) at 1-22, 135; N Charles et al, "Green is Not White: Giving Voice to Indigenous, Black and Racially Marginalized Workers in the Environmental Justice Movement" in Paul Blyton, ed, *Research Handbook on Inequalities and Work* (Edward Elgar Publishing, 2024) at 523- 526; D M Stieb et al, "Inequality in the Distribution of Air Pollution Attributable Mortality within Canadian Cities" (2023) 7:9 *GeoHealth* at 1-17.

¹⁵ Maya Venkataraman et al "Environmental racism in Canada" (2022) 68:8 *Canadian Family Physician* at 567, 568; M Kirby-McGregor et al, "Inequities in Ambient Fine Particulate Matter: A Spatiotemporal Analysis in Canadian Communities" (2023) 858:1 *Sci Total Env't* at 1-8.

¹⁶ See Ingrid Waldron, "Re-thinking Waste: Mapping Racial Geographies of Violence on the Colonial Landscape" (2018) 4:1 *Environmental Sociology* at 36-40; Shannon Kelsey Dill, *To What Extent is the History of Africville, Nova Scotia an Example of Environmental Racism?* (Bach Diss., Mount Allison University, 2021).

¹⁷ Ingrid Waldron, "Environmental Racism in Canada" (2020) *The Canadian Commission for UNESCO's IdeaLab* at 1-21; Ingrid RG Waldron, *There's Something in the Water: Environmental Racism in Indigenous & Black Communities* (Halifax: Fernwood Publishing, 2021).

¹⁸ Michael Damiano Buzzelli, "Environmental Justice in Canada: It Matters Where You Live" (*Canadian Policy Research Networks = Réseaux canadiens de recherche en politiques publiques*, 2008) at 2.

¹⁹ Ecojustice, "Addressing Environmental Racism in Canada" (23 July 2021), online: Ecojustice <https://ecojustice.ca/file/addressing-environmental-racism-in-canada/>; Jon Tattrie, "Africville" (27 January 2014), online: The Canadian Encyclopedia <https://www.thecanadianencyclopedia.ca/en/article/africville>. Africville was established in the early 19th century, with settlers arriving in the area as early as the 1840s. The establishment of undesirable facilities like a dump, an infectious disease hospital, and an abattoir in or near Africville began later, primarily in the mid-20th century. These developments contributed to the community's decline and eventual destruction in the 1960s. See Charles Saunders, *Africville: A Spirit that Lives On* (Halifax: Nimbus Publishing, 1992)

also important to take into consideration issues of inadequate access to clean water, air, and natural resources, which are essential for healthy living.²⁰ The crisis of clean drinking water in numerous Indigenous and racialized communities starkly illustrates the ongoing struggle for environmental justice.²¹

Given the significant impact of environmental racism on marginalized communities in Canada, this thesis adopts environmental justice as its guiding theoretical framework.²² Worthy of note is that environmental justice advocates for the equitable treatment and meaningful involvement of all people in environmental policy.²³ It emphasizes that no group should disproportionately bear the environmental and health risks associated with pollution or industrial activity.²⁴

Environmental justice calls for systematic change to rectify historical and current inequities, ensuring that Indigenous and racialized communities have a voice in decision-making processes that affect their environment and health.²⁵ Put simply, environmental justice recognizes that environmental benefits and burdens should be shared equally among all communities. In the context of this thesis, environmental justice should be viewed alongside environmental racism, as both concepts are centred on understanding and addressing environmental disparities. While environmental racism in Canada has long been a stark reality that has led to significant disparities

at 1-28; Donald HJ Clairmont & Dennis William Magill, *Africville: The Life and Death of a Canadian Black Community* (Toronto: Canadian Scholars' Press, 1999) at 89-134 for maps and photographs of Africville and the undesirable facilities built around it.

²⁰ David Schlosberg & David Carruthers, "Indigenous Struggles, Environmental Justice, and Community Capabilities" (2010) 10:4 *Global Environmental Politics* at 12- 20.

²¹ Michael Mascarenhas, "Where the Waters Divide: Neoliberal Racism, White Privilege and Environmental Injustice" (2016) 23:3-4 *Race, Gender & Class* 6 at 6-25.

²² See the general works of Julian Agyeman *et al Speaking for ourselves: Environmental justice in Canada* (UBC Press: Vancouver, 2010); A Gosnline & Cheryl Teelucksingh, *Environmental justice and racism in Canada* (Emond Publishing: Toronto, 2008).

²³ Robert D Bullard & Glenn S Johnson, "Environmentalism and Public Policy: Environmental Justice: Grassroots Activism and Its Impact on Public Policy Decision Making" (2000) 56:3 *Journal of Social Issues* at 555-558; Sara Seck & P Simons, "Sustainable Mining, Environmental Justice, and the Human Rights of Women and Girls" in Sumudu *et al* eds, *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge University Press: Cambridge, 2021) at 314-334; H Stacy, "Environmental justice and transformative law in South Africa and some cross-jurisdictional notes about Australia, the United States and Canada" (1999) *Acta Juridica* at 36-70.

²⁴ Dayna N Scott, "What is environmental justice?" in M. Brydon-Miller & D Coghlan eds *Environmental Justice* (The SAGE encyclopaedia, of action research, Forthcoming, Osgoode Legal Studies Research Paper Series, 2014) at 1-12; Ryan Holifield, "Defining Environmental Justice and Environmental Racism" (2001) 22:1 *Urban Geography* at 78-80.

Bullard & Johnson *Supra* note 23 556-559; Holifield *Supra* note 24 at 79-82.

in health and environmental quality for marginalized communities, legislative efforts have recently emerged to confront this systemic issue head-on.

1.3 Rational for focusing on environmental racism instead of environmental justice

This thesis deems it necessary to address the question: Why focus on environmental racism when there are already concepts like environmental justice that seek to protect everyone's rights? Notable is that the choice to focus on environmental racism, rather than the broader concept of environmental justice, is crucial for several reasons. Environmental racism targets the specific ways in which racial discrimination and systemic inequities influence environmental policies and practices.²⁶ This allows for more precise and effective interventions to address the unique challenges faced by racialized and Indigenous communities. Also, environmental racism is deeply rooted in historical and systemic discrimination.²⁷

Throughout history, policies and practices such as redlining, discriminatory zoning laws, and the siting of hazardous facilities in minority neighborhoods have marginalized racial and ethnic communities.²⁸ These practices have resulted in significant environmental and health disparities.²⁹ By focusing on environmental racism, policymakers and advocates can directly address these historical injustices and work towards rectifying the long-standing inequities that continue to affect these communities. This historical context underscores the importance of a targeted approach that specifically addresses the racial dimensions of environmental inequities.

In this context, racialized and Indigenous communities often bear a disproportionate burden of environmental hazards.³⁰ Studies have shown that these communities are more likely to live near sources of pollution, such as industrial plants, landfills, and highways, leading to higher exposure to toxins and pollutants.³¹ This increased exposure results in adverse health outcomes, including higher rates of respiratory illnesses, cancers, and other chronic diseases.³² A focused approach on environmental racism ensures that these disproportionate impacts are recognized and

²⁶ Waldron *Supra* note 9 at 29-30; Waldron *Supra* note 17 at 1, 2; Mitchell & D'Onofrio *Supra* note 9 at 306-315.

²⁷ Waldron *Supra* note 9 at 29-30; Mahzarin R. Banaji, Susan T. Fiske & Douglas S. Massey, "Systemic racism: individuals and interactions, institutions and society" (2021) 6:1 *Cognitive Research: Principles and Implications* at 1-7.

²⁸ Waldron *Supra* note 9 at 29-30; Banaji et al *Ibid.*

²⁹ Banaji et al *Supra* note 27 at 1-7.

³⁰ Mitchell & D'Onofrio *Supra* note 9 at 306-315; Waldron *Supra* note 9 at 14-38, 80-88,169.

³¹ Waldron *Supra* note 9 at 14-38, 80-88,169.

³² Mitchell & D'Onofrio *Supra* note 9 at 306-315; Waldron *Supra* note 9 at 14-38, 80-88,169.

specifically addressed, rather than being overshadowed by the broader issues encompassed by environmental justice. This recognition is crucial for developing effective interventions that directly target the specific health and environmental challenges faced by these communities.

Focusing on environmental racism helps ensure that the voices of marginalized communities are heard and considered in environmental decision-making processes. These communities have historically been excluded from policy development, resulting in their needs and concerns being overlooked. By explicitly addressing environmental racism, policies can be developed to promote inclusive participation, ensuring that all stakeholders, particularly those who are most affected, have a seat at the table. This approach helps to create more equitable and effective environmental policies that truly reflect the needs of all communities, fostering a more inclusive and participatory governance process.

Moreover, environmental racism requires targeted interventions that address the specific vulnerabilities and challenges faced by racialized and Indigenous communities.³³ Broad environmental justice initiatives may not always capture the unique experiences and needs of these communities. By focusing on environmental racism, policymakers can develop tailored strategies that directly address the root causes of environmental disparities in specific racialized communities. This targeted approach ensures that interventions are appropriately designed to address the specific issues faced by the most affected communities.

In addition, focusing on environmental racism helps to raise awareness about the specific environmental injustices faced by racialized and Indigenous communities. It brings attention to the intersection of environmental harm and racial discrimination, highlighting the need for urgent action. This focus can galvanize public support and advocacy efforts, leading to greater political will and resources dedicated to addressing these issues. By explicitly naming and addressing environmental racism, it becomes possible to build stronger coalitions and mobilize diverse stakeholders to work towards common goals of equity and justice, thereby strengthening the overall environmental justice movement.

In the Canadian context, focusing on environmental racism is particularly important given the country's history and ongoing challenges related to Indigenous rights and racial discrimination.

³³ Mitchell & D'Onofrio *Supra* note 9 at 306-320; Waldron *Supra* note 9 at 14-38, 80-88, 165.

Indigenous communities and other racialized groups in Canada have been disproportionately affected by environmental hazards and have often been excluded from environmental governance.³⁴ For instance, the contamination of Boat Harbour near Pictou Landing First Nation and the pollution affecting African Nova Scotian communities like Lincolnville and Shelburne are clear examples of environmental racism.³⁵ These cases highlight the urgent need for targeted policies that address the specific environmental challenges faced by these communities. Federal laws such as the Environmental Racism Act, which aim to develop a national strategy to redress environmental racism, underscore the importance of this focused approach. By specifically targeting the environmental injustices faced by racialized and Indigenous communities, the Environmental Racism Act seeks to create comprehensive and effective policies that address the unique challenges these communities face.

1.4 The Importance of the Environmental Racism Act

In February 2019, a pivotal step was taken when Bill C-230, an *Act Respecting the Development of a National Strategy to Redress Environmental Racism*, was introduced in Canada's House of Commons by Lenore Zann, Member of Parliament for Cumberland- Colchester.³⁶ Bill C-230 called on the Minister of Environment and Climate Change to work collaboratively with Indigenous communities, provincial and territorial governments, and non-profit and charitable organizations that are devoted to the right to clean water, healthy soil, and toxin-free air.³⁷ In addition, it would recognize that the financial resources, educational attainment, occupational status, and long-term impacts of colonization, discrimination, racism, and systemic racism leave some groups more likely to be affected by environmental hazards.³⁸

However, Bill C-230 did not progress beyond the preliminary stages in Parliament due to Parliament's dissolution for the 2021 federal election.³⁹ Recognizing the urgent need to address

³⁴ Ingrid Waldron, "Pipelines and Protests: Legacies of Struggle and Resistance in the Fight against Environmental Racism in Canada" (2021) 28 *Brown J World Aff* at 9- 10, 16, 19; Waldron *Supra* note 9 at 38, 80-88,165.

³⁵ Waldron *Ibid* at 9-10, 16-19; Waldron *Supra* note 9 at 29-38, 80-88,165.

³⁶ Bill C-230, *An Act Respecting the Development of a National Strategy to Redress Environmental Racism*, 1st sess, 43rd Parl, 2020.

³⁷ Bill C-230 *Ibid* sec 2.

³⁸ Bill C-230 *Ibid* preamble.

³⁹ Bill C-230, *National Strategy to Redress Environmental Racism*, 2nd Sess, 43rd Parl, 2021 (first introduced as Bill C-230 in the 2nd Session of the 43rd Parliament) online: Parliament of Canada LEGISinfo, <https://www.parl.ca/legisinfo/en/bill/44-1/c-230>.

the systemic nature of environmental racism, MP Elizabeth May reintroduced the initiative as Bill C-226 in the following February 2022 session.⁴⁰ Bill C-226, was originally proposed as a private member's bill and was designed to address environmental racism.⁴¹ The bill explicitly discussed the impact of environmental racism on marginalized communities, advocating for federal action to develop a national strategy to address environmental racism.⁴²

The introduction of Bill C-226 was significant as it represented a crucial legislative attempt in Canada to specifically address the intersection of race, socio-economic status, and environmental policy. The bill's focus on creating systemic changes can be commended for tackling the root causes of environmental racism rather than merely addressing its symptoms. Currently, Bill C-226 has received royal assent, meaning it has been formally approved by the Governor General as law and has, thus, become the Environmental Racism Act.⁴³

The objectives of the Environmental Racism Act align closely with global initiatives focused on environmental justice, making it a benchmark for international efforts against environmental racism. Similar initiatives have been seen in the United States with the Environmental Justice Movement and the implementation of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

⁴⁰ Bill C-226, *An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice*, 1st sess, 44th Parl, 2021.

⁴¹ E Egert, "Environmental justice in the urban landscape" (2023) *Political Science Undergraduate Review*, 8(1) at 13. In the Canadian legislative context, a Private Member's Bill (PMB) and a Government Bill differ significantly in terms of their introduction, purpose, process, and likelihood of passing. Private Member's Bills are introduced by Members of Parliament (MPs) or Senators who are not part of the cabinet, typically backbenchers or opposition members. These bills often address specific issues of concern to the individual MP or their constituents that may not be part of the government's legislative agenda. PMBs go through the same legislative process as government bills but have limited time for debate and consideration, usually during private members' hour. They face a lower likelihood of becoming law due to limited debate time, lower priority compared to government bills, and often lack the support of the governing party. For example, Bill C-226, introduced by MP Elizabeth May, is a PMB. As a PMB, its success depended on gaining cross-party support and navigating the legislative process without the formal backing of the government. House of Commons, *Procedure and Practice*, 3rd ed, ch 21, "Private Members' Business", online: <https://www.ourcommons.ca/About/ProcedureAndPractice3rdEdition/ch21-e.html>; House of Commons, *Procedure and Practice*, 3rd ed, Chapter 21, "Private Members' Business". Online: <https://www.ourcommons.ca/About/ProcedureAndPractice3rdEdition/ch21-e.html>.

⁴² Bill C-226 *Supra* note 40 Preamble.

⁴³ Bill C-226 received royal assent on June 20, 2024. See Bill C-226, *An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice*, 1st Sess, 44th Parl, 2022, SC 2023, c 26, online: <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-226/royal-assent>. This is the final step in the legislative process at the federal level, signifying that the bill has been approved and has become law. On the legislative process in Canada see generally F Morton, *Law, politics and the judicial process in Canada* (University of Calgary Press: Calgary, 2002).

Populations".⁴⁴ These mandate federal agencies to consider environmental justice in their actions.⁴⁵ By situating itself within this broader international context, the Environmental Racism Act not only addresses domestic issues but also contributes to a global dialogue on equitable environmental governance.

Having laid out a succinct introduction of the Environmental Racism Act, this thesis notes that the Act represents a crucial shift in the Canadian legislative landscape toward rectifying environmental inequalities. The Environmental Racism Act reflects a recognition of the systemic issues inherent in environmental racism and the need for comprehensive strategies that address these challenges. Given the groundbreaking nature of this legislation and its alignment with global movements toward environmental justice, understanding how the Environmental Racism Act will be implemented, and its potential impact is vital.

However, to fully grasp the significance and potential impact of the Environmental Racism Act, this thesis will examine a selection of Canada's existing federal and Nova Scotia's laws in the context of environmental justice and environmental racism. A key statute in this regard is the Canadian Environmental Protection Act (CEPA).⁴⁶ The purpose of such exposition is to detail how the Environmental Racism Act complements these existing laws in the fight against environmental racism. Thus, the focus of this thesis is on examining how the Act could be operationalized within the existing frameworks of environmental policy, justice, and governance in Canada, and evaluating the potential impacts these mechanisms may have on marginalized communities disproportionately affected by environmental hazards. The thesis aims to elucidate the potential successes and hurdles that the implementation of this Act might encounter, drawing from historical precedents, current policy analyses, and comparative legislative frameworks.

1.6 Theoretical Framework

To effectively analyze the Environmental Racism Act, it is essential to employ the theoretical framework of environmental justice. This framework guides the analysis and

⁴⁴ Donald Miller, "Methods for Evaluating Environmental Justice-Approaches to Implementing US Executive Order 12898" in Matthew D Adler & Robert S Pritzker, eds, *Beyond Benefit-Cost Analysis* (Abingdon: Routledge, 2017) at 25-30.

⁴⁵ Miller *Ibid.*

⁴⁶ *Canadian Environmental Protection Act (CEPA)*, SC 1999, c 33. For a discussion of Canada's existing federal and provincial laws on environmental justice and environmental racism see chapter three of this thesis.

interpretation of the Environmental Racism Act by considering how laws and policies can be designed to ensure equitable environmental protection and participatory parity in decision-making processes.⁴⁷ It further emphasizes the need to identify and rectify the unequal environmental burdens that marginalized communities often bear.⁴⁸ This includes assessing how historical and current policies have contributed to environmental inequities and what can be done to correct them.⁴⁹ In this light, environmental justice could be employed as the theoretical framework that helps assess whether the Environmental Racism Act's provisions adequately address environmental inequities, thereby reducing the disproportionate environmental burdens experienced by marginalized communities. By embedding this analysis within the broader environmental justice context, the research can provide a comprehensive assessment of whether the Act meets its intended objectives while aligning with international human rights law and advancing environmental justice in Canada.

By combining these methodologies and frameworks, the research aims to provide a comprehensive analysis of the Environmental Racism Act, offering insights into how it can be effectively implemented to combat environmental racism and achieve lasting environmental justice. The application of these diverse methodologies ensures a holistic understanding of the legislative, social, and practical dimensions of addressing environmental racism through legal means.

1.7 Objectives and Research Questions

1.7.1 Research Question

The central research question that informs this study is:

⁴⁷ Nathalie Chalifour & Dayna Nadine Scott, "Environmental Justice" in William Arthur Tilleman et al, eds, *Environmental Law and Policy*, 4th ed (Toronto: Emond Montgomery Publications Limited, 2020) at 59-62; David Schlosberg & David Carruthers, "Indigenous Struggles, Environmental Justice, and Community Capabilities" (2010) 10:4 *Global Environmental Politics* at 12- 20.

⁴⁸ Chalifour & Scott *Supra* note 47 at 63-67; Schlosberg & Carruthers *Supra* note 47 at 12- 20.

⁴⁹ David N Pellow, "Critical Environmental Justice Studies: Black Lives Matter as an Environmental Justice Challenge" (2016) 13:2 *Du Bois Rev* 221 at 223.

Can, and if so, how can the Environmental Racism Act be effectively implemented to address environmental justice including environmental racism in Canada?⁵⁰ This overarching question gives rise to several ancillary questions that will guide the research, including:

- i. What other legal initiatives have been undertaken to address environmental racism, and have they been successful or not?
- ii. What implementation strategies can be adopted to ensure that the Environmental Racism Act is effective in protecting marginalized communities from environmental hazards?
- iii. What challenges might hinder the successful implementation of the Environmental Racism Act, and how can these obstacles be overcome to achieve environmental justice?

1.7.2 Research Objectives

To comprehensively address these research questions, the main objective of this thesis is to analyze the anticipated implementation and potential effects of the Environmental Racism Act. Specifically, this involves understanding how this legislation can be operationalized within Canada's existing frameworks of environmental policy, justice, and governance. From this central objective, several specific objectives are identified to structure the study:

- i. To evaluate the existing federal and provincial legal framework for environmental protection in Canada and identify gaps addressed by the Environmental Racism Act.
- ii. To anticipate how the Environmental Racism Act could influence existing policies and practices concerning marginalized communities, using case studies from Canada and other nations.
- iii. To identify potential challenges and barriers to the effective implementation of the Environmental Racism Act, including political, legal, social, and economic factors.
- iv. To propose practical recommendations for effectively implementing the Environmental Racism Act, ensuring its broad acceptance, and preventing it from becoming a dead letter.

1.8 Research Methodology

Research methodology in the context of this thesis encompasses theory, approach, and method. Theory reveals the researcher's perspective, foundational assumptions, definitional parameters, and preferred reasoning.⁵¹ Approach offers a framework for conducting the study,

⁵⁰ See section 2.2 in chapter two below on the distinction between these two terms.

⁵¹ Richard Devlin, "The Charter and Anglophone Legal Theory" (1997 - 1998) 4:1 *Rev of Const Stud* 19 at 22.

while method supplies the instruments for carrying out the research design.⁵² In exploring the Environmental Racism Act's potential to mitigate environmental racism, this thesis adopts a comprehensive methodology that integrates doctrinal research, policy scholarship, history as a method and the study of comparative legislative frameworks. The methodology seeks to clarify the means by which scientific knowledge is acquired and applied to legislative analysis, particularly within the context of environmental law and social justice.

1.8.1 Doctrinal Research

This thesis primarily utilizes a doctrinal approach to analyze the legal texts, provisions, and intentions of the Environmental Racism Act. Through an analysis of its text, provisions, and legislative intent, this thesis aims to illuminate how the Act fits within the existing landscape of Canadian environmental justice efforts. In the context of this study, the doctrinal approach will integrate international legal instruments as stipulated by article 38 of the Statute of the International Court of Justice (ICJ).⁵³ This includes considering treaties and conventions to which Canada is a party, customary international law, and general principles of international law. For example, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP),⁵⁴ which Canada has adopted into law through the United Nations Declaration on the Rights of Indigenous Peoples Act.⁵⁵ Analyzing the Environmental Racism Act in light of UNDRIP is crucial to understanding how the Act supports the rights of Indigenous communities, particularly in Nova Scotia, and whether it complies with its obligations under international law.

With regard to customary international law, this thesis will discuss how Canada incorporates consistent state practice and *opinio juris*,⁵⁶ including principles such as the right to a healthy environment and the principle of non-discrimination which have recently been incorporated in CEPA's right to a healthy environment.⁵⁷ Furthermore, a doctrinal approach in the context of this thesis also considers general principles of international law, such as equality before

⁵² See generally R Kothari, *Research Methodology: Methods and Techniques*, 2nd edn (New Delhi: New Age, 2004).

⁵³ *Statute of the International Court of Justice*, 26 June 1945, Can TS 1945 No 7, art 38; Thomas Franck, "International Law in Canadian Practice: The State of the Art and the Art of the State" (1976) 31:1 *International Journal* 180 at 180-192.

⁵⁴ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007) (UNDRIP).

⁵⁵ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.

⁵⁶ Franck *Supra* note 53 at 180-214.

⁵⁷ CEPA *Supra* note 46 Preamble, s 2(1) (a.2).

the law and the right to a fair and public hearing.⁵⁸ These principles are pertinent in the context of environmental justice and environmental racism. The Environmental Racism Act should be evaluated to see if it complies with international law norms in ensuring equal protection and access to justice for communities affected by environmental racism.

Additionally, this study analyzes related national legislative materials to evaluate whether the Environmental Racism Act complements or diverges from established laws like the CEPA. By interpreting the Act's language and purpose, this approach clarifies the statutory mechanisms proposed to counter environmental racism. It examines their potential impact on affected communities and how they intersect with broader environmental justice principles. Ultimately, the doctrinal methodology will provide a nuanced understanding of whether the Environmental Racism Act advances a more equitable environmental justice framework across Canada.

1.8.2 Policy Scholarship as a Method

Policy scholarship in this research involves a systematic examination of existing policies, governmental reports, and legislative documents related to environmental racism and justice.⁵⁹ This method enables the assessment of how current policies either address or neglect the issues of environmental racism. It also involves analyzing the effectiveness of these policies in real-world settings by reviewing outcomes documented in academic literature and policy reviews. Through this approach, the thesis identifies gaps in existing policies and anticipates the challenges and opportunities that the Environmental Racism Act might encounter. Policy scholarship provides a critical lens through which the Environmental Racism Act is evaluated against established standards and practices, helping to propose evidence-based improvements and strategic directions for effective policy implementation.

1.8.3 History as a Method

The historical method in this thesis involves tracing the development of environmental policies and the evolution of legal responses to environmental racism in Canada. It includes an examination of the socio-political context that has shaped these policies over time, focusing on

⁵⁸ Franck *Supra* note 53 at 180-201.

⁵⁹ Jennifer Browne et al, "A Guide to Policy Analysis as a Research Method" (2019) 34:5 *Health Promotion International* at 1032-44.

key events, landmark cases, and significant legislative changes.⁶⁰ Understanding the historical context is crucial for recognizing why the Environmental Racism Act was passed and how effective it could be in addressing the root causes of environmental racism. This historical perspective helps to situate the Environmental Racism Act within a continuum of legal and social efforts, providing insights into how past efforts have succeeded or failed, and what lessons can be drawn to inform the Act's implementation.

1.8.4 Comparative Case Study Approach

To broaden the scope of analysis, this study incorporates a comparative aspect by examining similar legislative efforts in other jurisdictions such as the United States and South Africa. Kaabo and Beasley describe the comparative case study approach (CCS) as “the systematic comparison of two or more data points obtained through use of the case study method”.⁶¹ The selection of case studies in this work is primarily guided by phenomena of interest, particularly environmental racism and environmental justice. Instead of limiting the study to specific jurisdictions, the approach prioritizes the availability of relevant examples that align with the conceptual frameworks. As Bartlett and Vavrus noted, this strategy allows for a comprehensive examination across multiple sites and cases.⁶²

Due to limited literature on comprehensive legal frameworks directly addressing environmental racism and environmental justice, this thesis draws on a range of relevant jurisdictions to illustrate different facets of these issues. For example, the United States provides significant case studies on environmental racism, particularly around the historical burden of pollution placed on marginalized communities.⁶³ In South Africa, the legacy of apartheid has

⁶⁰ Richard Hofer, "Using the Historical Approach" in *Policy Creation and Evaluation: Understanding Welfare Reform in the United States*, Pocket Guides to Social Work Research Methods (2011), *Oxford Academic* at 21-30.

⁶¹ M.P. do Amaral, "Comparative Case Studies: Methodological Discussion" in S. Benasso et al, eds, *Landscapes of Lifelong Learning Policies across Europe*, *Palgrave Studies in Adult Education and Lifelong Learning* (Cham: Palgrave Macmillan, 2022) 41 at 42-41. The Comparative Case Study Approach (CCS) is different from case study which is described as "... an in-depth examination, often undertaken over time, of a single case". Conversely, CCS includes two or more cases "in a way that produces more generalizable knowledge about causal questions". See also P. Ishwara Bhat, "Comparative Method of Legal Research: Nature, Process, and Potentiality" in *Idea and Methods of Legal Research* (Delhi: Oxford Academic, 2020) 267 at 267-299.

⁶² Lesley Bartlett & Frances Vavrus, "Comparative Case Study: An Innovative Approach" (2017) 1:1 *Nordic Journal of Comparative and Intl Education* 5 at 10.

⁶³ Robert D. Bullard, "The Legacy of American Apartheid and Environmental Racism," *St. John's Journal of Legal Commentary* 9 (1993) at 445-450.

resulted in environmental injustice, with poorer communities still disproportionately affected by industrial pollution.⁶⁴

Canada offers examples through its Indigenous communities, where traditional lands have been exploited for resource extraction, causing significant environmental impacts.⁶⁵ In Nova Scotia, African Nova Scotian communities have faced longstanding environmental racism, with hazardous waste sites and landfills disproportionately located in their neighbourhoods.⁶⁶ Together, these cases highlight key characteristics and frameworks that inform comprehensive approaches to environmental justice worldwide. Consequently, such a comparison sheds light on different approaches to combating environmental racism and offers valuable lessons that can inform the implementation of the Environmental Racism Act.

1.9 Structure of Thesis

The remainder of thesis is divided as follows: the second chapter considers the theoretical framework and relevant literature that provide the foundational context for understanding the Environmental Racism Act. This chapter delves into the theoretical underpinnings of environmental justice and policy implementation. This will help guide the study's analysis of the Environmental Racism Act and how it complies with international law. It also reviews previous studies on environmental racism, both in Canada and internationally. These perspectives frame the potential impact and challenges facing the Environmental Racism Act, establishing the groundwork for the subsequent examination.

Following this theoretical exploration, the third chapter provides a comprehensive analysis of the Environmental Racism Act alongside Canada's existing federal and provincial laws on environmental justice, with a particular focus on Nova Scotia's laws. Here, the legislative content is scrutinized, with detailed attention to its provisions and intended outcomes. This analysis clarifies the Act's goals and objectives, particularly regarding its commitment to promoting

⁶⁴ See generally Greg Ruiters, "Environmental racism and justice in South Africa's transition" (2001) 28:1 *Politikon: South African Journal of Political Studies* at 95-103.

⁶⁵ See generally David A Lertzman & Harrie Vredenburg, "Indigenous peoples, resource extraction and sustainable development: An ethical approach" (2005) 56 *Journal of Business Ethics* at 239-254.

⁶⁶ Waldron *Supra* note 17 at 3-6; Shannon Kelsey Dill, "To what Extent is the History of Africville, Nova Scotia an Example of Environmental Racism?" (2021) *Bach diss, Mount Allison University* at 2-24.

environmental and social justice. By exploring the targeted outcomes, this chapter provides a critical baseline for understanding the Environmental Racism Act's legislative intents.

Building upon this baseline, the fourth chapter shifts focus toward predicting implementation strategies. It analyzes how government agencies and bodies could collaborate to ensure the Act's effective implementation. The chapter also evaluates the allocation of resources, including funding, that will be essential for achieving the intended impact. Additionally, the chapter anticipates the challenges that may arise during the implementation of the Environmental Racism Act. This includes potential political resistance or economic barriers that could impede progress and technical and logistical issues relating to data collection, monitoring, and enforcement. By identifying these challenges, the chapter facilitates the development of strategies to mitigate their impact.

Finally, the fifth chapter synthesizes the research findings into concrete recommendations that could strengthen the Environmental Racism Act. The chapter also provides the conclusion which summarizes the predictive insights from the analysis, highlighting the anticipated impacts of the Environmental Racism Act. It also outlines future research directions, identifying areas for further investigation as more data becomes available.

Chapter Two

Theoretical framework

2.1 Introduction to theoretical framework

This chapter focuses on the theoretical underpinnings that inform the understanding and application of the Environmental Racism Act. It argues that environmental justice finds application as a theory upon which this study can be based. On this note, this chapter explores the philosophical and practical basis of environmental justice as a possible response to environmental racism. This approach not only contextualizes the Environmental Racism Act within broader environmental justice movements but also sets the stage for a critical examination of the Act's alignment with established legislative frameworks.⁶⁷

This chapter begins by introducing and clarifying key terms and their distinctions, such as environmental racism and environmental justice. This is done to establish a foundational understanding for the analysis that follows. Following this introduction, the chapter delves into the environmental justice theory, tracing its historical development and evolution as a movement. This theoretical background will then lead into a discussion of relevant international instruments, examining their principles and how they intersect with the concepts of environmental justice. Finally, the chapter will explore how Canada, through legislative efforts like the Environmental Racism Act, can align its policies and frameworks with these international instruments to effectively address environmental and social inequities.

2.2 Introduction to the Terms and Their Distinctions

To better understand the objectives of this chapter, it is important to clarify the use of the concepts “environmental justice” and “environmental racism”, their differences and how they are related. While these concepts are closely related, they address different aspects of the intersection between the environment and social equity. Understanding the distinction between these terms is

⁶⁷ See the discussion in chapter three of this thesis which examines how the ERA complements Canada's existing legal frameworks on environmental justice and environmental racism, if any.

crucial for developing effective policies and interventions to promote fair and inclusive environmental governance.

Environmental justice is a broad and inclusive framework that seeks to ensure the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in environmental decision-making processes.⁶⁸ This study recognizes that environmental justice encompasses the right to a healthy environment and aims to address the inequitable distribution of environmental benefits and burdens across different communities.⁶⁹

Environmental racism, on the other hand, refers to the systemic and discriminatory practices that disproportionately expose marginalized racial and ethnic communities to environmental hazards, resulting in adverse health, economic, and social outcomes.⁷⁰ This concept includes the siting of hazardous waste facilities, industrial operations, and other sources of pollution in or near communities of color and low-income communities, as well as the lack of access to environmental benefits such as clean air, water, and green spaces.⁷¹ Understanding environmental racism involves recognizing the historical and institutional discrimination that has shaped the distribution of environmental hazards and benefits.⁷² Discriminatory zoning laws, redlining,⁷³ and other forms of systemic inequality have historically marginalized racial and ethnic

⁶⁸ David Schlosberg, "Reconceiving environmental justice: global movements and political theories" (2004) 13:3 *Environmental Politics* at 517; Gwendolyn Blue, Kelly Bronson & Alana Lajoie-O'Malley, "Beyond distribution and participation: A scoping review to advance a comprehensive environmental justice framework for impact assessment" (2021) 90:106607 *Environmental Impact Assessment Review* at 2; Chalifour & Scott *Supra* note 47 at 59-73. Noteworthy is that for the purpose of relevance, scope and brevity, this chapter will not delve into the various debates on what environmental justice entails or how it is to be properly defined. However, the working definition for this thesis is that environmental justice involves the right to a healthy environment and seeks to address the inequitable distribution of environmental benefits and burdens across different communities.

⁶⁹ David Boyd, "The Constitutional Right to a Healthy Environment" (2012) 54:4 *Environment: Science and Policy for Sustainable Development* 3 at 3-15; Government of Canada, "Canada taking next steps on the right to a healthy environment and environmental justice and racism" (8 February 2024), online: <https://www.canada.ca/en/environment-climate-change/news/2024/02/canada-taking-next-steps-on-the-right-to-a-healthy-environment-and-environmental-justice-and-racism.html>.

⁷⁰ Waldron *Supra* note 9 at 38; Banaji et al *Supra* note 27 at 1-7; Robin Turner & Diana Pei Wu, "Environmental justice and environmental racism: An annotated bibliography and general overview, focusing on US literature, 1996-2002" in Berkeley *Workshop on Environmental Politics, Institute of International Studies* (2002) at 1-10.

⁷¹ R W Collin, "Review of the Legal Literature on Environmental Racism, Environmental Equity and Environmental Justice" (1994) 9 *Journal of Environmental Law and Litigation* at 125-130. See also the general works of Robin Morris Collin & Robert W. Collin, "Environmental Justice and Sustainability: The United States Experience" in Carmen G. Gonzalez, Sumudu Atapattu & Sara L. Seck, eds, *The Cambridge Handbook of Environmental Justice and Sustainable Development: Foreword and Chapter 1* (2021) at 115-125.

⁷² L. Pulido, "Flint, Environmental Racism, and Racial Capitalism" (2016) 27 *Capitalism, Nature, Socialism* 1 at 8. See also the general works of Morris & Collin *Supra* note 71 at 115-125.

⁷³ Redlining refers to the discriminatory practice where services (financial and otherwise) are withheld from potential customers who reside in neighbourhoods classified as high-risk based on racial or ethnic composition. The term

communities, placing them in harm's way and denying them the environmental protection afforded to more privileged groups.⁷⁴

While environmental justice provides a comprehensive framework for addressing inequities in environmental protection and governance, environmental racism specifically highlights the racial dimensions of these inequities. Environmental racism is a subset of environmental injustice, that focuses on how race and ethnicity influence the distribution of environmental risks and benefits.⁷⁵ By understanding and addressing environmental racism, we can more effectively work towards achieving the broader goals of environmental justice, ensuring that all communities, regardless of race or socio-economic status, have the right to a healthy environment.⁷⁶ In other words, while environmental racism and environmental justice are intrinsically linked, the environmental racism concept is used to bring light to specific injustices to racialized communities, while the environmental justice concept is then used to guide efforts to address environmental racism through systemic change and equitable policy implementation.⁷⁷

Recognizing the importance of both environmental justice and environmental racism allows for the development of more nuanced and effective policies. By addressing the specific ways in which racial discrimination and systemic inequities influence environmental outcomes, we can create a more inclusive and equitable environmental governance framework. This approach is essential for promoting a healthier, more just society where all individuals have the opportunity to thrive in a safe and sustainable environment.

originates from the practice of drawing red lines on maps to demarcate areas where banks would avoid investments. This practice contributed significantly to the segregation and economic disparity observed in many urban areas today. See Richard Harris, "From 'Black-Balling' to 'Marking': The Suburban Origin of Redlining in Canada, 1930s–1950s" (2003) 47:3 *Canadian Geographer/Le Géographe canadien* 338 at 338-350.

⁷⁴ RW Collin, "Environmental Equity: A Law and Planning Approach to Environmental Racism" (1992) 11 *Virginia Environmental Law Review* 493 at 527–546. See also the general works of Morris & Collin *Supra* note 71 at 115-125.

⁷⁵ Michael Mascarenhas, *Where the Waters Divide: Neoliberalism, White Privilege, and Environmental Racism in Canada* (Lexington Books, 2012) at 8; Bruce Johansen, *Environmental Racism in the United States and Canada: Seeking Justice and Sustainability* (Bloomsbury Publishing USA, 2020) at 1-5; David Pellow & Jasmine Vazin, "The intersection of race, immigration status, and environmental justice" (2019) 11:14 *Sustainability* at 1-11; David Pellow, "Toward A Critical Environmental Justice Studies: Black Lives Matter as an Environmental and Justice Challenge" (2016) 13:2 *Du Bois Review* at 221-233.

⁷⁶ This thesis chooses to adopt the definition of a healthy environment in section 3 of CEPA. CEPA defines a healthy environment as "an environment that is clean, healthy and sustainable". This language is from the UNGA resolution on the human right to a clean, healthy and sustainable environment: resolution / adopted by the General Assembly A_RES_76_300 online <https://digitallibrary.un.org/record/3983329?v=pdf> which recognizes the right to a clean, healthy and sustainable environment as a human right.

⁷⁷ Holifield *Supra* note 24 at 78-85.

2.3 Environmental racism

To understand environmental justice as a theoretical framework in this study, it is crucial to first elucidate on what environmental racism is. Understanding environmental racism is key to understanding environmental justice as a theoretical framework. The term “environmental racism” was first coined in the early 1980s by Dr Benjamin Chavis, a civil rights leader and the former executive director of the United Church of Christ Commission for Racial Justice.⁷⁸ Dr Chavis defined environmental racism as racial discrimination in environmental policy-making and enforcement of regulations and laws.⁷⁹ It involves the deliberate targeting of communities of color for toxic waste facilities, the official sanctioning of the presence of life-threatening poisons and pollutants, and the systematic exclusion of people of color from leadership in environmental movements.⁸⁰

A key component of environmental racism is the disproportionate exposure to environmental hazards faced by marginalized racial and ethnic communities.⁸¹ These communities are often located near sources of pollution, such as factories, landfills, and highways, leading to higher levels of exposure to toxins and pollutants.⁸² This exposure results in serious health issues, including respiratory illnesses, cancers, and other chronic diseases.⁸³ Additionally, these communities frequently lack access to environmental amenities and benefits, such as clean air, safe drinking water, green spaces, and recreational areas.⁸⁴ This inequity contributes to a lower quality of life and diminished opportunities for healthy living, exacerbating the overall impact of environmental hazards on these populations.⁸⁵

⁷⁸ Richard Lazarus, "Environmental Racism- That's What It Is" (2000) *U Ill L Rev* at 257. See also Robert D. Bullard et al, *Toxic Wastes and Race at Twenty: 1987–2007: A Report Prepared for the United Church of Christ Justice & Witness Ministries* (2007), online: http://www.ucc.org/environmental-ministries_toxic-waste-20 at vii, viii, 1-4.

⁷⁹ Lazarus *Supra* note 78 at 257; Bullard *et al Ibid* note 78 at vii, viii, 1-4.

⁸⁰ Lazarus *Supra* note 78 at 257; Bullard *et al Ibid* note 78 at vii, viii, 1-4.

⁸¹ Mascarenhas *Supra* note 75 at 10, 84-86, 136; Johansen *Supra* note 75 at 295-346. See generally Waldron *Supra* note 9 at 20-32.

⁸² Mascarenhas *Supra* note 75 at 10, 84-86, 136; Johansen *Supra* note 75 at 295-346; Waldron *Supra* note 9 at 20-32; Bullard *Supra* note 11 at 16-37.

⁸³ Mascarenhas *Supra* note 75 at 10, 84-86, 136; Johansen *Supra* note 75 at 295-346; Waldron *Supra* note 9 at 20-32; Bullard *Supra* note 11 at 16-37.

⁸⁴ Mascarenhas *Supra* note 75 at 10, 84-86, 136; Johansen *Supra* note 75 at 295-346; Waldron *Supra* note 9 at 20-32; Bullard *Supra* note 11 at 16-37.

⁸⁵ Mascarenhas *Supra* note 75 at 10, 84-86, 136; Johansen *Supra* note 75 at 295-346; Waldron *Supra* note 9 at 20-32; Bullard *Supra* note 11 at 16-37.

Another critical aspect of environmental racism is the limited access that marginalized communities have to environmental decision-making processes.⁸⁶ These communities often have less political power and fewer opportunities to participate in the development and implementation of environmental policies.⁸⁷ This exclusion means that their concerns and needs are frequently overlooked or ignored, perpetuating cycles of neglect and inequity.⁸⁸ This continuous cycle of neglect and inequity is reflected in historical and institutional discrimination of these communities, a situation that has also played a significant role in shaping the distribution of environmental hazards and benefits.⁸⁹ Discriminatory zoning laws, redlining, and other forms of systemic inequality have historically marginalized racial and ethnic communities.⁹⁰ This places them in harm's way and denies them the environmental protections afforded to more privileged groups.

In addition to the lack of environmental protection, the economic and social impacts of environmental racism are profound. Communities affected by environmental racism often face reduced property values, limited economic opportunities, and increased costs related to healthcare and environmental remediation.⁹¹ This perpetuates cycles of poverty and inequality, making it more difficult for these communities to recover and thrive.

In Canada, the historic African Canadian community of Africville, Nova Scotia, is one of the most well-documented cases of environmental racism in Nova Scotia.⁹² Africville was established in the early 1800s and is a predominantly African Nova Scotian community located on the outskirts of Halifax.⁹³ Despite its vibrant community and rich cultural heritage, Africville faced

⁸⁶ Pulido *Supra* note 72 at 12-26; Mascarenhas *Supra* note 75 at 91-92, 95-143; Waldron *Supra* note 9 at 14, 80-88,169; Lazarus *Supra* note 78 at 268-271. See also Robert D. Bullard, "Unequal Environmental Protection: Incorporating Environmental Justice in Decision Making" in Adam M. Finkel & Dominic Golding, eds, *Worst Things First? The Debate over Risk-Based National Environmental Priorities* (Washington, DC: Resources for the Future, 1994) at 237-266.

⁸⁷ Pulido *Supra* note 72 at 12-26; Mascarenhas *Supra* note 75 at 91-92, 95-143; Waldron *Supra* note 9 at 14, 80-88,169; Lazarus *Supra* note 78 at 268-271; Bullard *Supra* note 86 at 237-266.

⁸⁸ Pulido *Supra* note 72 at 12-26; Mascarenhas *Supra* note 75 at 91-92, 95-143; Waldron *Supra* note 9 at 14, 80-88,169; Lazarus *Supra* note 78 at 268-271.

⁸⁹ Pulido *Supra* note 72 at 12-26; Mascarenhas *Supra* note 75 at 91-92, 95-143; Waldron *Supra* note 9 at 14, 80-88,169; Lazarus *Supra* note 78 at 268-271; Bullard *Supra* note 86 at 237-266.

⁹⁰ Pulido *Supra* note 72 at 12-26; Mascarenhas *Supra* note 75 at 91-92, 95-143; Waldron *Supra* note 9 at 14, 80-88,169; Lazarus *Supra* note 78 at 268-271; Bullard *Supra* note 86 at 237-266.

⁹¹ Johansen *Supra* note 75 at 1-5.

⁹² Waldron *Supra* note 9 at 105, 106; Mascarenhas *Supra* note 75 at 8; Shannon Kelsey Dill, "To what Extent is the History of Africville, Nova Scotia an Example of Environmental Racism?" (2021) *Bach diss, Mount Allison University* at 22-23, 34-36; Mitchell & D'Onofrio *Supra* note 9 at 305-315.

⁹³ Dill *Supra* note 92 at 22-23, 34-36; Mitchell & D'Onofrio *Supra* note 9 at 305-315.

significant neglect and discrimination from municipal authorities.⁹⁴ Over the years, the city of Halifax systematically placed undesirable and hazardous facilities near Africville, including an open-pit dump, an abattoir, a prison, and a sewage disposal plant.⁹⁵ These facilities posed severe health risks to the residents and degraded their living conditions. In the 1960s, under the guise of urban renewal, the city forcibly relocated Africville residents, promising them better housing and living conditions.⁹⁶ However, the relocation was poorly managed, and many residents were left without adequate compensation or support, leading to the dismantling of the community and the loss of their homes and cultural heritage.⁹⁷

Another significant example of environmental racism in Nova Scotia is the contamination of Boat Harbour.⁹⁸ Boat Harbour is located near Pictou Landing First Nation.⁹⁹ It was turned into a waste treatment facility for a nearby pulp and paper mill in the 1960s.¹⁰⁰ The untreated effluent from the mill was discharged into Boat Harbour, leading to severe pollution and environmental degradation.¹⁰¹ The contamination of Boat Harbour had devastating effects on the local Mi'kmaq community, including the loss of traditional fishing grounds, health problems, and the destruction of the natural environment.¹⁰² For decades, the community advocated for the cleanup and restoration of Boat Harbour. In 2019, the Nova Scotia government finally passed the Boat Harbour Act, mandating the closure of the waste treatment facility and initiating the cleanup of the site.¹⁰³ However, the long delay in addressing the contamination underscores the persistent environmental injustices faced by Indigenous communities.

Similar to the communities in Africville and Boat Harbour is the African Nova Scotian community of Lincolnville which has also experienced environmental racism. In 1974, a landfill was established near Lincolnville, despite strong opposition from the residents.¹⁰⁴ The landfill

⁹⁴ Dill *Supra* note 92 at 22-23, 34-36; Mitchell & D'Onofrio *Supra* note 9 at 305-315.

⁹⁵ Dill *Supra* note 92 at 22-23, 34-36; Mitchell & D'Onofrio *Supra* note 9 at 305-315; Waldron *Supra* note 9 at 105, 106; Mascarenhas *Supra* note 75 at 8.

⁹⁶ Waldron *Supra* note 9 at 105, 106; Mascarenhas *Supra* note 75 at 8.

⁹⁷ Dill *Supra* note 92 at 22-23, 34-36; Mitchell & D'Onofrio *Supra* note 9 at 305-315.

⁹⁸ Waldron *Supra* note 9 at 137, 138; Ingrid Waldron, "Pipelines and Protests: Legacies of Struggle and Resistance in the Fight against Environmental Racism in Canada" (2021) 28 *Brown J World Aff* at 9- 10, 16, 19.

⁹⁹ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹⁰⁰ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹⁰¹ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹⁰² Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹⁰³ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹⁰⁴ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

accepted hazardous waste, including asbestos and other toxic materials, posing significant health risks to the community.¹⁰⁵ Over the years, the community has reported increased cases of respiratory illnesses, cancers, and other health problems believed to be associated with the landfill.¹⁰⁶ Despite ongoing advocacy and demands for the landfill's closure and thorough investigation into its health impacts, the community's concerns have often been ignored or downplayed by authorities.

Furthermore, the town of Shelburne is another example where environmental racism has affected African Nova Scotian residents.¹⁰⁷ For many years, an open-pit dump was located near the predominantly African Nova Scotian neighborhood of South End Shelburne.¹⁰⁸ The dump was used for decades without proper environmental safeguards, leading to significant contamination of the soil and water.¹⁰⁹ Residents reported high rates of cancer and other serious health issues, which they attributed to the proximity of the dump.¹¹⁰ In recent years, community activists have highlighted the environmental racism inherent in the placement and management of the dump, advocating for comprehensive health studies and cleanup efforts.¹¹¹

These examples succinctly illustrate the pervasive nature of environmental racism in Nova Scotia. Communities of African Nova Scotians and Mi'kmaq people have historically faced disproportionate exposure to environmental hazards, inadequate infrastructure, and limited political power to influence environmental decisions.¹¹² Addressing these injustices requires targeted policies, inclusive decision-making processes, and genuine efforts to rectify past harms. Legislative measures like the Environmental Racism Act, that are aimed at developing a national strategy to address environmental racism, are crucial for ensuring that these communities receive the protection and justice they deserve.¹¹³ By recognizing and addressing environmental racism, Nova Scotia can work towards a more equitable and just environmental future for all its residents.

¹⁰⁵ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹⁰⁶ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹⁰⁷ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹⁰⁸ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹⁰⁹ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹¹⁰ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹¹¹ Waldron *Supra* note 9 at 137, 138; Waldron *Supra* note 98 at 9-19.

¹¹² See the general works of Waldron *Supra* note 9; Waldron *Supra* note 98.

¹¹³ For a detailed discussion on the ERA's implementation strategies, see chapter four of this thesis.

2.4 Environmental justice theory

Building on the foundation of understanding environmental racism, the concept of environmental justice offers a broader framework to address these inequities. Environmental justice is a global movement that seeks to address the unfair distribution of environmental benefits and burdens across different communities and socio-economic groups.¹¹⁴ At the international level, environmental justice is grounded in the principles of equity, inclusion, and the right of all people to live in a healthy environment.¹¹⁵ It calls for the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income in the development, implementation, and enforcement of environmental laws, regulations, and policies.¹¹⁶

The phrase “all people” includes a consideration of factors such as disability, gender, and age. These are critical intersectional factors that influence how individuals experience environmental injustices.¹¹⁷ For instance, people with disabilities often face barriers in accessing information and participating in environmental decision-making processes.¹¹⁸ Similarly, gender plays a significant role as women, particularly in marginalized communities, are disproportionately affected by environmental degradation due to their roles in food production and water collection.¹¹⁹ Age is another crucial factor, with children and the elderly being more vulnerable to environmental hazards and less likely to be included in policy discussions.¹²⁰

¹¹⁴ Randolph Haluza-Delay, "Environmental justice in Canada" (2007) 12:6 *Local Environment* at 557-560; Johansen *Supra* note 75 at 1-5; David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford: OUP, 2007) at 3-10.

¹¹⁵ Susan Spierre Clark & Monica Lynn Miles, "Assessing the integration of environmental justice and sustainability in practice: A review of the literature" (2021) 13:20 *Sustainability* at 1-10; Johansen *Supra* note 75 at 1-5.

¹¹⁶ Center for Biological diversity, "17 Principles of Environmental Justice." Center for Biological Diversity. Online: <https://www.biologicaldiversity.org/about/17-principles-of-environmental-justice.html>; Clark & Miles note 127 *Ibid* at 1-10.

¹¹⁷ Stacia S. Ryder, "A Bridge to Challenging Environmental Inequality: Intersectionality, Environmental Justice, and Disaster Vulnerability" (2017) *Social Thought & Research: A Continuation of the Mid-American Review of Sociology* 85-115.

¹¹⁸ Rebecca J. Mitchell et al, "An Overview of Systematic Reviews to Determine the Impact of Socio-Environmental Factors on Health Outcomes of People with Disabilities" (2022) 30:4 *Health & Social Care in the Community* 1254-1260.

¹¹⁹ Kirsten Vinyeta, Kyle Whyte & Kathy Lynn, "Climate Change Through an Intersectional Lens: Gendered Vulnerability and Resilience in Indigenous Communities in the United States" (2018), *Canadian Research Institute for the Advancement of Women and the Alliance for Intergenerational Resilience* at 5-30.

¹²⁰ David R Boyd, *Cleaner, Greener, Healthier: A Prescription for Stronger Canadian Environmental Laws and Policies* (Vancouver: UBC Press, 2015) at 3-4, 58-66, 119.

For the sake of scope and brevity, this thesis will not examine the interplay of disability, age and gender in environmental justice and environmental racism.¹²¹ Nonetheless, to address these intersectional factors within the realm of environmental justice, a human rights framework would provide a grounded foundation for addressing these intersectional issues.¹²² In this respect, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) emphasizes the need for accessibility and inclusion for all people living with disabilities in all matters.¹²³ This provision can be extended to ensuring that people with disabilities are not left behind in all matters including environmental.

Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) underscores the importance of women's participation in environmental governance.¹²⁴ Furthermore, the rights of children, enshrined in the Convention on the Rights of the Child (CRC), highlight the need to protect younger populations from environmental harm.¹²⁵ Although this is just a succinct description of how gender, age and disability are important to the discourse on environmental justice, one notes that integrating human rights into environmental justice efforts ensures that policies are inclusive, equitable, and address the unique challenges faced by different groups. This holistic approach is essential for achieving true environmental justice and safeguarding the rights of all individuals.

In Canada, environmental justice encompasses the principles of equity and inclusivity in environmental protection and governance.¹²⁶ It recognizes that certain communities, particularly

¹²¹ Although this thesis will not examine the interplay of disability, age, and gender in environmental justice and environmental racism, these factors remain a critical area for future research. See discussion on future research in chapter 5.

¹²² Ontario Human Rights Commission, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* (Toronto: Ontario Human Rights Commission, 2001) at 1-30.

¹²³ *United Nations Convention on the Rights of Persons with Disabilities* (CRPD), 13 December 2006, UN Doc A/RES/61/106, art 3 and 9.

¹²⁴ *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), 18 December 1979, UN Doc A/RES/34/180; Majid Khan, "Women's Empowerment and Environmental Governance," (2023) MPRA Paper No. 116306, online: https://mpra.ub.uni-muenchen.de/116306/1/MPRA_paper_116306.pdf, preamble, art 3.

¹²⁵ *Convention on the Rights of the Child*, 20 November 1989, UN Doc A/RES/44/25, preamble, article 24(2) (c), 29(e). See also Francesca Ippolito, "The Convention on the Rights of the Child as a Basis for Environment-Related Children's Rights and the Committee on the Rights of the Child's Contribution to Their Expansion" in Francesca Ippolito, ed, *Children's Environmental Rights Under International and EU Law: The Changing Face of Fundamental Rights in Pursuit of Ecocentrism* (The Hague: TMC Asser Press, 2022) 73-167.

¹²⁶ While the core principles of addressing disproportionate environmental impacts on marginalized communities are shared between international law and in the Canadian context, the Canadian definition is tailored to its specific socio-political context, focusing on systemic changes and the inclusion of Indigenous and racialized communities in decision-making processes. Ingrid Waldron & Lisa Gue, "Environmental Justice in Canada Needs Legislative Backing

Indigenous peoples, racialized communities, and low-income groups, have historically been disproportionately affected by environmental hazards and have had limited access to environmental benefits.¹²⁷ Central to achieving these principles are the four primary components of environmental justice, namely distributive justice, procedural justice, corrective justice and recognition justice.¹²⁸

Each of these components plays a crucial role in addressing the complex layers of environmental issues and ensuring that solutions are equitable and inclusive. Notable is that distributive justice focuses on the equitable distribution of environmental benefits and burdens.¹²⁹ It challenges the patterns of inequality that result in marginalized communities bearing a disproportionate share of environmental harms and having less access to environmental benefits.¹³⁰ For example, distributive justice would address issues such as the placement of toxic waste facilities predominantly in low-income or minority neighborhoods.¹³¹ The goal is to ensure that no single group is unfairly subjected to environmental hazards, and that all communities have equal access to clean air, water, and natural resources.¹³²

Complementing distributive justice is procedural justice which emphasizes fairness and transparency in the environmental decision-making processes.¹³³ It involves ensuring that all stakeholders, particularly those from marginalized communities, have an opportunity to participate in decisions that affect their environment and health.¹³⁴ This can include public hearings,

Now," David Suzuki Foundation (21 March 2024), online: <https://davidsuzuki.org/expert-article/environmental-justice-in-canada-needs-legislative-backing-now/>; Olivia Wawin, "Environmental Racism and the Struggle for Change in Canadian Law" (2022) *McGill JL & Health*, online: <https://mjhl.mcgill.ca/2022/03/28/environmental-racism-and-the-struggle-for-change-in-canadian-law/>; Johansen *Supra* note 75 at 1-5; Randolph *Supra* note 114 at 557-560; Waldron *Supra* note 9 at 12-21; Mitchell & D'Onofrio *Supra* note 9 at 306-315.

¹²⁷ Waldron *Supra* note 9 at 36-40.

¹²⁸ Robert Kuehn, "A Taxonomy of Environmental Justice" (2000) *30 Env'tl. L. Rep. News & Analysis* 10681 at 10681-10703; Schlosberg *Supra* note 114 at 11-44, 103-128; Katinka Wijsman & Marta Berbés-Blázquez, "What do we mean by justice in sustainability pathways? Commitments, dilemmas, and translations from theory to practice in nature-based solutions" (2022) *136 Environmental Science & Policy* at 377- 386; Gerhard Reese & Lisa Jacob, "Principles of environmental justice and pro-environmental action: A two-step process model of moral anger and responsibility to act" (2015) *51 Environmental Science & Policy* at 88- 90.

¹²⁹ Kuehn *Supra* note 128 at 10681-10703; Schlosberg *Supra* note 114 at 11-44, 103-128; Wijsman & Berbés-Blázquez *Supra* note 128 at 377- 386; Reese & Jacob *Supra* note 128 at 88- 90.

¹³⁰ Kuehn *Supra* note 128 at 10681-10703; Schlosberg *Supra* note 114 at 11-44, 103-128; Wijsman & Berbés-Blázquez *Supra* note 128 at 377- 386; Reese & Jacob *Supra* note 128 at 88- 90.

¹³¹ Wijsman & Berbés-Blázquez *Supra* note 128 at 377-386.

¹³² Wijsman & Berbés-Blázquez *Supra* note 128 at 377-386.

¹³³ Derek Bell & Jayne Carrick, "Procedural environmental justice" in Ryan Holifield, Jayajit Chakraborty & Gordon Walker, eds, *The Routledge Handbook of Environmental Justice* (Routledge, 2017) at 101- 112.

¹³⁴ Bell & Carrick *Supra* at 101-112.

consultations, and the right to appeal decisions.¹³⁵ Procedural justice seeks to democratize the process by which environmental decisions are made, ensuring that it is not only the powerful or well-connected who influence these outcomes.¹³⁶

Another important element of environmental justice is recognition justice. This aspect of environmental justice stresses the importance of recognizing and respecting the diverse needs, cultures, and rights of marginalized communities.¹³⁷ It acknowledges that environmental issues do not affect all groups equally and that cultural differences and historical contexts must be considered in addressing these issues.¹³⁸ Recognition justice involves valuing the local knowledge and experiences of communities and incorporating this understanding into environmental policy and practice.¹³⁹

Equally important as a component of environmental justice is corrective justice. Corrective justice is a principle that seeks to rectify the wrongs or harms done to individuals or communities by compensating them or restoring their situation to what it would have been had the harm not occurred.¹⁴⁰ It focuses on addressing past injustices and making amends for them.¹⁴¹ In the context of environmental justice, corrective justice involves taking measures to remedy the environmental damages and associated social inequities experienced by communities, particularly those disproportionately affected by environmental degradation.¹⁴²

Understanding and addressing environmental racism requires a comprehensive framework that incorporates the principles of distributive justice, procedural justice, corrective justice and recognition justice.¹⁴³ Distributive justice is crucial as it addresses the unequal distribution of environmental benefits and burdens, ensuring that marginalized communities do not disproportionately bear the brunt of environmental hazards.¹⁴⁴ Procedural justice emphasizes

¹³⁵ Bell & Carrick *Supra* at 101-112.

¹³⁶ Bell & Carrick *Supra* at 101-112.

¹³⁷ Schlosberg *Supra* 114 at 11-44, 103-164.

¹³⁸ Schlosberg *Supra* 114 at 129-164.

¹³⁹ Schlosberg *Supra* 114 at 129-164.

¹⁴⁰ Kuehn *Supra* note 128 at 10681-10703; Sumudu A. Atapattu, Carmen G. Gonzalez & Sara L. Seck, "Intersections of Environmental Justice and Sustainable Development: Framing the Issues" in Sumudu A. Atapattu, Carmen G. Gonzalez & Sara L. Seck, eds, *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge: Cambridge University Press, 2021) at 10.

¹⁴¹ Kuehn *Supra* note 128 at 10681-10703.

¹⁴² Atapattu *et al Supra* note 140 at 10-22.

¹⁴³ Wijsman & Berbés-Blázquez *Supra* note 128 at 377-386; Atapattu *et al Supra* note 140 at 10-22.

¹⁴⁴ Schlosberg *Supra* note 114 at 103-128.

inclusive decision-making processes, guaranteeing that marginalized communities have a voice in the development and implementation of environmental policies that affect them.¹⁴⁵ This helps to democratize environmental governance and ensure that their concerns and needs are taken into account.

Corrective justice is essential in addressing environmental racism as it holds parties responsible for environmental harm accountable by requiring them to provide compensation and restoration to affected communities, such as the formal apology and compensation for Africville residents, and the restorative Inquiry into the Nova Scotia Home for Colored Children.¹⁴⁶ Furthermore, recognition justice is vital for acknowledging and respecting the unique needs, cultures, and rights of marginalized communities, ensuring that environmental policies are culturally sensitive and responsive.¹⁴⁷ By integrating these components, we can develop more effective strategies to combat environmental racism, addressing its root causes and promoting a healthier, more equitable society.¹⁴⁸ This holistic approach ensures that efforts to achieve environmental justice are not only about fair distribution but also about inclusive participation and cultural recognition.¹⁴⁹ Having defined environmental justice, and without deviating from the aim of this chapter, this study deems it necessary to provide a brief overview of the history of environmental justice.

2.4.1 History of environmental justice

The concept of environmental justice emerged as a distinct and powerful response to environmental inequalities. Its roots can be traced back to grassroots movements in the United States during the early 1980s.¹⁵⁰ These movements initially focused on combating the disproportionate environmental burdens borne by minority communities and low-income groups.

¹⁴⁵ Bell & Carrick *Supra* note 133 at 101-112.

¹⁴⁶ Michael Tutton, "Halifax Mayor Apologizes to Africville Residents," *The Star* (24 February 2010), online: https://www.thestar.com/news/canada/halifax-mayor-apologizes-to-africville-residents/article_b18b69bf-881f-5a94-aac-67b8171ed018.html; Bonnie McElhinny, "Reparations and Racism, Discourse and Diversity: Neoliberal Multiculturalism and the Canadian Age of Apologies" (2016) 51 *Language & Communication* 50-68; Alexandra Kitson & Lisa Berglund, "Heritage and Trauma: Reimagining the Preservation Planning Process for the Nova Scotia Home for Colored Children" (2021) 30:2 *Canadian Journal of Urban Research* 94-108.

¹⁴⁷ Schlosberg *Supra* note 114 at 129-164.

¹⁴⁸ Schlosberg *Supra* note 114 at 129-164.

¹⁴⁹ Schlosberg *Supra* note 114 at 103-164.

¹⁵⁰ CG Gonzalez, "Environmental Racism, American Exceptionalism, and Cold War Human Rights" (2017) 26 *Transnational Law and Contemporary Problems* 281 at 282-283.

For example, in 1982, the protest against the siting of a hazardous waste landfill in Warren County, North Carolina, marked a pivotal moment in the environmental justice movement.¹⁵¹ This event is widely regarded as the birth of the environmental justice movement.¹⁵² In this instance, the local community, which was predominantly African American and economically disadvantaged, supported by national civil rights leaders and organizations, engaged in weeks of protests and legal challenges to oppose the dumping of PCBs in their community.¹⁵³

Over six weeks, protesters staged nonviolent demonstrations, leading to over 500 arrests.¹⁵⁴ This widespread civil disobedience drew national attention to the issue of environmental racism, the disproportionate impact of environmental hazards on communities of color and low-income communities.¹⁵⁵ The Warren County protests galvanized a broader movement, culminating in the establishment of the environmental justice framework, which integrates civil rights with environmental protection to ensure that all people, regardless of race or income, have the right to a healthy environment.¹⁵⁶

This activism was not isolated but part of a broader pattern where marginalized communities were frequently targeted for environmentally hazardous facilities.¹⁵⁷ The movement's traction gained further credibility through several landmark studies in the late 1980s and early 1990s, which statistically confirmed that toxic waste facilities were disproportionately located in areas inhabited by minorities and the economically disadvantaged.¹⁵⁸

One of the most significant studies was the 1987 report "Toxic Wastes and Race in the United States," conducted by the United Church of Christ Commission for Racial Justice.¹⁵⁹ This report was groundbreaking in providing the first comprehensive national study demonstrating the

¹⁵¹ Bullard *et al Supra* note 78 at vii, viii, 1-4.

¹⁵² Robert D. Bullard, "Environmental Justice in the 21st Century: Race Still Matters," *Phylon* 49, no. 3/4 (2001) at 151-163.

¹⁵³ Bullard *et al Supra* note 78 at vii, viii, 1-8; Eileen McGurty, "From NIMBY to Civil Rights: The Origins of the Environmental Justice Movement" (1997) 2:3 *Environmental History* at 301-320.

¹⁵⁴ McGurty *Supra* note 153 at 301-320.

¹⁵⁵ Steve Lerner, "Warren County's Legacy for Environmental Justice" (2002) 44:4 *Environment: Science and Policy for Sustainable Development* at 6- 19; United Church of Christ, *Commission for Racial Justice, Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* (Public Data Access, 1987) 1-79.

¹⁵⁶ Lerner *Supra* at 6-19.

¹⁵⁷ McGurty *Supra* note 154 at 301-305; Pulido *Supra* note 72 at 12.

¹⁵⁸ Bunyan Bryant & Paul Mohai, "Environmental Racism: Reviewing the Evidence" in Bunyan Bryant & Paul Mohai, eds, *Race and the Incidence of Environmental Hazards* (Westview Press, 1992) 163- 170.

¹⁵⁹ United Church of Christ, Commission for Racial Justice *Supra* note 155 at 1-79; Pulido *Supra* note 72 at 12, 14.

correlation between race and the location of hazardous waste sites.¹⁶⁰ The findings revealed that race was the most significant predictor of where these facilities were located, even more so than socio-economic status.¹⁶¹

Following this, in 1992, the National Law Journal published a series of articles titled “Unequal Protection: The Racial Divide in Environmental Law,” which highlighted disparities in the enforcement of environmental laws.¹⁶² The series showed that penalties for environmental violations were significantly lower in minority and low-income communities compared to predominantly white communities.¹⁶³ In 1994, the Environmental Protection Agency (EPA) released a report titled “Environmental Equity: Reducing Risk for All Communities”.¹⁶⁴ This report examined the distribution of environmental risks and confirmed the disproportionate burden of pollution and hazardous waste borne by minority and low-income populations.¹⁶⁵ It also highlighted the need for equitable environmental protection measures.¹⁶⁶

In the Canadian context environmental justice can be traced back to a history of Indigenous stewardship, colonial impacts, industrialization, and the evolving recognition of the intersection between environmental protection and social equity.¹⁶⁷ Long before the term "environmental justice" was coined,¹⁶⁸ Indigenous peoples in Canada practiced sustainable living and environmental stewardship.¹⁶⁹ Their traditional ecological knowledge and practices ensured a

¹⁶⁰ Bryant & Mohai *Supra* note 158 at 165-172; United Church of Christ, Commission for Racial Justice *Supra* note 155 at 1-79.

¹⁶¹ Bryant & Mohai *Supra* note 158 at 165-172; United Church of Christ, Commission for Racial Justice *Supra* note 155 at 1-79.

¹⁶² Marianne Lavelle & Marcia Coyle, "Unequal protection: the racial divide in environmental law" (1992) 15:3 National Law Journal at S1- S12; Robert D. Bullard, *Confronting Environmental Racism: Voices from the Grassroots* (South End Press, 1993) at 1-40; Luke W Cole & Sheila R Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (NYU Press, 2001) at 19-53.

¹⁶³ Lavelle & Coyle *Supra* note 162 at S1-S12.

¹⁶⁴ United States, Environmental Protection Agency, *Environmental Equity Workgroup, Environmental Equity: Reducing Risk for All Communities: Report to the Administrator from the EPA Environmental Equity Workgroup*, vol 2 (US Environmental Protection Agency, Office of Policy, Planning and Evaluation, 1992) at 1-49; Lavelle & Coyle *Supra* note 162 at S1-S12.

¹⁶⁵ United States, Environmental Protection Agency *Supra* at 1-49; Lavelle & Coyle *Supra* note 162 at S1-S12.

¹⁶⁶ United States, Environmental Protection Agency *Supra* at 1-49; Lavelle & Coyle *Supra* note 162 at S1-S12.

¹⁶⁷ Haluza-Delay *Supra* note 126 at 557-571.

¹⁶⁸ The term “environmental justice” was coined in 1982. See Joan Martínez-Alier, "The United States: The Cradle of Environmental Justice Against Environmental Racism" in José Esteban Castro & Tom Perreault, eds, *Land, Water, Air and Freedom* (Edward Elgar Publishing, 2023) at 535-537, 556.

¹⁶⁹ Jessica Clogg *et al*, "Indigenous Legal Traditions and the Future of Environmental Governance in Canada" (2016) 29:227 *Journal of Environmental Law and Practice* at 1-12.

harmonious relationship with the land, water, and natural resources.¹⁷⁰ However, European colonization in the 17th and 18th centuries brought significant disruption.¹⁷¹ The imposition of European land use practices, resource extraction, and settlement patterns often disregarded Indigenous knowledge and rights, leading to environmental degradation and social injustices that disproportionately affected Indigenous communities.¹⁷²

As a result, the 19th and early 20th centuries saw rapid industrialization in Canada, marked by the growth of industries such as logging, mining, and oil extraction.¹⁷³ These activities had profound environmental impacts, including deforestation, pollution, and habitat destruction.¹⁷⁴ The negative effects were often felt most acutely by marginalized communities, particularly Indigenous peoples who lived close to resource-rich areas.¹⁷⁵ Despite these impacts, environmental justice was not a mainstream concern, and the voices of affected communities were frequently overlooked.¹⁷⁶

Following this, the 1960s and 1970s witnessed a burgeoning environmental movement in Canada which was influenced by global trends and landmark publications like Rachel Carson's "Silent Spring."¹⁷⁷ This period saw increased public awareness and activism around environmental issues, leading to the establishment of organizations such as Greenpeace, which originated in Vancouver in 1971.¹⁷⁸ While these movements primarily focused on issues like pollution, wildlife conservation, and nuclear testing, they also laid the groundwork for linking environmental concerns with social justice.¹⁷⁹

¹⁷⁰ Clogg *et al Ibid*.

¹⁷¹ Chris Hiller & Elizabeth Carlson, "These Are Indigenous Lands: Foregrounding Settler Colonialism and Indigenous Sovereignty as Primary Contexts for Canadian Environmental Social Work" (2018) 35:1 *Canadian Social Work Review* at 45-65.

¹⁷² Hiller & Carlson *Supra* at 45-60.

¹⁷³ Yin Paradies, "Colonisation, Racism and Indigenous Health" (2016) 33:1 *Journal of Population Research* at 83-96; Ken Drushka, *Canada's Forests: A History* (Montreal: McGill-Queen's Press-MQUP, 2003) at 6-83; James P Hull, "The Second Industrial Revolution and the Staples Frontier in Canada: Rethinking Knowledge and History" (1994) 18:1 *Scientia Canadensis* at 22-37; Liza Piper, *The Industrial Transformation of Subarctic Canada* (Vancouver: UBC Press, 2010) at 1-16.

¹⁷⁴ Drushka *Supra* note 173 at 6-83; Hull *Supra* note 173 at 22-37.

¹⁷⁵ Paradies *Supra* note 173 at 83-90.

¹⁷⁶ Paradies *Supra* note 173 at 83-90.

¹⁷⁷ Gary Wiener, ed, *The Environment in Rachel Carson's Silent Spring* (Farmington Hills: Greenhaven Publishing LLC, 2011) at 42-135.

¹⁷⁸ John-Henry Harter, "Environmental Justice for Whom? Class, New Social Movements, and the Environment: A Case Study of Greenpeace Canada, 1971-2000" (2004) 54 *Labour/Le Travailleur* at 83-120.

¹⁷⁹ Wiener *Supra* note 177 at 42-135; Harter *Supra* at 83-120.

The concept of environmental justice began to take shape in the 1980s and 1990s, as activists and scholars started to highlight the disproportionate environmental burdens borne by marginalized communities.¹⁸⁰ A landmark event in this period was the 1991 People of Color Environmental Leadership Summit in the United States, which had a significant influence on Canadian activists and policymakers.¹⁸¹ The summit's principles underscored the need to address environmental racism and ensure equitable access to a healthy environment for all communities.¹⁸²

A pivotal aspect of environmental justice in Canada is the recognition of Indigenous rights. Legal milestones, such as the 1982 patriation of the Constitution and the inclusion of section 35, affirmed existing Aboriginal and treaty rights.¹⁸³ Subsequent Supreme Court rulings, including the landmark 1997 *Delgamuukw* decision, reinforced the importance of Indigenous land claims and the need for meaningful consultation in resource development projects.¹⁸⁴

The late 20th and early 21st centuries saw numerous conflicts and collaborations between Indigenous communities and the Canadian government over environmental issues.¹⁸⁵ Notable examples include the opposition to the James Bay hydroelectric project in Quebec, which led to the 1975 James Bay and Northern Quebec Agreement, and the ongoing resistance against pipeline projects that threaten Indigenous lands and waters.¹⁸⁶

In recent years, environmental justice has gained increased recognition within Canadian environmental policy and discourse. The federal government has made commitments to

¹⁸⁰ Haluza-Delay *Supra* note 126 at 557-572; Mascarenhas *Supra* note 75 at 565-577. Also see David Suzuki Foundation, "About," online: <https://davidsuzuki.org/about/>.

¹⁸¹ United Church of Christ, "30th Anniversary: The First National People of Color Environmental Leadership Summit," United Church of Christ (25 March 2021), online: <https://www.ucc.org/30th-anniversary-the-first-national-people-of-color-environmental-leadership-summit/>.

¹⁸² United Church of Christ *Ibid.*

¹⁸³ *Constitution Act*, 1982, s 35, being *Schedule B to the Canada Act* 1982 (UK), 1982, c 11; Douglas Sanders, "The Rights of the Aboriginal Peoples of Canada" (1983) 61 *Can B Rev* at 314-338.

¹⁸⁴ *Delgamuukw v British Columbia*, [1997] 3 SCR 1010. In 1997, the Supreme Court of Canada delivered a landmark decision in *Delgamuukw v British Columbia*, which significantly impacted the recognition and understanding of Aboriginal title in Canada. The court ruled that Aboriginal title constitutes a right to the land itself, not just the right to hunt, fish, or gather, and must be protected under section 35(1) of the *Constitution Act*, 1982.

¹⁸⁵ Don Wall, "The Battle for James Bay," Daily Commercial News (10 November 2017), online: <https://canada.constructconnect.com/dcn/news/infrastructure/2017/11/the-battle-for-james-bay-1028910w>; Amnesty International, "Canada: Construction of pipeline on Indigenous territory endangers land defenders," Amnesty International Canada (3 October 2022), online: <https://amnesty.ca/human-rights-news/canada-construction-of-pipeline-on-indigenous-territory-endangers-land-defenders/>; Pierre Senécal & Dominique Égré, "Human Impacts of the La Grande Hydroelectric Complex on Cree Communities in Québec" (1999) 17:4 *Impact Assessment and Project Appraisal* at 319-329.

¹⁸⁶ Wall *Supra*; Amnesty International *Supra*; Senécal & Égré *Supra* at 319-329.

reconciliation with Indigenous peoples, including addressing historical environmental injustices.¹⁸⁷ The Truth and Reconciliation Commission's Calls to Action, particularly those related to land, resources, and health, highlight the need for integrating Indigenous perspectives into environmental governance.¹⁸⁸

Importantly, grassroots movements and organizations continue to play a crucial role in advancing environmental justice.¹⁸⁹ Significant grassroots efforts include the Africville Genealogy Society and the campaign against Alton Gas project.¹⁹⁰ The Africville Genealogy Society was established in 1983, and has been instrumental in seeking justice, preserving Africville community's history, and advocating for reparations and environmental equity.¹⁹¹ In the same light, the campaign against the Alton Gas project, where Indigenous Mi'kmaq activists have been at the forefront of opposing the project's potential harm to the Shubenacadie River is a notable environmental justice movement that underscores the critical role of Indigenous leadership in protecting natural resources.¹⁹² This movement has drawn attention to the environmental and cultural significance of the river, advocating for the preservation of traditional lands and waters against corporate interests.¹⁹³ It exemplifies the broader struggle for environmental justice in Nova Scotia, highlighting the intersection of environmental protection, Indigenous rights, and community resilience in the face of ecological threats.¹⁹⁴

These studies provided empirical evidence that environmental hazards were not randomly distributed but were systematically placed in Indigenous communities and communities of color and economically disadvantaged areas.¹⁹⁵ This body of research played a crucial role in

¹⁸⁷ Truth and Reconciliation Commission of Canada, "Truth and Reconciliation Commission of Canada: Calls to Action" (2015), online: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf.

¹⁸⁸ Truth and Reconciliation Commission of Canada *Ibid.*

¹⁸⁹ Africville Genealogy Society, "About the Society," online: Africville Society (2017) <http://africville.ca/society/>; Ingrid Waldron, "Pipelines and Protests: Legacies of Struggle and Resistance" (2022) *Brown Journal of World Affairs* at 4-10.

¹⁹⁰ Africville Genealogy Society *Supra*; Waldron *Supra* at 4-10.

¹⁹¹ Africville Genealogy Society *Supra* note 189; Clairmont, Don. "Africville." (2007). Online: Dalhousie University <https://dalspace.library.dal.ca/bitstream/handle/10222/72252/AFRICVILLE,%20Encyclopedia%202007.pdf?sequence=1> at 1-3;

¹⁹² Waldron *Supra* note 189 at 4-10.

¹⁹³ Waldron *Supra* note 189 at 4-10.

¹⁹⁴ Waldron *Supra* note 189 at 4-10.

¹⁹⁵ Waldron *Supra* note 189 at 4-10.

legitimizing the environmental justice movement and informing subsequent policy and advocacy efforts aimed at addressing these inequities.¹⁹⁶

Additionally, the environmental justice movement's narrative is intertwined with the broader historical context of oppression and marginalization.¹⁹⁷ The movement not only addresses the immediate impacts of environmental injustices but also views them as manifestations of deeper historical and institutional racism.¹⁹⁸ This perspective is supported by the continuous advocacy and analytical work by scholars and activists who link environmental policy failures directly to systemic racial and social inequities.¹⁹⁹

The environmental justice movement understands that the placement of hazardous waste sites, industrial facilities, and other sources of pollution in marginalized communities is not a series of isolated incidents but rather a symptom of long-standing systemic racism.²⁰⁰ This perspective argues that discriminatory practices in housing, land use, and political disenfranchisement have historically funnelled minority and low-income populations into areas that are more likely to be targeted for environmental hazards.²⁰¹

Prominent scholars such as Dr Robert Bullard, often referred to as the “father of environmental justice,” have extensively documented these patterns.²⁰² In his seminal book, “Dumping in Dixie: Race, Class, and Environmental Quality”, Bullard outlines how African American communities in the South have been disproportionately affected by environmental hazards due to historical and structural inequalities.²⁰³ Another influential scholar, Dr Beverly Wright, founder and executive director of the Deep South Center for Environmental Justice, has conducted critical research on the impacts of environmental racism in Louisiana and the broader

¹⁹⁶ Waldron *Supra* note 189 at 4-10; Lavelle & Coyle *Supra* note 162 at S1-S12; United States, Environmental Protection Agency *Supra* note 164 at 1-49; Bryant & Mohai *Supra* note 162 at 165-176.

¹⁹⁷ Pulido *Supra* note 72 at 12-36; Giovanna Di Chiro, "Nature as Community: The Convergence of Environment and Social Justice" in William Cronon, ed, *Uncommon Ground: Rethinking the Human Place in Nature* (W.W. Norton & Company, 1995) at 298- 320.

¹⁹⁸ Pulido *Supra* note 72 at 12-36; Di Chiro *Supra* at 298- 320.

¹⁹⁹ Pulido *Supra* note 72 at 12-36; Di Chiro *Supra* at 298- 320.

²⁰⁰ Cole & Foster *Supra* note 12 at 19-53.

²⁰¹ Bryant & Mohai *Supra* note 158 at 165-176.

²⁰² Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (Westview Press, 1990) at 1-36.

²⁰³ Bullard *Ibid*.

Gulf Coast region.²⁰⁴ Her work has highlighted how these communities are doubly burdened by both environmental hazards and socio-economic challenges.²⁰⁵

Furthermore, organizations such as the Environmental Justice Health Alliance for Chemical Policy Reform (EJHA) and the Center for Earth, Energy and Democracy (CEED) were also at the forefront of advocating for policy changes that address these systemic issues.²⁰⁶ These groups work to ensure that environmental policies are not only equitable but also inclusive of the voices of those most affected by environmental injustices.²⁰⁷ Moreover, the landmark 1991 National People of Color Environmental Leadership Summit, which produced the “Principles of Environmental Justice,” was a pivotal event that brought together a diverse coalition of activists, scholars, and community leaders.²⁰⁸ This summit solidified the connection between environmental justice and broader social justice movements, emphasizing the need to address root causes such as racial discrimination and economic inequality.²⁰⁹

The continuous efforts of these scholars, activists, and organizations underscore the environmental justice movement’s focus on not only alleviating immediate environmental harms but also dismantling the underlying structures of racism and inequality that perpetuate these injustices. To build a robust framework for addressing environmental racism, it is essential to look at the broader concept of environmental justice, which is supported by several key international frameworks and declarations. Recognizing the need for equity, inclusion, and the right of all people to live in a healthy environment, these international instruments have shaped the principles and practices of environmental justice globally. Similarly, principles and practices of environmental justice have over the years shaped these international instruments, thus providing the foundation for national and provincial policies that aim to achieve fair and inclusive environmental governance.

²⁰⁴ Beverly Wright & Robert D. Bullard, *The Wrong Complexion for Protection: How the Government Response to Disaster Endangers African American Communities* (NYU Press, 2012) at 1-230; Robert D. Bullard & Beverly Wright, "The Politics of Pollution: Implications for the Black Community" (1986) 47:1 *Phylon* at 71-78

²⁰⁵ Wright & Bullard *Supra* note 204 at 1-230; Bullard & Wright *Supra* note 204 at 71-78.

²⁰⁶ Environmental Justice Health Alliance for Chemical Policy Reform, "Environmental Justice for All", online: EJ for All <https://ej4all.org/>; Center for Earth, Energy and Democracy, "Home", online: CEED <https://ceed.org/>.

²⁰⁷ Environmental Justice Health Alliance *Ibid*.

²⁰⁸ See generally Robert D. Bullard, Glenn S. Johnson & Angel O. Torres, "Second National People of Color Environmental Leadership Summit—Summit II" (2002); Running Grass & Julian Agyeman, "Second National People of Color Environmental Leadership Summit—Summit II" (2002).

²⁰⁹ Bullard *et al Ibid*.

2.5 International instruments and policies

As the environmental justice movement evolved, it prompted a critical examination of not only environmental policies but also the socio-economic and political frameworks that perpetuate environmental inequalities. This has led to a significant paradigm shift in how environmental policies are shaped, evaluated and implemented. The goal is to ensure that international and domestic environmental policies are more inclusive and equitable. In this respect, internationally, the principles of environmental justice have been increasingly recognized in various international environmental law instruments and international human rights instruments. However, as discussed below, international instruments often overlap, to function as both human rights and environmental law instruments.

In considering these instruments, this thesis takes note of article 38 of the ICJ Statute which identifies the primary sources of international law.²¹⁰ Among the primary sources in the ICJ Statute are international treaties and conventions, international custom, and general principles of law recognized by civilized nations.²¹¹ For Canada, these sources play varying roles in shaping both national policy and international obligations concerning environmental justice.²¹² Treaties and conventions, such as the Paris Agreement, hold significant weight as they create binding commitments.²¹³ International custom, as reflected in practices like the principle of sustainable development, influences Canadian law and policy through established global norms.²¹⁴ Moreover, general principles of law, including those relating to equity and justice, underpin both domestic and international efforts to address environmental inequities.²¹⁵

²¹⁰ ICJ Statute *Supra* note 53 art 38: The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

²¹¹ ICJ Statute *Supra* note 53 art 38.

²¹² David B Hunter, "International Environmental Law: Sources, Principles and Innovations" in Paul G Harris, ed, *Routledge Handbook of Global Environmental Politics* (London: Routledge, 2022) 132 at 132- 134.

²¹³ *Paris Agreement*, 12 December 2015, FCCC/CP/2015/10/Add.1, art 2 (entered into force 4 November 2016). See also John Dillon, "Huge Challenges for Canada after the Paris Climate Conference" (2016) *Kairos Discussion Papers* at 1-24.

²¹⁴ Christina Voigt, ed, *Sustainable Development as a Principle of International Law: Resolving Conflicts Between Climate Measures and WTO Law*, vol 2 (Leiden: Brill, 2009) at 1-18.

²¹⁵ Gregory F Maggio, "Inter/Intra-Generational Equity: Current Applications Under International Law for Promoting the Sustainable Development of Natural Resources" (1996) 4:1 *Buff Envtl LJ* 161 at 161-165.

In light of the vast array of international instruments related to environmental justice, this thesis will, for the sake of brevity, time, and scope, focus on the most pertinent ones. To ensure clarity and coherence, these selected instruments will be examined in chronological order. This approach allows for a streamlined analysis that highlights the evolution of environmental justice principles over time, providing a clear and concise understanding of their impact on both international law and Canada's policies.

Among these pivotal instruments is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).²¹⁶ ICERD is a key international treaty that aims to eliminate racial discrimination and promote equality.²¹⁷ The Convention obligates its signatory countries to take concrete measures to eradicate racial discrimination in all its forms and to promote understanding among all races.²¹⁸ Countries that ratify the treaty commit to condemning racial discrimination and undertaking measures to eliminate it, including by amending or repealing laws and regulations that create or perpetuate racial discrimination.²¹⁹

In the context of this thesis, ICERD is highly relevant to issues of environmental justice and environmental racism. ICERD mandates that state parties prohibit and eliminate racial discrimination in all its forms, including policies and practices that disproportionately harm such persons.²²⁰ This thesis argues that ICERD's provisions include ensuring equal access to environmental benefits and protections, such as clean air, water, and safe living conditions.²²¹ By

²¹⁶ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, Treaty Series, vol. 660, p. 195, 21 December 1965, <https://www.refworld.org/legal/agreements/unga/1965/en/13974> herein (ICERD). ICERD was adopted by the United Nations General Assembly in 1965 and entered into force in 1969.

²¹⁷See also the general works of E Schwelb, "The international convention on the elimination of all forms of racial discrimination," *International & Comparative Law Quarterly* 15, no. 4 (1966) at 996-1068; David Matas, "Domestic Implementation of International Human Rights Agreements" (1987) *Can Hum Rts YB* 91 at 91-118.

²¹⁸ ICERD *Supra* note 216 at 212-213. Canada, South Africa, and the United States of America are all parties to the ICERD. Canada ratified ICERD on October 14, 1970, South Africa on December 10, 1998, and the United States on October 21, 1994. By ratifying ICERD, each country has committed to align its national laws and policies with the convention's requirements to combat racial discrimination. However, the United States has done so with several reservations, understandings, and declarations that affect the full implementation of the convention's provisions domestically. Nevertheless, all three countries are required to periodically report to the Committee on the Elimination of Racial Discrimination on their progress in addressing racial discrimination.

²¹⁹ ICERD *Supra* note 216 at 212-213; Matas *Supra* note 217 at 92-99.

²²⁰ ICERD *Supra* note 216, art 5; Matas *Supra* note 217 at 92-99.

²²¹ Neil AF Popović, "Environmental Racism in the United States and the Convention on the Elimination of Racial Discrimination" (1996) 14:3 *Netherlands Q Hum Rts* 277 at 277-280. Without digressing from the flow of this chapter, this study would like to note that ICERD, in article 5, recognizes the need for equality in several rights except the right to a healthy environment or the right to have the environment protected. This in a way reflects how the environmental right has been disregarded or given little importance. It is such disregard for environmental rights or

addressing systemic inequalities and ensuring that environmental policies do not have a discriminatory impact, ICERD supports the goals of environmental justice.

The treaty's relevance to environmental justice is further highlighted through the work of the Committee on the Elimination of Racial Discrimination (CERD), which monitors the implementation of ICERD by its member states.²²² The Committee has addressed environmental racism in its reviews and recommendations, urging countries to take proactive steps to protect marginalized communities from environmental harm.²²³ This includes advocating for equitable distribution of environmental benefits and burdens, ensuring that marginalized communities have a voice in environmental decision-making processes, and implementing effective legal remedies for those affected by environmental injustices.²²⁴

Of further relevance to this thesis is the fact that the Environmental Racism Act aligns with the principles and obligations outlined in ICERD. ICERD requires signatory states, including Canada, to eliminate racial discrimination and promote equality in all areas.²²⁵ The Environmental Racism Act addresses these requirements by mandating the development of a national strategy to identify, assess, and mitigate environmental racism, which disproportionately affects marginalized communities, including Indigenous and Black Canadians.²²⁶ By focusing on the environmental injustices faced by racialized communities, the Environmental Racism Act supports the goals of ICERD to promote equitable treatment and prevent discriminatory practices. The Act's emphasis on public participation, legal reforms, and targeted interventions aligns with ICERD's framework for eliminating racial discrimination and promoting social justice.²²⁷

equality that has for time immemorial led to the proliferation of environmental injustices such as environmental racism. This also explains why very few countries have looked into environmental racism in particular. However, this argument will not be considered in this thesis, but could be engaged in future scholarly research.

²²² OHCHR, Committee on the Elimination of Racial Discrimination, online, <https://www.ohchr.org/en/treaty-bodies/cerd>.

²²³ OHCHR *Supra* note 222; Popović *Supra* note 221 at 278-290.

²²⁴ OHCHR *Supra* note 222; Popović *Supra* note 221 at 278-290.

²²⁵ ICERD *Supra* note 216, art 5.

²²⁶ ERA *Supra* note 8, preamble, art 3. The ERA embodies ICERD's call for proactive measures to combat systemic inequalities and ensure equal access to environmental benefits and protections.

²²⁷ ERA *Supra* note 8, preamble, art 3. In doing so, The ERA not only fulfils Canada's international human rights obligations under ICERD but also advances national efforts to create a more just and equitable society by addressing the environmental dimensions of racial inequality.

Also important is the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration).²²⁸ The Stockholm Declaration was adopted on June 16, 1972, during the first United Nations Conference on the Human Environment held in Stockholm, Sweden.²²⁹ This landmark declaration is considered a foundational document in international environmental law, that sets the stage for global environmental governance and the recognition of the interdependence between human rights and environmental protection.²³⁰

The Stockholm Declaration consists of 26 principles that guide the international community in environmental conservation and sustainable development.²³¹ Of these principles, several explicitly address environmental justice and emphasize on the equitable distribution of environmental benefits and burdens. For instance, principle 1 of the Stockholm provides that everyone has the right to equality, freedom, and “adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”²³² This principle underscores the intrinsic link between human rights and a healthy environment, asserting that environmental quality is essential for human dignity and well-being.²³³ It lays the foundation for environmental justice by recognizing that all individuals are entitled to a safe and healthy environment.

Despite its groundbreaking nature, the Stockholm Declaration has faced considerable criticism for its limitations in addressing environmental justice.²³⁴ One of the primary criticisms of the Stockholm Declaration is its insufficient focus on the social dimensions of environmental issues, particularly the intersections of race, poverty, and environmental degradation.²³⁵ The

²²⁸ *United Nations Conference on the Human Environment, Declaration of the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (1972) (Stockholm Declaration).

²²⁹ Stockholm Declaration *Supra*; Louis B Sohn, "The Stockholm Declaration on the Human Environment" (1973) 14:3 *Harv Int'l LJ* 423 at 423-425.

²³⁰ Sohn *Supra* note 229 at 423, 424, 514-515.

²³¹ Stockholm Declaration *Supra* note 228.

²³² Stockholm Declaration *Supra* note 228 at 2; Alexandre Kiss, "The Destiny of the Principles of the Stockholm Declaration" in Myron H Nordquist, John Norton Moore & Said Mahmoudi, eds, *The Stockholm Declaration and Law of the Marine Environment* (Leiden: Brill Nijhoff, 2003) 53 at 53-55; Günther Handl, "Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992" (2012) 11:6 *United Nations Audiovisual Library of International Law* 1 at 1-11.

²³³ Kiss *Supra* note 232 at 53-55; Handl *Supra* note 232 at 1-6.

²³⁴ Jutta Brunnée, "The Stockholm Declaration and the Structure and Processes of International Environmental Law" in Aldo Chircop, Ted L McDorman & Susan Rolston, eds, *The Future of Ocean Regime-Building* (Leiden: Brill Nijhoff, 2009) 39 at 399-462; ²³⁴ Sohn *Supra* note 229 at 423-515.

²³⁵ Melissa J Durkee, "International Environmental Law at Its Semcentennial: The Stockholm Legacy" (2021) 50 *Ga J Int'l & Comp L* 748 at 750-753; Brunnée *Supra* note 234 at 399-462.

declaration predominantly framed environmental problems through a universal lens, often neglecting the disparate impacts on marginalized communities.²³⁶

For instance, principle 1 of the Stockholm Declaration which establishes a universal right to a healthy environment.²³⁷ Although this is a significant and progressive acknowledgment, the declaration frames this right in broad terms without addressing how environmental degradation disproportionately affects marginalized communities.²³⁸ The Stockholm Declaration's language does not differentiate between the experiences of affluent and impoverished populations or between racialized and non-racialized groups, thereby assuming that environmental impacts are uniformly distributed.²³⁹ In addressing the right to a healthy environment, the Stockholm Declaration does not provide specific guidelines or mechanisms to ensure that this right is equitably realized for all communities.²⁴⁰ The declaration's principles are framed in a manner that assumes equal capacity and responsibility among all states and communities to protect the environment, ignoring the unequal power dynamics and resource distribution that exacerbate environmental injustices.²⁴¹ This universalist approach fails to account for the systemic inequities that result in marginalized communities bearing a disproportionate share of environmental burdens.

Similarly, principle 6 highlights the importance of protecting and improving the environment for the benefit of all people.²⁴² However, this provision does not specify measures to safeguard vulnerable populations who suffer the most from environmental degradation.²⁴³ The universal language of "all people" masks the disparate impacts on different communities, failing to provide targeted protections or recognize the unique challenges faced by marginalized groups. This oversight can be attributed to the problematic wording of general principles that are often rooted in the laws of so-called "civilized nations," as critiqued by scholars like Usha Natarajan.²⁴⁴

²³⁶ Durkee *Ibid.*

²³⁷ Stockholm Declaration *Supra* note 228 at principle 1.

²³⁸ Durkee *Supra* note 235 at 752; Rebecca Bratspies, "'In Countless Ways and on an Unprecedented Scale': Reflections on the Stockholm Declaration at 50" (2021) 50 *Ga J Int'l & Comp L* 754 at 756-768.

²³⁹ Durkee *Supra* note 235 at 752; Bratspies *Supra* note 238 at 760-766.

²⁴⁰ Durkee *Supra* note 235 at 752; Bratspies *Supra* note 238 at 760-766.

²⁴¹ Durkee *Supra* note 235 at 752; Bratspies *Supra* note 238 at 760-766.

²⁴² Stockholm Declaration *Supra* note 228 at principle 6.

²⁴³ Durkee *Supra* note 235 at 752; Bratspies *Supra* note 238 at 760-766.

²⁴⁴ Usha Natarajan, "TWAAIL and the Environment: The State of Nature, the Nature of the State, and the Arab Spring" (2012) 14 *Or Rev Int'l L* 177 at 177-202.

Natarajan argues that such principles reflect a Western-centric perspective, neglecting the historical and socio-economic contexts that shape environmental injustices in the Global South.²⁴⁵ By relying on vague and generalized language, the declaration inadvertently perpetuates the marginalization of vulnerable populations. The assumption that environmental benefits and protections can be uniformly applied across all societies ignores the structural inequalities and specific needs of different communities.

Further to the shortcomings of the Stockholm Declaration, is the fact that it is not a legally binding treaty but a set of principles that guide international environmental policy.²⁴⁶ Because the Stockholm Declaration is not legally binding, its effectiveness is questioned, with some scholars suggesting that it serves more as a symbolic statement rather than a practical tool for change.²⁴⁷ Nonetheless, this thesis argues that although non-binding on states, the Stockholm Declaration still carries significant moral and political weight that can influence national and international environmental laws and policies.

This influence can be linked to article 38 of ICJ Statute. Thus, the Stockholm Declaration falls under the category of "soft law."²⁴⁸ The principles in the Stockholm Declaration can shape state behavior and contribute to the formation of customary international law by guiding national policies and practices.²⁴⁹ This is particularly relevant to environmental law, where the declaration's principles are often referenced in international and national legal frameworks.

Canada, as a signatory to the Stockholm Declaration, has committed to upholding its principles through various national laws and policies.²⁵⁰ On this note, the principle 1 of the Stockholm Declaration can be seen as having been integrated into some of Canada's environmental laws such as CEPA's provisions on the right to a healthy environment.²⁵¹ The specific provisions of CEPA are discussed in chapter three and will not be rehashed here. Despite these efforts, Canada could improve its laws on environmental justice to better align with the Stockholm Declaration,

²⁴⁵ Natarajan *Ibid.*

²⁴⁶ ICJ Statute *Supra* note 53, art 38; RR Baxter, "International Law in 'Her Infinity Variety'" (1980) 29:4 *Intl & Comp LJ* 549 at 549-566.

²⁴⁷ Durkee *Supra* note 235 at 752; Bratspies *Supra* note 238 at 760-766.

²⁴⁸ Soft law refers to instruments that, while not legally binding, can influence the development of customary international law and state practice. Baxter *Supra* note 246 at 549-566.

²⁴⁹ ICJ Statute *Supra* note 53, art 38; Baxter *Supra* note 246 at 549-566.

²⁵⁰ ICJ Statute *Supra* note 53, art 38; Baxter *Supra* note 246 at 549-566.

²⁵¹ CEPA *Supra* note 46, preamble, art 2(1) and 5(1).

for instance through enhancing legal protections for marginalized and vulnerable communities disproportionately affected by environmental degradation. This includes adopting specific environmental justice legislation that addresses systemic inequalities. In this respect, this thesis submits that with proper implementation and strategy, the Environmental Racism Act could be a significant step to bridging the gap between the current legal framework and the aspirations of the Stockholm Declaration.

Building upon the foundations of the Stockholm Declaration is the Rio Declaration on Environment and Development (hereinafter the Rio Declaration).²⁵² The Rio Declaration is a notable instrument in international environmental law matters. It consists of 27 principles intended to guide sustainable development worldwide.²⁵³ These principles emphasize the need for a balanced and integrated approach to environmental and developmental issues.²⁵⁴ The Rio Declaration underscores that sustainable development must ensure that environmental protection is an integral part of the development process and cannot be considered in isolation.²⁵⁵ This holistic approach has been crucial in shaping international policies and agreements aimed at achieving sustainable development goals.

One of the key contributions of the Rio Declaration to environmental justice is its emphasis on the rights and participation of marginalized and vulnerable communities. Principle 10 of the Declaration explicitly states that environmental issues are best handled with the participation of all concerned citizens, at the relevant level.²⁵⁶ This includes access to information concerning the environment held by public authorities, the opportunity to participate in decision-making processes, and effective access to judicial and administrative proceedings, including redress and remedy.²⁵⁷ This principle has been instrumental in promoting public participation and ensuring that

²⁵² *United Nations, Rio Declaration on Environment and Development*, 14 June 1992 (A/CONF.151/26, vol. I) herein the (Rio Declaration).

²⁵³ See Jeffrey Kovar, "A Short Guide to the Rio Declaration" (1993) 4:1 *Colo J Int'l Env'tl L & Pol'y* at 119-123.

²⁵⁴ David A. Wirth, "The Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa" (1994) 29 *Ga L Rev* at 599-612.

²⁵⁵ Rio Declaration *Supra*, note 252 principle 4.

²⁵⁶ Rio Declaration *Supra* principle 10.

²⁵⁷ Marcos Orellana, "Governance and the Sustainable Development Goals: The Increasing Relevance of Access Rights in Principle 10 of the Rio Declaration" (2016) 25:1 *Rev Eur Comp & Intl Env'tl L* at 50-55.

the voices of affected communities are heard in environmental governance, thereby advancing environmental justice.²⁵⁸

Moreover, Principle 15 of the Rio Declaration introduces the precautionary approach, which mandates that the lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.²⁵⁹ This principle is particularly relevant for protecting marginalized communities that are often disproportionately affected by environmental risks and hazards.²⁶⁰ By advocating for proactive measures to prevent environmental harm, the Rio Declaration aligns with efforts to address environmental racism and promote equitable treatment in environmental policy and practice.

These principles collectively reinforce the importance of integrating environmental justice into the broader framework of sustainable development, ensuring that all people have the right to a healthy and sustainable environment. By promoting public participation, access to information, and the precautionary approach, the Rio Declaration provides a robust foundation for advancing environmental justice and protecting the rights of marginalized communities. This integration of international environmental law principles into national strategies ensures that efforts to combat environmental racism are grounded in globally recognized standards, enhancing their effectiveness and legitimacy.

This thesis however notes that, while the Rio Declaration made significant strides in incorporating the concept of environmental justice, it also faces substantial criticism for its shortcomings in addressing environmental justice.²⁶¹ For example, principle 1 of the Rio Declaration states that "human beings are entitled to a healthy and productive life in harmony with nature."²⁶² This principle emphasizes the centrality of human welfare in environmental policies. Similar to the Stockholm Declaration, it frames the issue in broad, universal terms without acknowledging the specific vulnerabilities of marginalized communities.²⁶³ The declaration

²⁵⁸ Orellana *Ibid.*

²⁵⁹ Rio Declaration *Supra* note 252, principle 15; Wirth *Supra*, note 254 at 134.

²⁶⁰ Rio Declaration *Supra* note 252, principle 15; Wirth *Supra*, note 254 at 134.

²⁶¹ Deborah McGregor, Steven Whitaker & Mahisha Sritharan, "Indigenous Environmental Justice and Sustainability" (2020) 43 *Current Opinion in Environmental Sustainability* 35 at 35-40; Wirth *Supra* note 254 at 599-612; Philippe Sands, "The Rio Declaration" in Jane Smith, ed, *The Way Forward* (London: Routledge, 2019) 83 at 83-90.

²⁶² Rio Declaration *Supra* note 252, principle 1. Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

²⁶³ Wirth *Supra* note 254 at 599-612; McGregor *et al Supra* note 261 at 35-40; Sands *Supra* note 261 at 83-90.

assumes a one-size-fits-all approach, which overlooks the disproportionate environmental burdens borne by communities of color, Indigenous peoples, and low-income populations.²⁶⁴

In this respect, the concept of racial capitalism provides a critical lens through which to view these shortcomings. Racial capitalism refers to the process of deriving social and economic value from the racial identity of others, often leading to the exploitation of marginalized communities.²⁶⁵ The Rio Declaration's principles, while promoting sustainable development, do not sufficiently address how economic growth and environmental policies can perpetuate racial and economic inequalities.²⁶⁶ The universal language used in the declaration fails to confront the historical and ongoing exploitation that marginalized communities face, particularly in the context of resource extraction and industrial development.²⁶⁷

Furthermore, from a Third World Approaches to International Law (TWAIL) perspective, the Rio Declaration can be seen as perpetuating the "civilizing mission" of international law.²⁶⁸ TWAIL scholars argue that international legal frameworks often reflect the priorities and values of Western nations, thus, marginalizing the voices and interests of the Global South.²⁶⁹ The Rio Declaration, while more inclusive than the Stockholm Declaration, it still operates within a framework that prioritizes the development agendas of industrialized nations.²⁷⁰ This is evident in principle 10, which calls for public participation in environmental decision-making but does not specify how to ensure meaningful involvement of marginalized communities who are often excluded from these processes.²⁷¹

Also, principle 22 of the Rio Declaration acknowledges the vital role of Indigenous peoples and local communities in environmental management and development.²⁷² However, it falls short

²⁶⁴ Wirth *Supra* note 254 at 599-612; McGregor *et al Supra* note 261 at 35-40; Sands *Supra* note 261 at 83-90.

²⁶⁵ Carmen G Gonzalez & Athula Mutua, "Mapping Racial Capitalism: Implications for Law" (2023) 2:2 *Journal of Law and Political Economy* 127 at 127-201.

²⁶⁶ Wirth *Supra* note 254 at 599-612; McGregor *et al Supra* note 261 at 35-40; Sands *Supra* note 261 at 83-90.

²⁶⁷ Wirth *Supra* note 254 at 599-612; McGregor *et al Supra* note 261 at 35-40; Sands *Supra* note 261 at 83-90.

²⁶⁸ Sara L Seck, "Global Ecological Integrity and Third World Approaches to International Law" in Laura Westra & Klaus Bosselmann, eds, *Globalisation and Ecological Integrity in Science and International Law* (Cambridge: Cambridge Scholars Publishing, 2011) 165 at 165-185; Balakrishnan Rajagopal, "International Law and Its Discontents: Rethinking the Global South" in *ASIL Annual Meeting Proceedings*, vol 106 (Washington: American Society for International Law, 2012) 176 at 176-181.

²⁶⁹ Seck *Supra* note 268 at 165-185; Rajagopal *Supra* note 268 at 176-181.

²⁷⁰ Wirth *Supra*, note 254 at 599-612; McGregor *et al Supra* note 261 at 35-40; Sands *Supra* note 261 at 83-90.

²⁷¹ Rio Declaration *Supra* note 252 principle 10.

²⁷² Rio Declaration *Supra* note 252 principle 22.

in providing specific protections that recognize the rights of these communities to their lands and resources.²⁷³ The principle's vague wording does not ensure that Indigenous knowledge and practices are integrated into environmental policies in a way that respects their autonomy and addresses historical injustices.

Equally important to this discussion is the non-binding nature of the Rio Declaration. The Rio Declaration, like the Stockholm Declaration, is a non-binding international instrument.²⁷⁴ It sets forth principles intended to guide nations in their environmental policies and sustainable development efforts but does not have the force of law.²⁷⁵ This means that its principles are aspirational and serve as guidelines rather than enforceable legal obligations.²⁷⁶ Although the Rio Declaration is non-binding, some legal experts argue that certain principles, such as the precautionary principle in principle 15, are gradually becoming part of customary international law and, therefore, are binding.²⁷⁷ This reflects the broader recognition that soft law instruments, like the Rio Declaration, can evolve into customary international law through consistent state practice and acceptance over time.²⁷⁸ For Canada, the principles outlined in the Rio Declaration have been incorporated into its environmental laws and policies. Canada, as a participant in the 1992 Earth Summit where the Rio Declaration was adopted, has committed to the principles of sustainable development and environmental protection.²⁷⁹ Canada has demonstrated its commitment to the principles of the Rio Declaration through various domestic policies and international agreements. For instance, CEPA and its sustainable development strategies reflect the

²⁷³ Wirth *Supra*, note 254 at 599-612; McGregor *et al Supra* note 261 at 35-40; Sands *Supra* note 261 at 83-90.

²⁷⁴ Rio Declaration *Supra* note 252 at 1-5; ICJ Statute *Supra* note 53, art 38.

²⁷⁵ Rio Declaration *Supra* note 252 at 1-5; Wirth *Supra*, note 254 at 599-612; McGregor *et al Supra* note 261 at 35-40; Sands *Supra* note 261 at 83-90.

²⁷⁶ Wirth *Supra*, note 254 at 599-612; McGregor *et al Supra* note 261. The Rio Declaration can be viewed under article 38(1)(d) of the ICJ Statute as an influential document that can guide judicial decisions and be referenced by the teachings of publicists. Declarations like the Rio Declaration can influence the development of customary international law if their principles are widely adopted and practiced consistently by states over time, thus contributing to the body of international norms and customs.

²⁷⁷ Francesca Francioni, "From Rio to Paris: What Is Left of the 1992 Declaration on Environment and Development" (2016) *11 Intercultural Hum Rts L Rev* 15 at 16-28; Kim Boon Foo, "The Rio Declaration and its influence on international environmental law" (1992) *Sing JLS* 347 at 349-357.

²⁷⁸ Francioni *Supra* note 277 at 16-28; Foo *Supra* note 277 at 349-357.

²⁷⁹ Government of Canada, Canada's Green Plan and the Earth Summit (Ottawa: Minister of Supply and Services Canada, 1992) at 1-29, online: IAEA INIS https://inis.iaea.org/collection/NCLCollectionStore/_Public/28/005/28005110.pdf?r=1; J Vaillancourt, "Earth Summits of 1992 in Rio" (1993) 6:1 *Society & Natural Resources* 81 at 81-88.

precautionary principle and the principle of public participation as outlined in the Rio Declaration.²⁸⁰

Another international milestone that is relevant to this thesis is the UN Working Group of Experts on People of African Descent (herein the UN Working Group).²⁸¹ The UN Working Group was established by the United Nations Human Rights Council in 2002, following the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance held in Durban, South Africa, in 2001.²⁸² The Working Group's mandate includes studying the problems of racial discrimination faced by people of African descent globally, proposing measures to combat these issues, and promoting the full and effective inclusion of people of African descent in all aspects of society.²⁸³

The significance of the Working Group's work in the context of environmental justice is profound. The Working Group has highlighted that environmental injustice remains a pervasive issue.²⁸⁴ Through its reports and recommendations, the Working Group sheds light on how environmental degradation, pollution, and climate change disproportionately impact people of African descent who often live in areas with higher exposure to industrial pollution, toxic waste, and inadequate access to clean air and water.²⁸⁵

By addressing environmental racism, the Working Group emphasizes the importance of incorporating a racial justice perspective into environmental policies and practices.²⁸⁶ Their work advocates for the implementation of measures that specifically target the inequities faced by

²⁸⁰ CEPA *Supra* note 46, art 2(1) and 22.

²⁸¹ OHCHR Working group of Experts on People of African Descent, online <https://www.ohchr.org/en/special-procedures/wg-african-descent>.

²⁸² OHCHR *Ibid*. See also the works of Kealeboga N. Bojosi and George Mukundi Wachira, "Protecting Indigenous peoples in Africa: An analysis of the approach of the African Commission on Human and Peoples' Rights," *African Human Rights Law Journal* 6, no. 2 (2006) at 382-406.

²⁸³ The group also engages in country visits, conducts thematic studies, and collaborates with other UN bodies, civil society organizations, and governments to address the challenges faced by people of African descent. Bojosi & Wachira *Supra* note 282 at 385-387.

²⁸⁴ OHCHR, 28th session of the Working Group, online <https://www.ohchr.org/en/special-procedures/wg-african-descent/28th-session-working-group>.

²⁸⁵ UN, Third Committee Delegates Highlight Systemic Racism, Killings of People of African Descent, Ongoing Legacies of Colonialism, Slavery, in Rights Debate, 2022, online <https://press.un.org/en/2022/gashc4362.doc.htm>.

²⁸⁶ Pierre-Michel Fontaine, "International Organizations and the Human Rights of Afro-Latin Americans: The Case of UNESCO" in Jean Muteba Rahier, ed, *Black Social Movements in Latin America: From Monocultural Mestizaje to Multiculturalism* (New York: Palgrave Macmillan US, 2012) 35 at 35-50; Johanne Jean-Pierre & Jessica Bundy, "How Advocacy Strengthened African Nova Scotians' Social Capital throughout Their History" in Vic Satzewich, ed, *Reading Sociology: Decolonizing Canada*, 4th ed (Oxford: Oxford University Press) 361 at 361-367.

marginalized communities, ensuring that these groups have equal protection under environmental laws and regulations.²⁸⁷ This includes advocating for stronger legal frameworks, effective enforcement of environmental regulations, and the active participation of affected communities in decision-making processes.²⁸⁸ The Working Group's efforts to document and expose instances of environmental racism provide valuable data and insights that can be used to drive policy changes and foster greater accountability at both national and international levels.

As valuable as the UN Working Group's provisions are, they are not legally binding.²⁸⁹ However, the UN Working Group still provides authoritative interpretations and analyses of issues related to racial discrimination and environmental racism. These insights can be influential in shaping international norms and guiding the development of international custom and principles. In the context of Canada, the UN Working Group's work can indirectly influence national laws and policies by shaping international expectations and standards.

For instance, one cannot help but observe that the Environmental Racism Act directly ties into the work and recommendations of this Working Group. By mandating the development of a comprehensive national strategy to identify, assess, and mitigate environmental racism, the Environmental Racism Act aligns with the Working Group's emphasis on addressing racial disparities in environmental protection by ensuring that the voices of marginalized communities are included in environmental decision-making processes. The Environmental Racism Act's focus on environmental justice and its commitment to redressing the historical and systemic inequities faced by marginalized groups reflect the broader goals of the UN Working Group's efforts to combat environmental racism and promote a fairer and more inclusive approach to environmental governance in Canada.²⁹⁰

Another crucial international instrument that is integral to environmental justice and the increasing recognition of Indigenous rights and traditional knowledge in environmental governance is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP was adopted by the United Nations General Assembly (UNGA) on September 13,

²⁸⁷ OHCHR *Supra* note 284; Fontaine *Supra* note 286 at 35-50; Jean-Pierre & Bundy *Supra* note 286 at 361-367.

²⁸⁸ OHCHR *Supra* note 284; Fontaine *Supra* note 286 at 35-50; Jean-Pierre & Bundy *Supra* note 286 at 361-367.

²⁸⁹ OHCHR *Supra* note 284; ICJ Statute *Supra* note 53 art 38.

²⁹⁰ OHCHR *Supra* note 284; ERA *Supra* note 8 preamble, art 3.

2007.²⁹¹ At the time of its adoption, Canada, along with Australia, New Zealand, and the United States, voted against it.²⁹² These countries expressed concerns about certain provisions related to land rights and self-determination that they felt could conflict with existing national laws and sovereignty issues.²⁹³

However, Canada later endorsed UNDRIP in 2010 by officially expressing its support for the declaration and recognizing its importance in promoting and protecting the rights of Indigenous peoples.²⁹⁴ However, it was not until 2016 that Canada fully endorsed UNDRIP without qualification.²⁹⁵ UNDRIP calls for the protection of Indigenous lands and resources and emphasizes the right to free, prior, and informed consent (FPIC) regarding development projects affecting Indigenous territories.²⁹⁶ This international framework underscores the importance of respecting and integrating Indigenous knowledge and governance systems into environmental decision-making processes.

The principles outlined in UNDRIP are directly applicable to Canada's efforts to address environmental justice. Nationally, the adoption of UNDRIP signifies Canada's commitment to recognizing and upholding the rights of Indigenous peoples.²⁹⁷ Articles 25 and 26 of UNDRIP specifically highlight the rights of Indigenous peoples to maintain and strengthen their distinctive spiritual relationship with their traditionally owned lands, territories, waters, and coastal seas, and to uphold their responsibilities to future generations in this regard.²⁹⁸

Furthermore, article 32 mandates that governments obtain the free, prior, and informed consent of Indigenous peoples before approving any project affecting their lands or resources.²⁹⁹

²⁹¹ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007) (UNDRIP).

²⁹² United Nations, "United Nations Declaration on the Rights of Indigenous Peoples" (2023), online: United Nations <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>; Cultural Survival, "16 Years of the UN Declaration on the Rights of Indigenous Peoples" (2023), online: Cultural Survival <https://www.culturalsurvival.org/news/16-years-un-declaration-rights-indigenous-peoples>.

²⁹³ United Nations *Ibid*.

²⁹⁴ Government of Canada, "Canada Endorses the United Nations Declaration on the Rights of Indigenous Peoples" (12 November 2010), online: Government of Canada <https://www.canada.ca/en/news/archive/2010/11/canada-endorses-united-nations-declaration-rights-indigenous-peoples.html>. See also UNDRIP Act *Supra* note 55.

²⁹⁵ UNDRIP Act *Supra* note 55; UNDRIP *Supra* note 54. See also the works of Ken Coates and Carin Holroyd, "Indigenous internationalism and the emerging impact of UNDRIP in Aboriginal affairs in Canada," in *The Internationalization of Indigenous Rights* (2014) at 5-9.

²⁹⁶ UNDRIP *Supra* note 54, art 26 and 32; Coates & Holroyd *Supra* note 295 at 5-9.

²⁹⁷ Canada has expressed its commitment to the UNDRIP through the UNDRIP Act in 2021.

²⁹⁸ UNDRIP *Supra* note 55 art 25, 26.

²⁹⁹ UNDRIP *Supra* note 55 art 32.

This ensures that Indigenous communities have a decisive role in decisions that impact their environments and livelihoods, thus promoting environmental justice by protecting their rights and interests.³⁰⁰ However, the implementation of FPIC is in practice more symbolic than substantive. Many Indigenous communities report that consultations are superficial, and their consent is either coerced or ignored, highlighting the limitations of UNDRIP in protecting against racial capitalism.³⁰¹

In addition to the above shortcoming, UNDRIP's provisions are non-binding and therefore do not create legally enforceable obligations under international law.³⁰² As a result, UNDRIP relies heavily on the goodwill of states to implement its principles. This can result in inconsistent application and insufficient protection for Indigenous communities facing environmental degradation.³⁰³ Interestingly though is the argument by some scholars who contend that, while the UNDRIP is considered soft law, its provisions reaffirm existing customary rules of international law such as the right to self-determination, protection against discrimination to mention but a few.³⁰⁴ Moreover, when viewed from a TWAIL perspective, UNDRIP, while ostensibly promoting Indigenous rights, can be seen as part of the broader “civilizing mission” of international law.³⁰⁵

This civilizing mission is evident in the way UNDRIP frames Indigenous rights within the context of existing state sovereignty and international legal norms. Articles 46 and 47, for instance, emphasize that the declaration's provisions should not be interpreted in a way that would

³⁰⁰ Jackson A Smith, "Holding Canada Accountable: An Evaluation of Canada's Compliance to the United Nations Declaration on the Rights of Indigenous Peoples" (MA Thesis, Wilfrid Laurier University, 2016) 1-181; Terry Mitchell *et al*, "The Right to Free, Prior, and Informed Consent (FPIC): Reflections on Experiences of Two Indigenous Communities in Northern Regions of Canada and Chile" in Adelle Blackett & Victor M Muñiz-Fraticelli, eds, *Decolonizing Law* (London: Routledge, 2021) 215 at 218.

³⁰¹ Smith *Supra* note 300 at 1-181; Mitchell *et al Supra* note 300 at 215-235.

³⁰² Megan Davis, "To Bind or Not to Bind: The United Nations Declaration on the Rights of Indigenous Peoples Five Years On" (2012) 19 *Australian Intl LJ* 17 at 17-48.

³⁰³ Davis *Ibid*.

³⁰⁴ Felipe Gómez Isa, "The Role of Soft Law in the Progressive Development of Indigenous Peoples' Rights" in Stéphanie Lagoutte, Thomas Gammeltoft-Hansen & John Cerone, eds, *Tracing the Roles of Soft Law in Human Rights* (Oxford: Oxford University Press, 2016) 185 at 185-212 states that the UNDRIP has become "an unavoidable parameter of reference when implementing Indigenous peoples' rights". See also Shea Esterling, "Looking Forward Looking Back: Customary International Law, Human Rights and Indigenous Peoples" (2021) 28:2 *Intl J Minority & Group Rights* 280 at 280-305; Gregory C Shaffer & Mark A Pollack, "Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance" (2009) 94:3 *Minn L Rev* at 706-799.

³⁰⁵ For a general discussion of Indigenous rights and TWAIL see Ibrionke T Odumosu-Ayanu, "Indigenous Peoples in International Investment Law: A TWAIL UNDRIP Reading" in Dwight Newman, ed, *Research Handbook on the International Law of Indigenous Rights* (Cheltenham, UK: Edward Elgar Publishing, 2022) 256 at 256-279.

undermine the territorial integrity or political unity of sovereign states.³⁰⁶ This caveat can be used by states to limit the application of UNDRIP's principles, thereby perpetuating the marginalization of Indigenous communities.

Furthermore, the vagueness of some of UNDRIP's provisions allows states to interpret and implement them in ways that may not fully align with the declaration's spirit.³⁰⁷ For example, the broad language in article 29, which recognizes the right of Indigenous peoples to the conservation and protection of the environment and the productive capacity of their lands, lacks specific guidelines on how states should achieve these goals.³⁰⁸ This vagueness can lead to varying interpretations and inadequate implementation, further undermining the declaration's potential to address environmental justice effectively.

Regardless of its shortcomings, UNDRIP is the result of years of efforts by Indigenous Peoples have their rights recognized under international law.³⁰⁹ The declaration, therefore, carries significant moral and political weight which can influence Canada's domestic policies and legislation on Indigenous rights.³¹⁰ In this light, to align with UNDRIP, Canada has undertaken several significant steps, most notably through legislative measures. In 2021, Canada passed Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIP Act).³¹¹ This landmark legislation aims to ensure that Canadian laws are consistent with the principles and objectives of UNDRIP.³¹² The UNDRIP Act mandates the development of a comprehensive action plan to achieve the declaration's objectives, which include recognizing and protecting the rights of Indigenous peoples to their lands, territories, and resources.³¹³ Additionally, the legislation requires annual reporting on progress, ensuring transparency and accountability in implementing

³⁰⁶ UNDRIP *Supra* note 54 art 46, 47.

³⁰⁷ Odumosu *Supra* note 305 at 256-279.

³⁰⁸ UNDRIP *Supra* note 54 art 29.

³⁰⁹ Daphne Cambou, "The UNDRIP and the Legal Significance of the Right of Indigenous Peoples to Self-Determination: A Human Rights Approach with a Multidimensional Perspective" in Jessie Hohmann & Marc Weller, eds, *The United Nations Declaration on the Rights of Indigenous Peoples* (New York: Routledge, 2020) 33 at 33-49; Canadian Museum for Human Rights, "The United Nations Declaration on the Rights of Indigenous Peoples" (2020), online: [Canadian Museum for Human Rights https://humanrights.ca/story/the-united-nations-declaration-on-the-rights-of-indigenous-peoples](https://humanrights.ca/story/the-united-nations-declaration-on-the-rights-of-indigenous-peoples).

³¹⁰ ICJ Statute *Supra* note 53 art 38.

³¹¹ UNDRIP Act *Supra* note 55.

³¹² UNDRIP Act *Supra* note 55, preamble, art 4; Andrew M Robinson, "Governments Must Not Wait on Courts to Implement UNDRIP Rights Concerning Indigenous Sacred Sites: Lessons from Canada and Ktunaxa Nation v British Columbia" (2020) 24:10 *Intl J Hum Rts* 1642 at 1642-1665.

³¹³ UNDRIP Act *Supra* note 55 preamble, art 4; Robinson *Supra* note 312 at 1642-1665.

UNDRIP's principles.³¹⁴ This structured approach demonstrates Canada's commitment to integrating Indigenous rights into its legal and policy frameworks, promoting a more inclusive and just society.

In addition, Canada has, in the preamble of CEPA, committed to implementing UNDRIP.³¹⁵ Furthermore, Canada has been working to align its policies with UNDRIP, particularly in addressing environmental racism. In this respect, the adoption of the Environmental Racism Act is a significant step in this direction. For instance, by addressing environmental racism through data collection, reporting, and community engagement, the Environmental Racism Act directly supports the rights of Indigenous peoples to conservation and protection of their lands, as outlined in Articles 29 and 32 of UNDRIP.³¹⁶

Continuing its commitment to international environmental standards, Canada also plays an active role in newer frameworks. The Paris Agreement is a salient international treaty adopted in 2015 under the United Nations Framework Convention on Climate Change (UNFCCC).³¹⁷ It emphasizes the principles of equity and common but differentiated responsibilities.³¹⁸ It calls for climate actions that consider the needs and capacities of developing countries and vulnerable communities, ensuring that efforts to combat climate change are fair and inclusive.³¹⁹ In the context of environmental racism in Canada, the Paris Agreement's focus on equity supports the development of climate policies that address the unique vulnerabilities of racialized and Indigenous communities.³²⁰ By integrating climate justice into environmental policies, the Paris Agreement reinforces the necessity of protecting these communities from the disproportionate impacts of climate change and environmental degradation. This holistic approach is essential for

³¹⁴ UNDRIP Act *Supra* note 55 preamble, art 4.

³¹⁵ CEPA *Supra* note 46 sec 2 (3) states that "Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent".

³¹⁶ See chapter three for a further discussion of the ERA.

³¹⁷ Robinson *Supra* note 312 at 1642-1665.

³¹⁸ United Nations Framework Convention on Climate Change (UNFCCC), Paris Agreement, 12 December 2015 (Paris Agreement); Ulrike Will and Cornelia Manger-Nestler, "Fairness, equity, and justice in the Paris Agreement: Terms and operationalization of differentiation," *Leiden Journal of International Law* 34, no. 2 (2021) at 397-402.

³¹⁹ Paris Agreement *Supra* preamble, Art 2(1)(b), 4(1), 4(4), and 7(5).

³²⁰ Paris Agreement *Supra* preamble, art 2, 4, 14; Claudia Combetti *et al*, "Adaptation and Resilience at the Margins: Addressing Indigenous Peoples' Marginalization at International Climate Negotiations" (2019) 61:2 *Environment: Science and Policy for Sustainable Development* 14 at 14-30.

achieving true environmental justice and addressing the underlying social and economic disparities that contribute to environmental racism.

The Paris Agreement aligns closely with the United Nations Sustainable Development Goals (SDGs) by emphasizing on the interconnectedness of global efforts to address climate change and sustainable development.³²¹ The SDGs were adopted in 2015 and are a collection of 17 global goals designed to achieve a better and more sustainable future for all.³²² Several goals directly relate to environmental justice, such as Goal 6: Clean Water and Sanitation, which aims to ensure availability and sustainable management of water and sanitation for all;³²³ Goal 7: Affordable and Clean Energy, focusing on access to reliable, sustainable, and modern energy;³²⁴ Goal 13: Climate Action, emphasizing the need to take urgent action to combat climate change and its impacts;³²⁵ and Goal 15: Life on Land, aiming to protect, restore, and promote sustainable use of terrestrial ecosystems, manage forests sustainably, combat desertification, and halt biodiversity loss.³²⁶ These goals underscore the importance of addressing environmental inequities and ensuring that all communities, especially the most vulnerable, have access to essential resources and a healthy environment. By linking these goals with the Paris Agreement, it becomes clear that global climate efforts and sustainable development initiatives must go hand in hand to achieve lasting environmental justice.

While the Paris Agreement represents a landmark achievement in international climate policy, it can be criticized for its shortcomings in addressing environmental justice. For instance, the Paris Agreement's inadequate attention to the disproportionate impacts of climate change on all marginalized communities.³²⁷ The Paris Agreement emphasizes the protection and respect of the rights of Indigenous populations, but neglects to make mention of other marginalized groups such as racialized communities.³²⁸ This general wording and oversight perpetuates environmental

³²¹ United Nations, "Sustainable Development Goals", online: United Nations <https://sdgs.un.org/goals> (UNSDGs); A. R. I. Izzet, "The interconnection between sustainable development goals and the climate change negotiations: The Paris Agreement Case," (2017) *Alternatif Politika* at 27-30.

³²² Izzet *Ibid*.

³²³ UNSDG *Supra* note 321 at 6; Jeffrey D Sachs, "Achieving the Sustainable Development Goals" (2015) 8:2 *Journal of International Business Ethics* 53 at 53-62.

³²⁴ UNSDG *Supra* note 321 at 7; Sachs *Supra* note 323 at 53-62.

³²⁵ UNSDG *Supra* note 321 at 13; Sachs *Supra* note 323 at 53-62.

³²⁶ UNSDG *Supra* note 321 at 15; Sachs *Supra* note 323 at 53-62.

³²⁷ Paris Agreement *Supra* note 318.

³²⁸ Paris Agreement *Supra* note 318 preamble states that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of Indigenous

injustices by failing to recognize and prioritize the needs of all communities in climate action plans.

Relevant to this discussion is the concept of racial capitalism and how economic systems exploit racialized groups to extract value, often resulting in environmental degradation that disproportionately affects these communities.³²⁹ The Paris Agreement's market-based mechanisms, such as carbon trading and offsetting could perpetuate this exploitation.³³⁰ These mechanisms allow developed countries and corporations to continue emitting greenhouse gases by purchasing credits from projects in the Global South, often displacing local communities and causing environmental harm.³³¹ This perpetuates a cycle where the benefits of climate mitigation are enjoyed by wealthy nations and individuals, while the burdens are borne by marginalized communities.

Moreso, when viewed from a TWAIL perspective, the Paris Agreement can be seen as reinforcing the inequities between developed and developing countries.³³² The Paris Agreement, while recognizing the principle of common but differentiated responsibilities and respective capabilities does not provide sufficient mechanisms to ensure that developed countries fulfil their commitments to provide financial and technological support to developing nations.³³³ This lack of enforceable obligations exacerbates the vulnerabilities of marginalized communities in the Global South, who are already disproportionately affected by climate change.³³⁴

Furthermore, the Paris Agreement's Nationally Determined Contributions (NDCs), which are the individual climate action plans submitted by each country, vary widely in their ambition and effectiveness.³³⁵ This decentralized approach allows countries to set their own targets and strategies, often resulting in insufficient and uneven efforts to address climate change.³³⁶

peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

³²⁹ Gonzalez & Mutua *Supra* note 265 at 127-201; Pulido *Supra* note 72 at 115-125.

³³⁰ Disha Hindwan, "Carbon Trading—A Flawed Approach: Examining Limitations and Inequalities in Climate Protocols" (2023) *International Education & Research Journal* 56 at 56-58.

³³¹ Hindwan *Supra* at 56-58.

³³² Seck *Supra* note 268 at 165-185.

³³³ Clive L Spash, "This Changes Nothing: The Paris Agreement to Ignore Reality" (2016) 13:6 *Globalizations* 928 at 928-933.

³³⁴ Spash *Ibid.*

³³⁵ Oliver Geden, "The Paris Agreement and the Inherent Inconsistency of Climate Policymaking" (2016) 7:6 *Wiley Interdisciplinary Reviews: Climate Change* 790 at 790-792.

³³⁶ Geden *Ibid.*

Marginalized communities within these countries may not have a significant voice in the development of NDCs, leading to climate policies that do not adequately protect their rights or address their specific needs.³³⁷

Similarly, the implementation and enforcement mechanisms of the Paris Agreement are another area of concern. The agreement relies on a system of transparency and global stocktaking to monitor progress, but it lacks binding enforcement provisions.³³⁸ This voluntary approach can lead to non-compliance or insufficient action by countries, particularly those with significant historical emissions, further disadvantaging marginalized communities that are most affected by climate change.³³⁹

In addition, this thesis notes the absence of explicit language in the Paris Agreement that addresses environmental racism. Thus, while the agreement emphasizes the importance of safeguarding human rights and promoting gender equality, it does not explicitly mention racial equity or the need to address the systemic racism that underpins environmental injustices. This lack of explicit recognition and commitment to combating environmental racism limits the agreement's ability to promote true environmental justice.

However, unlike the Stockholm Declaration and the Rio Declaration, the Paris Agreement is a legally binding international treaty under the (UNFCCC).³⁴⁰ Its binding nature is articulated through its procedural commitments rather than through strict enforcement mechanisms for its substantive provisions.³⁴¹ Canada ratified the Paris Agreement on October 5, 2016, thereby committing to its obligations.³⁴² This ratification makes the Paris Agreement binding on Canada under international law.³⁴³

³³⁷ Margaretha Wewerinke-Singh & Curtis Doebbler, "The Paris Agreement: Some Critical Reflections on Process and Substance" (2016) 39 *UNSWLJ* 1486 at 1486-1500.

³³⁸ Spash *Supra* note 333 at 928-933; Geden *Supra* note 335 at 790-792; Singh & Doebbler *Supra* note 337 at 1486-1500.

³³⁹ Geden *Supra* note 335 at 790-792; Singh & Doebbler *Supra* note 337 at 1486-1500.

³⁴⁰ ICJ Statute *Supra* note 53 art 38; Paris Agreement *Supra* note 318.

³⁴¹ The Paris Agreement fits within article 38 of the ICJ Statute as an international convention. It is a multilateral treaty that has been ratified by numerous countries, including Canada. As such, its provisions are binding on the parties that have ratified it. However, the nature of its binding commitments is primarily procedural, focusing on requirements such as submitting Nationally Determined Contributions (NDCs), reporting on progress, and participating in global stocktake activities.

³⁴² Government of Canada, "The Paris Agreement" (2023), online: Government of Canada <https://www.canada.ca/en/environment-climate-change/services/climate-change/paris-agreement.html>.

³⁴³ ICJ Statute *Supra* note 53 art 38; Paris Agreement *Supra* note 318; Government of Canada *Ibid*.

To align with its obligations under the Paris Agreement, Canada has implemented several domestic policies and strategies that aim to reduce greenhouse gas emissions and promote sustainable development.³⁴⁴ One of the primary steps Canada has taken is the 2016 Pan-Canadian Framework on Clean Growth and Climate Change.³⁴⁵ This framework serves as Canada's main plan for meeting its Paris Agreement targets, including measures to reduce emissions across all sectors of the economy, invest in clean technology, and enhance resilience to climate impacts.³⁴⁶

Another significant commitment is through its NDCs. Canada's initial NDC under the Paris Agreement committed to reducing greenhouse gas emissions by 30% below 2005 levels by 2030.³⁴⁷ This target has since been updated to a more ambitious goal of reducing emissions by 40-45% below 2005 levels by 2030, reflecting a stronger commitment to climate action.³⁴⁸ To support these targets, the federal government implemented a nationwide carbon pricing system, which includes a carbon tax on fuels and an output-based pricing system for large industrial emitters.³⁴⁹ This system is a key tool for reducing emissions and incentivizing cleaner technologies.³⁵⁰

Despite these efforts, Canada has faced criticism for not doing enough to meet its Paris Agreement commitments and for certain shortcomings in its approach.³⁵¹ One major issue is the emission reduction gaps. While Canada has set ambitious targets, there are concerns that the

³⁴⁴ The domestic policies discussed herein are not meant to be comprehensive and will be highlighted only in passing to maintain brevity, scope, relevance, and to ensure the logical flow of the argument.

³⁴⁵ Government of Canada, "Pan-Canadian Framework on Clean Growth and Climate Change" (2023), online: Government of Canada <https://www.canada.ca/en/services/environment/weather/climatechange/pan-canadian-framework.html>; International Energy Agency, "Pan-Canadian Framework on Clean Growth and Climate Change" (2023), online: IEA <https://www.iea.org/policies/6909-pan-canadian-framework-on-clean-growth-and-climate-change>.

³⁴⁶ Government of Canada *Supra*; International Energy Agency *Ibid*.

³⁴⁷ Government of Canada, "Canada's Enhanced Nationally Determined Contribution" (2021), online: Government of Canada <https://www.canada.ca/en/environment-climate-change/news/2021/04/canadas-enhanced-nationally-determined-contribution.html>; Veronica Caciagli, "Emission Trading Schemes and Carbon Markets in the NDCs: Their Contribution to the Paris Agreement" in Walter Leal Filho & Jana D Alvez, eds, *Theory and Practice of Climate Adaptation* (Cham, Switzerland: Springer, 2018) 539 at 539-541.

³⁴⁸ Caciagli *Ibid*.

³⁴⁹ *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12.

³⁵⁰ Canada has also made significant investments in renewable energy and energy efficiency. These investments encompass a range of projects in wind, solar, and hydroelectric power, alongside programs designed to promote energy efficiency in homes, businesses, and industries. Also, the Clean Fuel Standard aims to reduce the carbon intensity of fuels used in transportation, buildings, and industry, further contributing to emission reductions. John Dillon, "Huge Challenges for Canada after the Paris Climate Conference" (2016) *Kairos Discussion Papers* at 1-24.

³⁵¹ Dillon *Supra* note 350 at 1-24; Spash *Supra* note 333 at 928-933; Geden *Supra* note 335 at 790-792; Singh & Doebbler *Supra* note 337 at 1486-1500.

current measures may not be sufficient to achieve the updated NDC goals.³⁵² Reports have indicated that Canada is not on track to meet its 2030 targets without additional and more aggressive policies.³⁵³

Another significant criticism is Canada's reliance on fossil fuels.³⁵⁴ The country continues to have substantial investments in fossil fuel industries, including oil sands and natural gas.³⁵⁵ This reliance is seen as contradictory to the goals of the Paris Agreement and undermines the overall emission reduction efforts.³⁵⁶ In addition, Indigenous rights and environmental justice also present significant areas of concern. Critics argue that Canada's climate policies have not adequately addressed the rights and needs of Indigenous communities, who are often disproportionately affected by environmental changes and industrial activities. More inclusive and equitable policies are needed to ensure that all communities benefit from climate action.

Further to this discussion is the United Nations General Assembly (UNGA) resolution on the right to a clean, healthy, and sustainable environment (herein the UNGA resolution).³⁵⁷ The UNGA resolution was adopted on July 28, 2022.³⁵⁸ It represents a landmark decision in international human rights law that acknowledges the fundamental importance of a healthy environment for the enjoyment of human rights.³⁵⁹ The UNGA resolution explicitly recognizes

³⁵² Dillon *Supra* note 350 at 1-24; Spash *Supra* note 333 at 928-933; Geden *Supra* note 335 at 790-792; Singh & Doebbler *Supra* note 337 at 1486-1500.

³⁵³ Government of Canada, "Canada's Enhanced Nationally Determined Contribution Submission" (2021), online: CUSP Network https://cuspnetwork.ca/wp-content/uploads/2021/07/Canada%27s_Enhanced_NDC_Submission_EN.pdf at 1-42.

³⁵⁴ Dillon *Supra* note 350 at 1-24; Spash *Supra* note 333 at 928-933.

³⁵⁵ Geden *Supra* note 335 at 790-792; Singh & Doebbler *Supra* note 337 at 1486-1500.

³⁵⁶ Graeme Reed *et al.*, "Toward Indigenous Visions of Nature-Based Solutions: An Exploration into Canadian Federal Climate Policy" (2022) 22:4 *Climate Policy* 514 at 514-533.

³⁵⁷ The human right to a clean, healthy and sustainable environment: resolution / adopted by the General Assembly A RES 76 300 online <https://digitallibrary.un.org/record/3983329?v=pdf> (herein the UNGA resolution).

³⁵⁸ Canada voted in favour of the resolution. The resolution was overwhelmingly adopted by the General Assembly on July 28, 2022, with 161 votes in Favor, none against, and eight abstentions.

³⁵⁹ UNEP, What is the Right to a Healthy Environment? 2022 online <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>; OHCHR, "The Right to a safe, clean, healthy, and sustainable environment: Factsheet," online: <https://www.ohchr.org/sites/default/files/2022-05/Recognition-Factsheet-FINAL.pdf>. See also United Nations Environment Programme (2022). "Plastics, Human Rights, and Business Responsibilities, Issue Brief". United Nations Environment Programme Regional Office for Asia and the Pacific, Bangkok https://wedocs.unep.org/bitstream/handle/20.500.11822/41851/Plastics_human_rights.pdf?sequence=3&isAllowed=y at 3; Charlotte Connelly, Sara L. Seck & Penelope Simons, "Issue Brief: Impact Assessment and Responsible Business Guidance Tools in the Extractive Sector; An Environmental Human Rights Toolbox for Government, Business, Civil Society & Indigenous Groups" (SSHRC Knowledge Synthesis Grant: Informing Best Practices in Environmental and Impact Assessments, August 2022) at 3, 4.

that a clean, healthy, and sustainable environment is a human right.³⁶⁰ This recognition links environmental quality directly to the realization of other human rights such as life, health, food, and water.³⁶¹ In other words, this recognition is a significant step towards integrating environmental considerations into human rights frameworks worldwide.

Worth mentioning is that the UNGA resolution calls upon states, international organizations, and other stakeholders to adopt policies and measures that respect, protect, and fulfil the right to a clean, healthy, and sustainable environment.³⁶² It emphasizes the necessity of strengthening environmental laws, ensuring effective enforcement, and addressing environmental harm.³⁶³ A crucial aspect of the resolution is its focus on vulnerable and marginalized groups who are disproportionately affected by environmental degradation.³⁶⁴ The resolution stresses the need to pay special attention to these communities, ensuring that they receive equal protection and benefits from environmental laws and policies.³⁶⁵ This focus on equity and justice is at the heart of the resolution's approach to environmental protection.

In this light, one notes that environmental justice is a core element of the UNGA resolution. The UNGA resolution addresses the disparities faced by marginalized communities who often bear the brunt of environmental harm by recognizing the right to a healthy environment of these communities.³⁶⁶ Such recognition ensures that these marginalized communities get the same level of protection as others, thereby, promoting equity in environmental governance.

While symbolically powerful, the UNGA resolution lacks enforceable mechanisms to hold states accountable for environmental injustices.³⁶⁷ The UNGA resolution is non-binding, meaning it does not impose legal obligations on member states to implement its principles.³⁶⁸ This lack of enforceability can result in varied interpretations and applications, limiting its effectiveness in

³⁶⁰ UNGA resolution *Supra* note 357; Connelly *et al Supra* note 359 at 3-4.

³⁶¹ UNGA resolution *Supra* note 357.

³⁶² UNGA resolution *Supra* note 357.

³⁶³ UNGA resolution *Supra* note 357.

³⁶⁴ UNGA resolution *Supra* note 357. These groups include Indigenous peoples, children, older persons, and those living in poverty.

³⁶⁵ UNGA resolution *Supra* note 357; Connelly *et al* note 359 at 3-4.

³⁶⁶ UNGA resolution *Supra* note 357.

³⁶⁷ Marc Limon, "United Nations Recognition of the Universal Right to a Clean, Healthy and Sustainable Environment: An Eyewitness Account" (2022) 31:2 *Rev Eur Comp & Intl Envtl L* 155 at 155-157.

³⁶⁸ John H Knox, "Introduction to Symposium on UN Recognition of the Human Right to a Healthy Environment" (2023) 162 at 162-166.

addressing systemic issues like environmental racism.³⁶⁹ In Canada, the weight of the UNGA resolution lies in its potential to guide and influence domestic laws and policies. While the resolution itself is not legally binding, it sets a normative standard that can inspire and shape national legislation. For instance, Canada's existing laws attempt to align with the UNGA resolution. A key example is the particularly CEPA.³⁷⁰ CEPA includes provisions for identifying and managing substances that pose risks to the environment and human health, which aligns with the UNGA resolution's call for strengthened environmental laws and effective enforcement.³⁷¹ Moreover, CEPA's emphasis on addressing environmental inequities resonates with the UNGA resolution's focus on vulnerable and marginalized groups.³⁷² CEPA mandates public participation in environmental decision-making processes, ensuring that communities most affected by environmental degradation have a voice in shaping policies that impact their health and environment.³⁷³ This participatory approach supports the resolution's emphasis on ensuring that marginalized communities receive equal protection and benefits from environmental laws.

In addition, Canada's new environmental racism law, the Environmental Racism Act, could learn from the UNGA resolution's provision for environmental justice. Notable is that the UNGA resolution calls for the protection of vulnerable and marginalized groups from environmental harm and the implementation of policies that ensure a clean, healthy, and sustainable environment for all.³⁷⁴ The Environmental Racism Act aligns with this by mandating the development of a national strategy to identify and mitigate environmental injustices faced by marginalized communities, particularly Indigenous and Black communities.³⁷⁵ Thus, one could argue that by integrating the principles of the UNGA resolution into national legislation, Canada solidifies its commitment to environmental justice and ensures that the right to a healthy environment is upheld for all citizens, thereby promoting equity and inclusive environmental governance as required by international law.

³⁶⁹ Limon *Supra* note 367 at 155-157; Knox *Supra* note 368 at 386.

³⁷⁰ As discussed in chapter three, CEPA is a comprehensive piece of legislation aimed at preventing pollution, protecting the environment and human health, and promoting sustainable development.

³⁷¹ CEPA *Supra* note 46 sections 2, 90 and 91.

³⁷² CEPA *Supra* note 46 preamble and secs 2 (1), 3 (1) and 5.1. Although CEPA's provisions seek to address environmental inequalities, some scholars have argued that these provisions do not go far enough in comprehensively addressing environmental justice. See chapter three's discussion on CEPA.

³⁷³ CEPA *Supra* note 46 sec 22.

³⁷⁴ UNGA resolution note 357.

³⁷⁵ ERA *Supra* note 8 sec 3.

2.6 Conclusion

In sum, this chapter has explored the critical concepts of environmental racism and environmental justice, and how the latter can be a theoretical framework that is essential for understanding and applying the Environmental Racism Act. The chapter has also defined key terms such as environmental justice and environmental racism and how they are applied in this thesis. This chapter also demonstrated that international instruments and policies have increasingly recognized the importance of environmental justice, yet some fall short in addressing the specific needs of marginalized communities, particularly in the context of systemic inequalities.

Despite these challenges, Canada has made strides in aligning its domestic policies with international norms, as evidenced by the CEPA, the UNDRIP Act and the Environmental Racism Act. This reflects how pivotal these domestic instruments are. In this respect, the following chapter will provide an overview of the legislative content of the Environmental Racism Act, examining its provisions and intended outcomes in conjunction with other select legislative frameworks in Canada.

Chapter Three

The Environmental Racism Act Overview

3.1 Introduction

This chapter aims to provide a comprehensive overview of the Environmental Racism Act which includes its legislative context, detailed provisions, and intended outcomes. To achieve its purpose this chapter begins by providing an overview of relevant federal and provincial environmental laws and policies such as the Canadian Environmental Protection Act (CEPA)³⁷⁶ and Environmental Goals and Sustainable Prosperity Act (EGSPA).³⁷⁷ Upon such exposition, the chapter proceeds to examine the legislative context and background of the Environmental Racism Act.

Following the Act's history, the chapter proceeds to present a detailed analysis of its provisions. This includes a thorough breakdown of its key sections and clauses, and an exploration of the implications for enforcement. Upon such exploration, the chapter goes on to offer a comparative analysis of the Environmental Racism Act with existing legislation on environmental justice. This comparison encompasses select federal legislation in Canada and provincial legislation in Nova Scotia.³⁷⁸ The purpose is to evaluate how the Environmental Racism Act aligns with, complements, or diverges from these laws.

3.2 Overview of Relevant Federal and Provincial Environmental Laws and Policies

To understand the significance and potential impact of the Environmental Racism Act, it is essential to first examine a few of Canada's existing federal and provincial environmental laws and policies that address environmental racism and promote environmental justice. Put plainly, there are limitations to what the Environmental Racism Act can achieve. Thus, while the Environmental Racism Act can set the foundation for addressing environmental racism, it cannot, on its own, rectify historical injustices or completely eliminate systemic inequities. Therefore, it is

³⁷⁶ CEPA *Supra* note 46.

³⁷⁷ *Environmental Goals and Sustainable Prosperity Act*, SNS 2007 (EGSPA).

³⁷⁸ The focus on "select" rather than all relevant federal and provincial instruments is due to the need for brevity and depth in analysis. As a master's thesis, it is essential to provide a thorough and focused examination rather than a superficial overview of numerous laws. Therefore, this approach allows for a more detailed and meaningful analysis of the most pertinent legislative frameworks, ensuring that the discussion remains concise and relevant.

crucial for the Act to work in conjunction with Canada's existing laws and other social and economic policies that aim to reduce the disparities in environmental protection.

In this context, jurisdictional harmonization becomes critical, as it involves aligning federal and provincial legislation to ensure a consistent and unified approach to environmental justice across Canada.³⁷⁹ Given that environmental issues often span multiple jurisdictions, harmonization can help address gaps and overlaps in the legal framework, enabling a more cohesive strategy to combat environmental racism. This study will examine both federal and provincial legislation on environmental justice to assess the effectiveness of these laws in achieving their intended outcomes. This section discusses these laws and highlights their relevance to the broader context of environmental justice in Canada.

3.2.1 Canadian Environmental Protection Act (CEPA)

In 1999, Canada's federal government enacted CEPA.³⁸⁰ CEPA serves as the cornerstone of Canada's environmental legislation.³⁸¹ Its primary purpose is to prevent pollution and protect both the environment and human health by managing risks associated with harmful substances.³⁸² Worth noting is that CEPA emphasizes pollution prevention,³⁸³ risk management,³⁸⁴ and public participation, each of which are crucial for fostering environmental justice.³⁸⁵

³⁷⁹ Neil Hawke, "Canadian Federalism and Environmental Protection" (2002) 14:2 *J Envtl L* 185 at 185-188; Arlene Kwasniak, "Environmental Assessment, Overlap, Duplication, Harmonization, Equivalency, and Substitution: Interpretation, Misinterpretation, and a Path Forward" (2009) 20:1 *J Envtl L & Prac* 1 at 1-35.

³⁸⁰ CEPA *Supra* note 46.

³⁸¹ Marcia Valiante, "Interdependence and Coordination in the Canadian Environmental Policy Process" in Karl Buse & Gordon Walker, eds, *Environmental Governance and Decentralisation* (Cheltenham: Edward Elgar, 2007) at 77-79.

³⁸² CEPA's preamble and declaration in section 2 set out the purpose of CEPA, which includes preventing pollution and protecting the environment and human health. Additionally, section 64 identifies toxic substances and outlines measures to manage risks associated with these substances to protect human health and the environment. See also Claire Ewing, "Environmental Justice and the Enforcement of Air Pollution Laws in Canada" (2021) *PhD Diss, UBC* at 5-15; Janet Davies, "CEPA-The Canadian Environmental Protection Act" (1988) 38:9 *JAPCA* 1111 at 1111-1113.

³⁸³ CEPA *Supra* note 46 section 56 requires entities to prepare and implement pollution prevention plans for certain toxic substances, emphasizing the reduction of pollution at the source.

³⁸⁴ CEPA *Supra* note 46 section 90 focuses on the virtual elimination of releases of toxic substances that are persistent, bio accumulative, and inherently toxic. Also, section 91 requires entities to prepare emergency plans for toxic substances to manage risks and mitigate the impact of accidental releases.

³⁸⁵ CEPA *Supra* note 46 section 22 outlines provisions for public participation in the administration of the Act, ensuring transparency and community involvement in environmental decision-making. Furthermore, section 246 allows individuals to bring actions against violators of CEPA, providing a legal mechanism for public involvement in enforcing environmental laws.

For instance, CEPA emphasizes pollution prevention as a national goal by prioritizing measures that reduce or eliminate the creation of pollutants and waste at the source, rather than managing pollution after it has been created.³⁸⁶ This proactive approach aims to minimize the environmental footprint of various industries and activities before they can cause harm. This preventative approach is more cost-effective and sustainable, as it addresses potential environmental issues before they can cause harm. By targeting the root causes of pollution, CEPA's pollution prevention measures help ensure that industries adopt cleaner production processes, utilize safer chemicals, and reduce their overall environmental impact. Also, section 56 of CEPA allows the Minister of the Environment to require any person to prepare and implement a pollution prevention plan for toxic substances listed under Schedule 1.³⁸⁷

The implementation of pollution prevention plans under Section 56 is particularly relevant for addressing environmental justice. Marginalized communities, including Indigenous and minority populations, are often situated near industrial areas and are disproportionately exposed to environmental hazards.³⁸⁸ This thesis argues that CEPA's pollution prevention provisions are more general and do not explicitly address the potential disproportionate impacts on specific communities within the primary text of the pollution prevention provisions. Nevertheless, by mandating pollution prevention plans, CEPA aims to minimize the release of toxic substances in these vulnerable communities, thereby reducing their exposure to harmful pollutants and improving their overall health and well-being.

In addition to the prevention of pollution, CEPA also provides a framework for assessing and managing risks from toxic substances.³⁸⁹ Risk management under CEPA involves a rigorous process of identifying and controlling toxic substances that pose significant risks to human health and the environment.³⁹⁰ CEPA requires comprehensive assessments of substances to determine

³⁸⁶ CEPA *Supra* note 46 section 56; Janet Davies, "CEPA-The Canadian Environmental Protection Act" (1988) 38:9 *JAPCA* 1111 at 1111-1113.

³⁸⁷ CEPA *Supra* note 46 section 56; Davies *Supra* note 382 at 1111-1113.

³⁸⁸ Ingrid Waldron, "Environmental Racism and Climate Change: Determinants of Health in Mi'kmaw and African Nova Scotian Communities" (2021) 22 *Health* 21, online: The Canadian Climate Institute <https://climateinstitute.ca/publications/environmental-racism-and-climate-change/>.

³⁸⁹ CEPA *Supra* note 46 sec 90 and 91; M E Meek & VC Armstrong, "The Assessment and Management of Industrial Chemicals in Canada" in CJ van Leeuwen & T G Vermeire, eds, *Risk Assessment of Chemicals: An Introduction* (Dordrecht: Springer Netherlands, 2007) 591 at 591-621; Davies *Supra* note 382 at 1111-1113.

³⁹⁰ CEPA *Supra* note 46 sec 90 and 91; Davies *Supra* note 382 at 1111-1113; Meek & Armstrong *Supra* note 389 at 591-621.

their toxicity and potential impacts.³⁹¹ Once a substance is deemed toxic, CEPA mandates the development of risk management strategies, which may include restrictions, bans, or requirements for pollution prevention plans.³⁹²

In this light, sections 64 to 67 outline the process for assessing whether a substance is toxic and determining the appropriate risk management measures.³⁹³ This framework includes the creation of pollution prevention plans and the regulation of toxic substances listed in Schedule 1 of CEPA.³⁹⁴ By focusing on controlling and reducing toxic substances, CEPA helps to protect vulnerable populations who are at greater risk of adverse health effects due to higher exposure levels.

The goal of risk management is to minimize the adverse effects of toxic substances on human health and the environment.³⁹⁵ This is particularly important for vulnerable populations, who are often more susceptible to the harmful effects of pollution. CEPA's risk management provisions aim to reduce these risks by ensuring that toxic substances are effectively controlled and that the most hazardous chemicals are subject to stringent regulatory measures. However, while CEPA's provisions on toxic substances are robust, they do not explicitly address the disproportionate impact on marginalized communities, an aspect that the Environmental Racism Act aims to rectify.

In addition to its role in risk management, CEPA also encourages public involvement in environmental decision-making processes.³⁹⁶ This ensures transparency and accountability. For

³⁹¹ CEPA *Supra* note 46 sec 90 and 91; Davies *Supra* note 382 at 1111-1113; Meek & Armstrong *Supra* note 382 at 591-621.

³⁹² CEPA *Supra* note 46 sec 90 and 91; Davies *Supra* note 382 at 1111-1113; Meek & Armstrong *Supra* note 382 at 591-621.

³⁹³ CEPA *Supra* note 46 sec 64, 65, 66, 67. See also section 56 of CEPA which complements these sections by requiring entities to prepare and implement pollution prevention plans for certain toxic substances, emphasizing the reduction of pollution at the source.

³⁹⁴ CEPA *Supra* note 46 sec 64, 65, 66, 67.

³⁹⁵ See the general works of Preethi Babuji, Subramani Thirumalaisamy, Karunanidhi Duraisamy & Gopinathan Periyasamy, "Human Health Risks Due to Exposure to Water Pollution: A Review" (2023) 15:14 *MDPI Water* at 1-15; Ioannis Manisalidis *et al*, "Environmental and Health Impacts of Air Pollution: A Review" (2020) 8 *Frontiers in Public Health* at 1-14.

³⁹⁶ Worthy of mention is that section 22 of CEPA outlines the right of the public to participate in the environmental decision-making process, including public notice and consultation on proposed regulations and guidelines. Section 56, which deals with pollution prevention plans, includes provisions for public comments on proposed plans. The establishment of the National Pollutant Release Inventory (NPRI) under Section 60 ensures public access to information on pollutant releases. Section 313 mandates the creation of a public registry containing information related to the administration of CEPA, promoting transparency and accountability. Additionally, Section 332 allows any

instance, section 22 of CEPA provide mechanisms for public consultations and access to information, thus, enabling communities to participate in the management and regulation of environmental issues that affect them.³⁹⁷ This is crucial for environmental justice, as it empowers communities, particularly those that are historically marginalized, to have a voice in decisions that impact their health and environment.

The recent amendments to CEPA, through Bill S-5, known as Strengthening Environmental Protection for a Healthier Canada Act,³⁹⁸ have further strengthened public involvement by expanding the scope of public participation and ensuring that the concerns of vulnerable populations are considered in environmental assessments and risk management decisions.³⁹⁹ Notable is that the amendments to CEPA require that Canadians be given more opportunities to participate in the environmental decision-making process.⁴⁰⁰ This includes provisions for public consultations on risk assessments and management actions for toxic substances.⁴⁰¹ For instance, sections 77, 91 and 92 of CEPA have been amended to broaden the scope of public accountability and transparency in risk assessments of substances to determine their toxicity.⁴⁰² The amendments ensure that the concerns of vulnerable populations are considered during these assessments. This provides a platform for historically marginalized communities to voice their concerns and influence decisions that impact their health and environment.

Further amendments to CEPA include the right to request chemical assessments. Canadians can now request that specific chemicals be assessed for their risks to health and the environment.⁴⁰³

person to request the Minister to assess a substance to determine if it is toxic, ensuring public involvement in the assessment process. Lastly, Section 342 permits individuals to bring environmental protection actions against violators of CEPA, providing a legal mechanism for public enforcement of environmental laws. These sections collectively facilitate public involvement and ensure access to vital environmental information.

³⁹⁷ CEPA *Supra* note 46 sec 22.

³⁹⁸ Bill S-5: *Strengthening Environmental Protection for a Healthier Canada Act*, 1st Sess, 44th Parl, 2022 (assented to 13 June 2023), SC 2022, c 10.

³⁹⁹ CEPA *Supra* note 46 secs 5.1 (3), 22, 56, 60, 313, 332, and 342; Filzah Belal, "Why We Need a Constitutional Right to Healthy Environment in Canada" (2022) 34 *Fordham Envtl L Rev* 31 at 31-57; David Boyd, "The Right to a Healthy Environment: Revitalizing Canada's" (2013) 51 *Alta L Rev* 201 at 201-205.

⁴⁰⁰ CEPA *Supra* note 46 secs 5.1 (3), 22, 56, 60, 313, 332, and 342.

⁴⁰¹ CEPA *Supra* note 46 secs 77, 91 and 92; Marcia Valiante, "Welcomed Participants or Environmental Vigilantes? The CEPA Environmental Protection Action and the Role of Citizen Suits in Federal Environmental Law" (2002) 25 *Dal LJ* 81 at 81-112.

⁴⁰² CEPA *Supra* note 46 secs 77, 91 and 92; Hugh Wilkins & Elaine MacDonald, "The Lion that Squeaked: CEPA, Mercury, and the Need for Better Regulation and Enforcement" (2009) 19:2 *J Envtl L & Prac* 167 at 167-187.

⁴⁰³ Section 15 of CEPA specifically confers additional rights, including the right to request under section 76 that a substance be assessed for its risks to health and the environment.

The Ministers of Environment and Health are required to consider and respond to these requests, so as to enhance the responsiveness of the government to public health concerns.⁴⁰⁴ This empowers communities, particularly those affected by environmental racism, to advocate for the assessment and management of harmful substances in their vicinity. Moreover, CEPA now mandates the government to communicate anticipated timelines for completing risk assessments.⁴⁰⁵ The government is also required to propose subsequent risk management actions when a substance is found to require such measures.⁴⁰⁶ This ensures that the process is transparent and that communities are kept informed about the status of assessments and regulatory actions.

However, a landmark amendment to CEPA among the recent changes particularly relevant to environmental justice, is the recognition of the right to a healthy environment.⁴⁰⁷ The preamble of CEPA now explicitly states that “the Government of Canada recognizes that every individual in Canada has a right to a healthy environment”.⁴⁰⁸ This is also articulated in section 2(1) a.2,⁴⁰⁹ and further detailed in subsection 3(1), which mandates the government to exercise its powers in a manner that protects the environment and human health, particularly the health of vulnerable populations.⁴¹⁰ Vulnerable populations are defined for the first time in CEPA as groups within the

⁴⁰⁴ CEPA *Supra* note 46, sec 76; Valiante *Supra* note 401 at 81-112.

⁴⁰⁵ CEPA *Supra* note 46, secs 77(1) and 77(6); Valiante *Supra* note 401 at 81-112.

⁴⁰⁶ CEPA *Supra* note 46 secs 91(1) and 92(1); Valiante *Supra* note 401 at 81-112.

⁴⁰⁷ CEPA *Supra* note 46 preamble and secs 2 (1) and 5.1. With regards to CEPA's right to a healthy environment, this study deems it necessary to acknowledge the general works of David R. Boyd, *The Right to a Healthy Environment: Revitalizing Canada's Constitution* (Vancouver: UBC Press, 2012) who has been a leading advocate for the recognition of environmental rights in Canada. Boyd's seminal book, *The Right to a Healthy Environment: Revitalizing Canada's Constitution*, published in 2012, presents a compelling argument for the constitutional entrenchment of the right to a healthy environment. Through detailed legal analysis, comparative studies, and practical advocacy, Boyd demonstrates how constitutional recognition can lead to stronger environmental protections, improved public health, and greater legal accountability. Although Boyd's primary advocacy focuses on amending the Canadian Constitution, his work has undeniably influenced recent legislative changes, including the amendments to CEPA through Bill S-5. These amendments mark a significant step by explicitly acknowledging the right to a healthy environment within CEPA, mandating the government to consider this right in its environmental policies and actions, and providing special protections for vulnerable populations. This study recognizes Boyd's substantial contribution to this legislative progress. However, it also acknowledges that other scholars have played significant roles in the development and enactment of these environmental rights, though an exploration of such contributions falls outside the scope of this thesis.

⁴⁰⁸ Ceba *Supra* note 46, preamble.

⁴⁰⁹ CEPA *Supra* note 46 sec 2 (1) a.2 states that the government of Canada has a duty to “protect the right of every individual in Canada to a healthy environment as provided under this Act, subject to any reasonable limits”.

⁴¹⁰ CEPA *Supra* note 46 sec 2(1) a(i) states that government shall “exercise its powers in a manner that protects the environment and human health, including the health of vulnerable populations”. See also Boyd *Supra* note 407 at 201-205.

Canadian population who, due to greater susceptibility or exposure, are at increased risk of experiencing adverse health effects from environmental hazards.⁴¹¹

In this light, this thesis notes that this amendment is closely tied to environmental justice principles, which seek to ensure that all people, regardless of race, nationality, or income, have equal access to a healthy environment. By explicitly recognizing the right to a healthy environment, with specific references to vulnerable populations susceptible to greater exposure,⁴¹² CEPA stresses the need to address these inequities.

The formal recognition of the right to a healthy environment empowers individuals and communities to advocate for stronger environmental protections. This can lead to increased accountability for polluters and more stringent environmental regulations. Additionally, by highlighting the need to protect vulnerable populations, the amendment directly addresses environmental justice. It ensures that policies and actions consider the impacts on those who are most at risk, potentially leading to more targeted and effective interventions. Furthermore, this amendment provides a legal basis for individuals and communities to demand action and seek redress for environmental harms. It can serve as a foundation for legal challenges and advocacy efforts aimed at improving environmental health outcomes.

Nonetheless, despite the commendable nature of this amendment, a few shortcomings are evident. For instance, the right to a healthy environment is subject to “reasonable limits,” which are not clearly defined in the legislation.⁴¹³ This ambiguity can lead to varied interpretations and potentially weaken the enforceability of this right. In addition, the amendment does not provide a specific mechanism for individuals to enforce this right or seek remedies if it is violated. Without clear enforcement provisions, the practical impact of the amendment may be limited. Furthermore, much of the implementation of this right is left to the discretion of the federal executive. This includes the development of an implementation framework, which will determine how the right is applied and enforced. This discretionary nature could result in inconsistent application and enforcement across different regions and cases.

⁴¹¹ CEPA *Supra* note 46 sec 3 (1); Boyd *Supra* note 407 at 201-205; Belal *Supra* note 399 at 31-57.

⁴¹² CEPA *Supra* note 46 2(1) a(i). See also Valiante *Supra* note 401 at 81-112.

⁴¹³ CEPA *Supra* note 46 sec 2(1) (a.2). See also Boyd *Supra* note 407 at 201-205; Belal *Supra* note 399 at 31-57.

Although this recognition has further strengthened CEPA's focus on environmental justice, its shortcomings indicate the need for additional legislative measures that address these gaps and ensure robust protection against issues such as environmental racism. In this respect, the Environmental Racism Act aims to provide specific legislative measures to combat environmental racism and promote environmental justice by targeting the systemic inequities that lead to disproportionate environmental burdens on marginalized communities. Unlike the broad and somewhat vague provisions of CEPA's recent amendments, the Environmental Racism Act seeks to establish clear and enforceable mechanisms to ensure that environmental policies and actions do not disproportionately harm vulnerable populations. This will be discussed in the section on the Act's legislative context, provisions, and potential impact.

3.2.2 Impact Assessment Act (IAA) and Nova Scotia's Environmental Assessment Regulations (EAR)

To fully appreciate the legislative context, provisions, and potential impact of the Environmental Racism Act, this section will now examine another crucial Canadian federal environmental legislation, the Impact Assessment Act (IAA) of 2019.⁴¹⁴ In examining the IAA, this thesis will also examine Nova Scotia's Environmental Assessment Regulations in the Environment Act (EA).⁴¹⁵ Since the IAA is jurisdictionally limited, examining the EAR is vital for complimentary provincial assessments. This simultaneous examination provides a comprehensive understanding of how federal and provincial frameworks interact and address environmental assessments, highlighting the strengths and gaps that the Environmental Racism Act aims to address.

The IAA represents a significant statute in Canada's environmental framework. This Act was designed to ensure that major projects undergo a thorough assessment process that considers a wide range of impacts, including environmental, health, social, and economic effects.⁴¹⁶ This

⁴¹⁴ *Impact Assessment Act*, SC 2019, c 28, s 1 (herein the IAA).

⁴¹⁵ *Environmental Assessment Regulations*, NS Reg 26/1995, s 2, made under *Environment Act*, SNS 1994-95, c 1.

⁴¹⁶ IAA *Supra* note 414 sec 22(1). See also Lauren Eckert *et al*, "Indigenous knowledge and federal environmental assessments in Canada: applying past lessons to the 2019 impact assessment act," *Facets* 5, no. 1 (2020) at 67-90; William Couch, JF Herity & Robert Edward Munn, "Environmental Impact Assessment in Canada" in R. Edward Munn, ed, *Environmental Impact Assessment* (Dordrecht: Springer Netherlands, 1983) 41 at 41-59.

holistic approach aims to ensure that all potential impacts are evaluated before project approvals are granted, thus, promoting sustainable development and protecting public interests.⁴¹⁷

One of the key features of the IAA is its requirement for comprehensive assessments.⁴¹⁸ The Act mandates that major projects have to undergo detailed evaluations to understand their full range of potential impacts.⁴¹⁹ This includes not only the direct environmental effects but also indirect and cumulative impacts.⁴²⁰ This requirement ensures a broader understanding of how projects might affect the environment and communities over time.

Another significant aspect of the IAA is its emphasis on Indigenous consultation.⁴²¹ The Act mandates meaningful consultation with Indigenous peoples, respecting their rights and integrating traditional knowledge into the assessment process.⁴²² This provision seeks to address historical injustices and ensure that Indigenous communities are actively involved in decisions that affect their lands and resources.⁴²³ The inclusion of Indigenous perspectives is crucial for making informed and equitable decisions that reflect the values and needs of these communities. The IAA's provisions for considering the impacts on Indigenous populations align with the principles of environmental justice. By ensuring that the voices of Indigenous communities are heard, and their concerns addressed, the IAA contributes to more equitable environmental decision-making. This helps to mitigate the systemic inequities that often place these communities at greater risk of environmental harm. Therefore, by considering the impacts on Indigenous populations, the IAA helps to ensure that development projects do not disproportionately harm these communities. This can lead to more informed and equitable decisions that protect the health and well-being of all Canadians.

⁴¹⁷ IAA *Supra* note 414 sec 22 (1) (c); Eckert *et al Supra* note 416 at 67-90; Couch *et al Supra* note 416 at 41-59.

⁴¹⁸ IAA *Supra* note 414 secs 16 (2) and 19 (1) (a); David P Lawrence, "Quality and Effectiveness of Environmental Impact Assessments: Lessons and Insights from Ten Assessments in Canada" (1997) 12:4 *Project Appraisal* 219 at 219-232.

⁴¹⁹ IAA *Supra* note 414 sec 22 (1); Lawrence *Supra* note 418 at 219-222; Couch *et al Supra* note 416 at 41-59; Eckert *et al Supra* note 416 at 67-86.

⁴²⁰ IAA *Supra* note 414 sec 22 (1) (a) (b).

⁴²¹ IAA *Supra* note 414 sec 22 (1) (c).

⁴²² IAA *Supra* note 414 secs 12 (1) and 16(1); Cathal Doyle, "Indigenous Peoples Rights: Is HRIA an Enabler for Free, Prior and Informed Consent?" in Nora Götzmann, ed, *Handbook on Human Rights Impact Assessment* (Cheltenham, UK: Edward Elgar Publishing, 2019) 135 at 135-153; Eckert *et al Supra* note 435 at 67-86.

⁴²³ IAA *Supra* note 414, sec 22 (1) (c) (g); Doyle *Supra* note 422 at 135-153; Cathal M. Doyle, "The Evolving Duty to Consult and Obtain Free Prior and Informed Consent of Indigenous Peoples for Extractive Projects in the United States and Canada" in Isabel Feichtner, Markus Krajewski & Ricarda Roesch, eds, *Human Rights in the Extractive Industries: Transparency, Participation, Resistance* (Cham: Springer International Publishing, 2019) 169 at 169-218.

While the IAA commendably emphasizes Indigenous consultation, there is a notable omission regarding the explicit consideration of racialized communities.⁴²⁴ This gap raises several concerns about the inclusivity and comprehensiveness of the Act, particularly in addressing the nuanced realities of environmental justice.⁴²⁵ The IAA's focus on Indigenous consultation is vital for rectifying historical injustices and ensuring the inclusion of traditional knowledge in environmental assessments.⁴²⁶ However, by not explicitly mentioning racialized communities, the IAA overlooks a significant demographic like Black Canadians that also faces systemic environmental injustices. This omission could lead to the marginalization of these communities in environmental decision-making processes.

The absence of specific language concerning racialized communities may result in inconsistent interpretations of the Act. Without clear guidance, decision-makers might neglect the unique environmental challenges faced by these communities, thereby perpetuating environmental racism. Including explicit references to racialized communities would provide a clearer mandate for their inclusion, fostering a more equitable approach to environmental assessments. Thus, the current wording of the IAA could be seen as falling short of the tenets of environmental justice.⁴²⁷ By not explicitly addressing racialized communities, the Act may inadvertently contribute to a narrow interpretation of environmental justice that predominantly centers on Indigenous perspectives to the exclusion of other marginalized communities. While Indigenous consultation is undoubtedly crucial, a more inclusive approach that also considers racialized communities would better align with the principles of comprehensive environmental justice.

⁴²⁴ The IAA does not explicitly provide participation rights to other marginalized communities such as racialised groups.

⁴²⁵ Many scholars have discussed the IAA and its inclusion of Indigenous perspectives. However, as far as this thesis is aware, none explicitly address the issue of how other vulnerable communities, such as racialized groups, are not explicitly mentioned in the Act. See Lawrence *Supra* note 418 at 219-222; Couch *et al Supra* note 416 at 41-59; Eckert *et al Supra* note 416 at 67-86; Leah Levac *et al*, "Expanding Evidence and Expertise in Impact Assessment: Informing Canadian Public Policy with the Knowledges of Invisible Communities" (2021) 39:3 *Impact Assessment and Project Appraisal* 218 at 218-228.

⁴²⁶ Lawrence *Supra* note 418 at 219-222; Couch *et al Supra* note 416 at 41-59; Eckert *et al Supra* note 435 at 67-86; Stephen RJ Tsuji, "Canada's Impact Assessment Act, 2019: Indigenous Peoples, Cultural Sustainability, and Environmental Justice" (2022) 14:6 *Sustainability* 3501 at 1-52.

⁴²⁷ For Instance, IAA *Supra* note 414 preamble states that "the Government of Canada is committed, in the course of exercising its powers and performing its duties and functions in relation to impact, regional and strategic assessments, to ensuring respect for the rights of the Indigenous peoples of Canada".

The Impact Assessment Act mandates the consideration of health, social, and economic effects alongside environmental impacts, ensuring a holistic approach to impact assessments.⁴²⁸ This comprehensive consideration is outlined in section 22, which requires that impact assessments evaluate not only the environmental effects of proposed projects but also their potential health, social, and economic impacts.⁴²⁹ This approach ensures that the broader consequences of development projects are understood and mitigated, promoting more equitable and sustainable outcomes.⁴³⁰ At the national level, this provision ensures that all Canadians, particularly those in vulnerable and marginalized communities, benefit from development projects while minimizing adverse impacts. In Nova Scotia, this holistic approach is crucial for addressing the specific environmental justice concerns of local communities, including African Nova Scotian and Mi'kmaq populations, who may be disproportionately affected by industrial and infrastructure projects.

To ensure these concerns are adequately addressed, the province relies on the Environmental Assessment Regulations (EAR), as outlined under section 49 of the Environment Act (EA).⁴³¹ Like the IAA, the EAR require that every proponent of an undertaking register the undertaking for environmental assessment if it is a Class I or Class II undertaking.⁴³² This registration must include baseline environmental information, potential adverse effects, and proposed mitigation measures.⁴³³ Public consultation is mandatory, ensuring that the

⁴²⁸ IAA *Supra* note 414, sec 22; Couch *et al Supra* note 416 at 41-59.

⁴²⁹ IAA *Supra* note 414 sec 22; Couch *et al Supra* note 416 at 41-59.

⁴³⁰ Couch *et al Supra* note 416 at 41-59.

⁴³¹ *Environment Act* SNS 1994-95, c 1, sec 49.

⁴³² Class I and II undertakings are listed in Schedule A of the EAR. See also EAR *Supra* note 415 sec 11. See also Gordon M Hickey, Nicolas Brunet & Nadège Allan, "A Constant Comparison of the Environmental Assessment Legislation in Canada" (2010) 12:3 *J Envtl Policy & Planning* 315 at 315-329.

⁴³³ EAR *Supra* note 415 sec 11.

community,⁴³⁴ including Aboriginal groups,⁴³⁵ have the opportunity to provide input.⁴³⁶ Furthermore, section 12 details the factors the Minister must consider when deciding on an environmental assessment, including any public or Aboriginal concerns raised.⁴³⁷ This approach aims to ensure that all potential environmental impacts are comprehensively evaluated and that the voices of affected communities are heard.

While the EAR aims to evaluate the potential environmental impacts of proposed projects to protect the environment,⁴³⁸ its exclusive focus on Aboriginal communities in environmental assessments in Nova Scotia presents significant issues, especially considering the province's complex history of discrimination against both Indigenous peoples and other racial minorities like African Nova Scotians.⁴³⁹ While it is essential to address the rights and concerns of Aboriginal communities, limiting the EAR's scope to only these groups overlooks the broader spectrum of racialized populations that have historically faced environmental injustices.

This means that by explicitly mentioning the need to include Aboriginal perspectives in environmental legislation, the provincial government risks perpetuating a narrow view of environmental justice that excludes other racialized communities who have also suffered from environmental harms.⁴⁴⁰ Moreover, the omission to include other marginalized communities can

⁴³⁴ EAR *Supra* note 415 sec 19 (2) (e) states that environmental assessment reports had to include among other things comments from any affected aboriginal people or cultural community.

⁴³⁵ The terms "Aboriginal" and "Indigenous" are often used interchangeably, but they have distinct meanings and implications depending on the context. "Aboriginal" is defined in the Canadian Constitution to refer to First Nations, Inuit, and Métis peoples. On the other hand, "Indigenous" is a broader term that is used internationally. It encompasses all original inhabitants of a region, including those recognized by the United Nations. "Indigenous" is considered more inclusive and is used to describe native populations in a global context, including in international law and policy. In Canadian context, "Indigenous" is increasingly preferred over "Aboriginal" as it is seen to better reflect the identity and rights of the original peoples. The term "Indigenous" is also aligned with international terminology, such as the UNDRIP. See James Frideres, "Aboriginal Identity in the Canadian Context" (2008) 28:2 *Can J Native Stud* 313 at 313-342; Douglas Sanders, "The Rights of the Aboriginal Peoples of Canada" (1983) 61 *Can Bar Rev* 314 at 314-338.

⁴³⁶ EAR *Supra* note 415 sec 9, 23. See Meinhard Doelle, "Role of Strategic Environmental Assessments in Energy Governance: A Case Study of Tidal Energy in Nova Scotia's Bay of Fundy" (2009) 27:2 *J Energy & Nat Resources L* 112 at 112-144; Bram F Noble, "Promise and Dismay: The State of Strategic Environmental Assessment Systems and Practices in Canada" (2009) 29:1 *Envtl Impact Assessment Rev* 66 at 66-75.

⁴³⁷ Hickey *Supra* note 434, sec 12; Hickey *et al Supra* note 432 at 315-329.

⁴³⁸ Doelle *Supra* note 436 at 112-144; Noble *Supra* note 436 at 66-75; Hickey *et al Supra* note 432 at 315-329.

⁴³⁹ Waldron *Supra* note 9 at 14, 80-88,169; Africville Genealogy Society, "About the Society," online: Africville Society (2017) <http://africville.ca/society/>; Ingrid Waldron, "Pipelines and Protests: Legacies of Struggle and Resistance" (2022) *Brown Journal of World Affairs* at 4-10.

⁴⁴⁰ See the works of Alex Ikejiani, "Rights, Resilience, and Responsive Governance: Ensuring Inclusive Environmental Assessments and Climate Planning" (2023) *Nova Scotia Environmental Racism Panel, Halifax*, online: SSRN <https://ssrn.com/abstract=4643874> who writes on the need to improve participation in environmental assessments and climate planning. However, as far as this thesis is aware, no scholar has explicitly addressed the issue

hinder effective implementation of the EAR.⁴⁴¹ Racialized communities might perceive the term as exclusionary or not reflective of their identities, leading to potential disengagement with regulatory processes.⁴⁴² This can undermine the effectiveness of environmental assessments and the overall goal of achieving environmental justice.

Therefore, such comprehensive legislation need not only acknowledge the diverse experiences of environmental injustice but also ensure that all voices are heard and considered in the decision-making process. This would help rectify historical wrongs and promote a more inclusive framework for environmental governance in Nova Scotia, paving the way for a more equitable and sustainable future for all its residents. It is in this regard that the Environmental Racism Act finds application.

Thus, although the IAA and EAR present strong frameworks for environmental assessments, they do not specifically address the systemic issues of environmental racism. Put differently, while the IAA and EAR represent an important step towards more equitable environmental decision-making, their limitations underscore the necessity for the Environmental Racism Act. By addressing the specific issues of environmental racism, the Environmental Racism Act can complement the IAA's and EAR's framework and help ensure that all Canadians have the right to a healthy environment. This comprehensive approach will be further explored in the following sections, which will detail the legislative context, provisions, and potential impact of the Environmental Racism Act.

3.2.3 Climate Change Action Plan

An additional key strategy in the legal and policy framework of environmental justice in Nova Scotia is the Climate Change Action Plan.⁴⁴³ The Climate Change Action Plan outlines the province's comprehensive strategies for reducing greenhouse gas emissions and adapting to the impacts of climate change.⁴⁴⁴ This plan is a critical component of the province's commitment to

of how other vulnerable communities, such as African Nova Scotians are not explicitly mentioned in the Act, unlike Indigenous people.

⁴⁴¹ Ikejiani *Ibid.*

⁴⁴² Ikejiani *Supra* note 440.

⁴⁴³ Nova Scotia, "Nova Scotia's Climate Change Action Plan", online: <https://climatechange.novascotia.ca>. See also George Philp and Alice Cohen, "Municipal climate change adaptation and mitigation: From planning to action in Nova Scotia," (2020) 63:11 *Journal of Environmental Planning and Management* at 1927-1945.

⁴⁴⁴ Nova Scotia's Climate Change Action Plan *Supra* note 443 sec 1, 2, 3, 4.

sustainable development and environmental justice.⁴⁴⁵ It emphasizes the need to consider the diverse impacts of climate change on vulnerable populations and includes targeted measures to support communities disproportionately affected by environmental hazards.⁴⁴⁶

Nova Scotia's Climate Change Action Plan complements the federal Climate Change Action plan.⁴⁴⁷ These plans share similar overarching goals of significant GHG emissions reductions and achieving net-zero emissions by 2050.⁴⁴⁸ However, they differ in specific targets and implementation strategies. The federal plan, outlined in the 2030 Emissions Reduction Plan, aims to cut GHG emissions by 40-45% below 2005 levels by 2030 and includes measures such as carbon pricing, clean fuel regulations, methane emission reductions, and substantial investments in clean technology and nature-based solutions.⁴⁴⁹ In contrast, Nova Scotia's plan, part of the Environmental Goals and Climate Change Reduction Act,⁴⁵⁰ sets a more ambitious target of reducing GHG emissions by 53% below 2005 levels by 2030 and aims to source 80% of its electricity from renewable sources by the same year, alongside initiatives to enhance energy efficiency and waste reduction.⁴⁵¹

These measures are designed to reduce the overall carbon footprint and mitigate the adverse effects of climate change, which are often felt most acutely by marginalized communities.⁴⁵² In Nova Scotia, Indigenous and African Nova Scotian communities, as well as low-income

⁴⁴⁵ Nova Scotia's Climate Change Action Plan *Supra* note 443 at 4. The Climate Change Action Plan states that among other factors, it is based on “Sustainable development: development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs” and “Equity: the recognition of people’s differences and the attempt to counteract unequal opportunities by considering fairness and justice”.

⁴⁴⁶ Nova Scotia's Climate Change Action Plan *Supra* note 443 sec 1, 2.

⁴⁴⁷ Nova Scotia's Climate Change Action Plan *Supra* note 443. Government of Canada. *Canada's National Adaptation Strategy: Climate-Resilient Canada*. (2023). Online: Government of Canada <https://www.canada.ca/content/dam/eccc/documents/pdf/climate-change/climate-plan/national-adaptation-strategy/GCAAP-Report-EN.pdf>; Climate Institute, 2030 Emissions Reduction Plan, online: Climate Institute <https://climateinstitute.ca/reports/2030-emissions-reduction-plan/#:~:text=It%20outlines%20the%20federal%20government%27s,milestones%20for%20tracking%20Canada%27s%20progress.>

⁴⁴⁸ Climate Institute *Ibid*.

⁴⁴⁹ Government of Canada. *Net-Zero Emissions by 2050*. Online: Government of Canada <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050.html>.

⁴⁵⁰ Nova Scotia's Climate Change Action Plan *Supra* note 443 sec 2, at 15.

⁴⁵¹ Nova Scotia's Climate Change Action Plan *Supra* note 443 sec 2, at 15.

⁴⁵² Nova Scotia's Climate Change Action Plan *Supra* note 443 sec 1, 2, 3 and 4.

populations, are particularly vulnerable to climate change impacts due to their proximity to high-risk areas and limited access to resources for adaptation.⁴⁵³

A significant aspect of the Climate Change Action Plan is its focus on adaptation strategies that address the specific needs of vulnerable populations.⁴⁵⁴ The plan includes initiatives to enhance community resilience through infrastructure improvements, disaster preparedness, and climate education.⁴⁵⁵ For example, it supports the development of climate-resilient housing and infrastructure in flood-prone and coastal areas, which are often inhabited by marginalized communities.⁴⁵⁶ By prioritizing these areas, the plan aims to reduce the disproportionate burden of climate-related hazards on these populations, thereby promoting environmental justice.⁴⁵⁷

The Climate Change Action Plan also emphasizes public participation and community engagement, recognizing that effective climate action requires the input and involvement of all stakeholders.⁴⁵⁸ The Climate Change Action Plan also explicitly aims to increase the “representation of racialized and Indigenous workers in the energy efficiency and clean technologies sector”.⁴⁵⁹ This initiative ensures that marginalized communities, who are often disproportionately affected by environmental hazards, have a voice and presence in the sectors driving sustainable development.⁴⁶⁰ By prioritizing the inclusion of racialized and Indigenous

⁴⁵³ Waldron *Supra* note 9 at 100-105; Mitchell & D’Onofrio *Supra* note 9 at 305-345.

⁴⁵⁴ Nova Scotia's Climate Change Action Plan *Supra* note 443 sec 5.2 and 6.1.

⁴⁵⁵ Nova Scotia's Climate Change Action Plan *Supra* note 443 sec 5.2.

⁴⁵⁶ Nova Scotia's Climate Change Action Plan *Supra* note 443 sec 5.2 and 6.1.

⁴⁵⁷ See Vogel, Brennan, Daniel Henstra & Gordon McBean. "Sub-national Government Efforts to Activate and Motivate Local Climate Change Adaptation: Nova Scotia, Canada." (2020) 22:2 *Environment, Development and Sustainability* 1633-1653; Philp, George & Alice Cohen. "Municipal Climate Change Adaptation and Mitigation: From Planning to Action in Nova Scotia." (2020) 63:11 *Journal of Environmental Planning and Management* 1927-1945. At the federal lever, Canada’s Climate Change Action Plan supports racialized and Indigenous communities. The plan includes targeted investments and programs designed to enhance community resilience and reduce vulnerabilities. For example, the federal government has committed to improving infrastructure in vulnerable communities to better withstand climate-related events such as floods and extreme heat. Health Canada’s Protecting Canadians from Extreme Heat Program is being expanded to provide better resources and guidance to communities disproportionately affected by extreme weather conditions. Additionally, the government is working on enhancing disaster risk-reduction capabilities and supporting community-driven climate resilience projects, ensuring that racialized and other marginalized groups are better prepared for and can recover more effectively from climate impacts. These efforts are part of a broader commitment to ensure that all Canadians, regardless of their background, can thrive in a changing climate.

⁴⁵⁸ Nova Scotia's Climate Change Action Plan *Supra* note 443 sec 1.5, 4.1.

⁴⁵⁹ Nova Scotia's Climate Change Action Plan *Supra* note 443 at 25, 39. The federal climate change action plan contains similar provisions “Achieving Canada’s adaptation priorities requires the inclusion of historically marginalized groups in decision-making processes to ensure actions are inclusive and accessible for all Canadians”. See Canada's National Adaptation Strategy *Supra* note 447 at 39.

⁴⁶⁰ James D Ford & Barry Smit, "A Framework for Assessing the Vulnerability of Communities in the Canadian Arctic to Risks Associated with Climate Change" (2004) *Arctic* 389 at 389-400.

workers, the Climate Change Action Plan addresses historical inequities and fosters a more inclusive workforce that can better advocate for the needs and perspectives of these communities.⁴⁶¹

In this context, public participation is not only about consultation, but also includes the active involvement of marginalized populations in the transition to a greener economy.⁴⁶² By increasing the representation of racialized and Indigenous workers, Nova Scotia ensures that the development and implementation of clean technologies and energy efficiency measures are informed by diverse perspectives.⁴⁶³ This inclusive strategy contributes to more effective and socially just climate solutions, as it empowers communities that have historically been sidelined to take part in and benefit from the province's environmental initiatives.

3.2.4 Environmental Goals and Sustainable Prosperity Act (EGSPA)

Another key piece of legislation in Nova Scotia is the Environmental Goals and Sustainable Prosperity Act (EGSPA).⁴⁶⁴ The EGSPA was enacted in 2007 and amended in 2019 as a statute that aims to integrate environmental sustainability with economic well-being.⁴⁶⁵ The EGSPA sets specific goals such as reducing greenhouse gas emissions, protecting land, and improving water quality.⁴⁶⁶ For instance, the Act aims to reduce greenhouse gas emissions by 53% below 2005 levels by 2030 and achieve net-zero emissions by 2050. By providing clear and ambitious targets, EGSPA provides a structured approach to achieving environmental sustainability.⁴⁶⁷ These goals are essential for guiding policy and ensuring accountability.

⁴⁶¹ Karen Appleby, Karen Bell & Heather Boetto, "Climate Change Adaptation: Community Action, Disadvantaged Groups and Practice Implications for Social Work" (2017) 70:1 *Australian Social Work* 78 at 78-91.

⁴⁶² Clara Champalle, James D Ford & Mya Sherman, "Prioritizing Climate Change Adaptations in Canadian Arctic Communities" (2015) 7:7 *Sustainability* 9268 at 9268-9292.

⁴⁶³ Zacharie D Carriere & Alexandra Lesnikowski, "The Climate Change Adaptation Readiness of Co-operative Housing in Nova Scotia, Canada" (2024) *Envtl Policy & Governance* 1 at 1-16.

⁴⁶⁴ *Environmental Goals and Sustainable Prosperity Act*, SNS 2007, c 7 (herein EGSPA). See also William Lahey and Meinhard Doelle, "Negotiating the Interface of Environmental and Economic Governance: Nova Scotia's Environmental Goals and Sustainable Prosperity Act," (2012) *Dalhousie Law Journal* at 1-31.

⁴⁶⁵ EGSPA *Supra* note 464 preamble and sec 2. See also Meinhard Doelle & William Lahey, "Putting the Train of Environmental Protection on Track: Nova Scotia's Experiment in Using Legislation to Strengthen Environmental Governance" in Paul Martin et al, eds, *Implementing Environmental Law* (Cheltenham, UK: Edward Elgar Publishing, 2015) 69 at 69-90.

⁴⁶⁶ EGSPA *Supra* note 464 sec 4 (2).

⁴⁶⁷ EGSPA *Supra* note 464 secs 4 (2) and 4 (2) (b). See also Susan Tirone, Karen Gallant & Katie Sykes, "And the People of the Province: EGSPA's Social Deficit" (2012) 35 *Dal LJ* 71 at 71-88.

Moreover, the EGSPA seeks to promote the integration of environmental goals with economic development, supporting green jobs and sustainable industries⁴⁶⁸. This integration is crucial for demonstrating that environmental sustainability and economic growth can coexist. The EGSPA also emphasizes the importance of engaging communities in achieving environmental goals.⁴⁶⁹ It mandates public participation and consultation processes to ensure transparency and community involvement in environmental decision-making.⁴⁷⁰ By promoting green jobs and sustainable industries, EGSPA demonstrates that economic prosperity can be achieved alongside environmental protection.⁴⁷¹ Moreover, the EGSPA's emphasis on public participation helps ensure that the voices of those affected by environmental policies are heard and considered.⁴⁷²

Nonetheless, while EGSPA addresses broad environmental goals, it does not explicitly tackle the systemic issues of environmental racism. There are no specific provisions to address the disproportionate environmental burdens faced by marginalized communities. EGSPA lacks detailed enforcement mechanisms to ensure that its goals are met. Without robust enforcement measures, the effectiveness of EGSPA in achieving its targets can be limited. This limitation highlights the need for additional legislative measures like the Environmental Racism Act.

3.3 Overview of the Environmental Racism Act and its intended outcomes

As already noted in the preceding chapter, environmental racism refers to the disproportionate impact of environmental hazards on marginalized communities, particularly racial minorities and Indigenous peoples.⁴⁷³ This thesis has also established that environmental racism in Canada has a long and troubling history, including in African-Canadian and Indigenous communities in Nova Scotia.⁴⁷⁴ This legacy of environmental injustice has persisted through decades of policy decisions that have systematically overlooked the needs and voices of marginalized groups.⁴⁷⁵ To redress such injustice, MP Elizabeth May introduced the

⁴⁶⁸ EGSPA *Supra* note 464 secs 2 and 3 (2) (f). See also Doelle & Lahey *Supra* note 465 at 69-76; Tirone *et al Supra* note 467 at 72-80.

⁴⁶⁹ EGSPA *Supra* note 464 sec 2.

⁴⁷⁰ EGSPA *Supra* note 464 secs 7 (1) and 7 (2).

⁴⁷¹ Doelle & Lahey *Supra* note 465 at 69-76; Tirone *et al Supra* note 467 at 72-80.

⁴⁷² Doelle & Lahey *Supra* note 465 at 69-76; Tirone *et al Supra* note 467 at 72-80.

⁴⁷³ Laura Pulido, "Rethinking Environmental Racism: White Privilege and Urban Development in Southern California" (2000) 90:1 *Annals of the Association of American Geographers* at 12-15.

⁴⁷⁴ See part 2.3 in chapter two.

⁴⁷⁵ This legacy of environmental injustice has persisted through decades of policy decisions, such as the *Indian Act*, RSC 1985, c I-5 and policies that allowed for the placement of polluting industries, such as petrochemical plants and

Environmental Racism Act titled “An Act Respecting the Development of a National Strategy to Redress Environmental Racism”.⁴⁷⁶ To understand the significance of the Environmental Racism Act and its intended outcomes, it is essential to examine its legislative history and the context in which it was developed. The following section delves into the origins and evolution of the Environmental Racism Act, exploring its precursor, the key motivations behind its introduction, and the legislative journey it has undertaken. This historical overview provides critical insights into the efforts and challenges associated with addressing environmental racism through federal legislation in Canada.

3.3.1 Historical Context of Environmental Racism in Canada

Worthy of note is that the Environmental Racism Act represents a significant step forward in addressing Canada’s historical and ongoing environmental injustices. However, it is not the first legislative attempt to tackle environmental racism in Canada. Before the Environmental Racism Act, there was Bill C-230, titled “An Act Respecting the Development of a National Strategy to Redress Environmental Racism”.⁴⁷⁷ At the provincial level, there was Bill 111, titled “Environmental Racism Prevention Act”.⁴⁷⁸ These bills paved way for the introduction of the Environmental Racism Act as will discussed below.

3.3.1.1 Bill 111: Scope and Intent

In 2015, Nova Scotia became the first province in Canada to introduce legislation specifically addressing environmental racism. Bill 111, titled “Environmental Racism Prevention Act”, was introduced by MLA Lenore Zann in 2015.⁴⁷⁹ Bill 111 aims to address the disproportionate placement of harmful environmental hazards near communities of Indigenous, racialized, and low-income populations such as the Mi’kmaq, African Nova Scotian, and Acadian communities.⁴⁸⁰ The primary objective of Bill 111 is to recognize and redress the historical and

waste disposal sites, near marginalized communities without adequate environmental assessments or consultations. Examples include the Africville community in Halifax, Nova Scotia, and the Aamjiwnaang First Nation near Sarnia, Ontario.

⁴⁷⁶ ERA note 8 above.

⁴⁷⁷ ERA *Supra* note 8.

⁴⁷⁸ Bill 111, *Environmental Racism Prevention Act*, 2nd Sess, 62nd Gen Assem, Nova Scotia, 2015.

⁴⁷⁹ Bill 111 *Supra* note 478. See also Ecojustice, "Environmental Racism: Acknowledgment is Crucial" (6 May 2015), online: Ecojustice <https://ecojustice.ca/environmental-racism-acknowledgment-is-crucial/>.

⁴⁸⁰ Bill 111 *Supra* note 478, preamble. See also Ingrid RG Waldron, "The ENRICH Project" (2018) 5:2 *Kalfou* 394 at 400-405.

ongoing injustices that these communities face due to environmental policies and practices that expose them to greater health and safety risks.⁴⁸¹

The bill also requires government to establish a comprehensive panel to consult with affected communities.⁴⁸² It is possible that this panel would gather data on the health and socio-economic impacts of environmental racism, allowing residents to voice their concerns and collaborate on developing strategies and solutions. The bill proposes public consultations and emphasizes the need for community involvement in addressing environmental injustices.⁴⁸³ Additionally, the bill calls for regular reporting and accountability measures to monitor progress in reducing environmental inequities.⁴⁸⁴

Noteworthy is that Bill 111 passed second reading in the Nova Scotia Legislature on November 25, 2015, but did not become law.⁴⁸⁵ The bill has been re-introduced several times since 2015, with the most recent version being in 2021 as the Redressing Environmental Racism Act (Bill 69).⁴⁸⁶ However, regardless of the strong advocacy and support from community groups and researchers, Bill 111 or its subsequent versions has not passed into law. One significant reason for its current status could be political dynamics within the Nova Scotia Legislature.⁴⁸⁷ The New Democratic Party (NDP), which introduced the bill, holds fewer seats compared to the governing Liberal Party and the Progressive Conservative Party, making it challenging to secure the necessary support for the bill's passage.

The introduction and debate of Bill 111 has nonetheless brought significant attention to the issue of environmental racism in Nova Scotia, raising awareness among both politicians and the public. Bill 111 marked a significant milestone in the environmental justice movement in Nova Scotia. It highlighted the systemic nature of environmental racism and the need for legislative

⁴⁸¹ Bill 111 *Supra* note 478 Preamble; Waldron *Supra* note 480 at 400-405.

⁴⁸² Bill 111 *Supra* note 478 sec 3 (1); Waldron *Supra* note 480 at 400-405.

⁴⁸³ Bill 111 *Supra* note 478 sec 4; Waldron *Supra* note 480 at 400-405.

⁴⁸⁴ Bill 111 *Supra* note 478 sec 5.

⁴⁸⁵ Sarah Poko, "Activists lobby for passage of Bill 111 to address environmental racism," *The Signal* (2015), online: The Signal <https://signalhfx.ca/activists-lobby-for-passage-of-bill-111-to-address-environmental-racism/>.

⁴⁸⁶ Victoria Walton, "Environmental racism bill goes to second reading in House of Commons," *The Coast* (2020), online: The Coast <https://www.thecoast.ca/halifax/environmental-racism-bill-goes-to-second-reading-in-house-of-commons/Content?oid=25215543>.

⁴⁸⁷ Elections Nova Scotia, "Past Election Results (and by-elections below)," online: Elections Nova Scotia <https://electionsnovascotia.ca/past-election-results-statistics>; Marieke Walsh & Sean Previl, "Nova Scotia election: How the results impact each party's bottom line," *Global News* (2 June 2017), online: Global News <https://globalnews.ca/news/3492023/live-nova-scotia-election-coverage/>.

measures to protect vulnerable communities. The bill's failure to pass did not diminish its impact; instead, it served as a catalyst for ongoing advocacy and raised public awareness about the critical issue of environmental racism. The momentum generated by Bill 111 eventually contributed to the development of Bill C-230 at the federal level.

3.3.1.2 Bill C-230: Scope and Intent

Bill C-230 was introduced by MP, Lenore Zann, during the 43rd Parliament in 2020.⁴⁸⁸ The bill recognized that a disproportionate number of people who live in environmentally hazardous areas are members of Indigenous, racialized, or marginalized communities.⁴⁸⁹ The bill further acknowledged the systemic discrimination these communities face in environmental policy making.⁴⁹⁰ Bill C-230 mandated the development of a national strategy to address this issue, including measures to identify, address, and mitigate environmental racism through data collection, analysis, and the creation of an inventory of environmental hazards disproportionately impacting racialized communities.⁴⁹¹ The strategy would establish clear objectives and timelines for addressing these hazards.⁴⁹²

The primary objective of Bill C-230 was to mitigate the disproportionate impact of environmental hazards on marginalized communities, particularly racial minorities and Indigenous peoples.⁴⁹³ The bill sought to accomplish this objective through several key provisions. Firstly, Bill C-230 called for the collection of data on the location and impact of environmental hazards, including landfills, incinerators, and other sources of pollution, particularly in communities predominantly inhabited by racial minorities and Indigenous peoples.⁴⁹⁴ This data collection was intended to provide a clear understanding of the scope and scale of environmental racism in Canada.⁴⁹⁵

Secondly, Bill C-230 mandated the creation of a national strategy to address and mitigate environmental racism.⁴⁹⁶ This strategy would involve setting targets and timelines for reducing

⁴⁸⁸ Bill C-230 *Supra note 36*.

⁴⁸⁹ Bill C-230 *Supra note 36* Preamble.

⁴⁹⁰ Bill C-230 *Supra note 36* Preamble.

⁴⁹¹ Bill C-230 *Supra note 36* secs 3 (1), 3 (3), 3 (3) (b).

⁴⁹² Bill C-230 *Supra note 36* sec 4.

⁴⁹³ Bill C-230 *Supra note 36* Preamble.

⁴⁹⁴ Bill C-230 *Supra note 36* sec 3 (3).

⁴⁹⁵ Bill C-230 *Supra note 36* sec 3 (3).

⁴⁹⁶ Bill C-230 *Supra note 36* secs 3 (1) and 3 (2).

environmental hazards in affected communities and promoting sustainable and equitable development practices.⁴⁹⁷ The strategy was to be developed in consultation with affected communities, ensuring their voices and concerns were central to the policy-making process.⁴⁹⁸ Additionally, Bill C-230 required the Minister of Environment to prepare and submit regular reports to Parliament on the progress of the national strategy.⁴⁹⁹ The reports were likely intended to highlight any challenges or obstacles encountered during the implementation process, allowing for adjustments and improvements to the strategy as needed.

Moreover, Bill C-230 stipulated that information related to the national strategy, including data on environmental hazards and progress reports, be made publicly accessible to ensure transparency and accountability.⁵⁰⁰ It should also be noted that Bill C-230 included provisions for supporting community-based projects that address environmental racism.⁵⁰¹ Such support could involve funding for local initiatives, capacity-building programs, and other forms of assistance to empower communities. Furthermore, Bill C-230 highlighted the importance of research and education, calling for increased funding and support for research on the health impacts of environmental hazards on racialized communities.⁵⁰²

However, despite Bill C-230's commendable attempt at addressing environmental racism, it did not make it through all legislative stages. This was primarily due to the timing and political circumstances surrounding its introduction.⁵⁰³ The bill was introduced during the 43rd Parliament in 2020. While it garnered significant support from environmental and social justice advocates, as well as from various members of Parliament, the legislative process was interrupted by the dissolution of Parliament for the 2021 federal election.⁵⁰⁴

In the Canadian legislative process, all bills that have not yet been passed through both the House of Commons and the Senate effectively die on the order paper when Parliament is

⁴⁹⁷ Bill C-230 *Supra note 36* secs 4 and 4 (1).

⁴⁹⁸ Bill C-230 *Supra note 36* sec 3 (2).

⁴⁹⁹ Bill C-230 *Supra note 36* sec 4 (1).

⁵⁰⁰ Bill C-230 *Supra note 36* sec 4 (2).

⁵⁰¹ Bill C-230 *Supra note 36* sec 3 (3) (e).

⁵⁰² Bill C-230 *Supra note 36* sec 3 (3) (a).

⁵⁰³ Private member's bills don't often become enacted law. See House of Commons, *The Legislative Process: From Government Policy to Proclamation*, online: House of Commons https://www.ourcommons.ca/procedure/our-procedure/LegislativeProcess/c_g_legislativeprocess-e.html; Michael Clegg, "The Legislative Process" (1986) 11 *Resource News* 6 at 6-10.

⁵⁰⁴ House of Commons *Supra note 503*; Clegg *Supra note 503* at 6-10.

dissolved.⁵⁰⁵ This means that they must be reintroduced and start the legislative process anew in the subsequent Parliament.⁵⁰⁶ Bill C-230 was one of many pieces of legislation that were halted due to the dissolution, which is a common occurrence in parliamentary systems when elections are called before the legislative process is complete.⁵⁰⁷ Nonetheless, although Bill C-230 did not pass through all legislative stages, it laid an important foundation for future legislative efforts on environmental racism, such as the Environmental Racism Act.

3.3.1.3 The Environmental Racism Act: Scope and Intent

Following the dissolution of the 43rd Parliament, the commitment to end environmental racism remained strong among legislators. In February 2022, MP Elizabeth May introduced the Bill C-226 during the first session of the 44th Parliament.⁵⁰⁸ This bill was designed to build on the momentum generated by Bill C-230 in addressing environmental racism. Both Bill C-226 and Bill C-230 were very similar in their intent and provisions. In essence both bills sought to rectify historical injustices by ensuring equitable access to a healthy environment for all Canadians, regardless of their race or socio-economic status.⁵⁰⁹ By addressing the root causes and consequences of environmental racism, Bill C-230 and Bill c-226 aimed to create a more just and sustainable future. To achieve this aim, both bills required the development of a national strategy to promote efforts across Canada to redress the harm caused by environmental racism.⁵¹⁰ Therefore, Bill C-226, which is now the Environmental Racism Act, was essentially a re-introduction of Bill C-230.

⁵⁰⁵ Canada, House of Commons, House of Commons Procedure and Practice, 3rd ed, (Ottawa: House of Commons, 2017), c 9 "The Parliamentary Cycle", s "Dissolution of Parliament", online: House of Commons https://www.ourcommons.ca/about/procedureandpractice3rdedition/ch_09_3-e.html.

⁵⁰⁶ House of Commons *Ibid*.

⁵⁰⁷ Additionally, the legislative process itself is often lengthy and complex, involving multiple readings, committee reviews, debates, and votes. Even bills with broad support can face delays and obstacles, such as scheduling issues, competing legislative priorities, and the need for thorough examination and amendment. In the case of Bill C-230, while it had significant backing, it ultimately did not progress through all the required stages before Parliament was dissolved. See David E Smith, *The Canadian Senate in Bicameral Perspective* (Toronto: University of Toronto Press, 2003) at 126-130; House of Commons Procedure and Practice, 3rd ed (Ottawa: House of Commons, 2017) <https://www.ourcommons.ca/procedure/procedure-and-practice-3/index-e.html> at 746-768.

⁵⁰⁸ Bill C-226 *Supra* note 40.

⁵⁰⁹ Bill C-230 *Supra* note 36 preamble and sec 3; Bill C-226 *Supra* note 40 Preamble and sec 3. See also Development and Peace, "Bill C-226: A Victory for Environmental Justice" (2023), online: Development and Peace <https://devp.org/en/bill-c-226-a-victory-for-environmental-justice/>.

⁵¹⁰ Development and Peace *Ibid*.

To understand the foundation of the Environmental Racism Act, it is important to examine its preamble, which sets the tone for the entire legislation. In its preamble, the Environmental Racism Act acknowledges that environmental racism has resulted in marginalized communities, particularly Indigenous and racialized communities who face disproportionate impacts from environmental hazards.⁵¹¹ It recognizes the need for an effective and comprehensive approach to address these injustices and to ensure that all Canadians have equal protection and access to a healthy environment.⁵¹² The preamble sets the tone by emphasizing the importance of advancing environmental justice and the commitment of the Government of Canada to address the harm caused by environmental racism.⁵¹³

Following the preamble, the first section of the Environmental Racism Act provides the short title by which the Act may be cited: the “national strategy to assess, prevent and address environmental racism and to advance environmental justice.”⁵¹⁴ This title succinctly reflects the Act’s purpose and scope, setting the tone for the provisions that follow. After which, the Act outlines, in section 2, the definition of “Minister” as the Minister of Environment.⁵¹⁵ This definition is crucial for identifying the responsible authority for the development and implementation of the national strategy to address environmental racism. However, as noted in chapter four of this study, the Act does not define other key terms such as “environmental racism,” “strategy,” or “affected communities.”⁵¹⁶ I will discuss the implications of failing to clearly define these terms in chapter 4 below.

⁵¹¹ Bill C-226 *Supra* note 40 Preamble. Ecojustice, “Environmental Racism in Canada” (2023), online: Ecojustice <https://ecojustice.ca/news/environmental-racism-in-canada/>.

⁵¹² Ecojustice *Ibid*. See also Development and Peace, “Bill C-226: A Victory for Environmental Justice” (2023), online: Development and Peace <https://devp.org/en/bill-c-226-a-victory-for-environmental-justice/>.

⁵¹³ Development and Peace *Ibid*.

⁵¹⁴ ERA *Supra* note 8 sec 1. See also Environmental Health News, “Canada Passes Bill C-226 to Combat Environmental Racism” (2023), online: EHN <https://www.ehn.org/canada-passes-bill-c-226-to-combat-environmental-racism-2668536480.html>.

⁵¹⁵ ERA *Supra* note 8 sec 2. Ecojustice, “Environmental Racism in Canada” (2023), online: Ecojustice <https://ecojustice.ca/news/environmental-racism-in-canada/>.

⁵¹⁶ See chapter four below where I argue that this omission could have significant implications for the clarity and effectiveness of the legislation. The absence of these definitions may lead to varied interpretations and inconsistencies in the implementation of the bill’s provisions.

The heart of the Environmental Racism Act is section 3,⁵¹⁷ which mandates the development and implementation of a national strategy to address environmental racism.⁵¹⁸ This strategy is to be developed by the Minister in consultation with affected communities, stakeholders, and experts.⁵¹⁹ The aim of consulting is to identify, monitor, and mitigate environmental hazards that disproportionately affect Indigenous communities.⁵²⁰ These consultations are crucial for ensuring that the strategy is informed by the lived experiences and insights of those most impacted by environmental racism. The Act stipulates that these consultations must be inclusive, accessible, and culturally appropriate to ensure genuine community engagement.⁵²¹

To complement these efforts and maintain accountability, section 4 of the Environmental Racism Act requires the Minister to prepare and submit a report to Parliament within two years of the Act coming into force.⁵²² This report will detail the progress made in developing and implementing the national strategy, including the outcomes of consultations and any measures

⁵¹⁷ Section 3 of ERA stipulates that: “3(1) The Minister must develop a national strategy to promote efforts across Canada to advance environmental justice and to assess, prevent and address environmental racism.” 3 (2) “In developing the strategy, the Minister must consult or cooperate with any interested persons, bodies, organizations or communities- including other ministers, representatives of governments in Canada and Indigenous communities- and ensure that it is consistent with the Government of Canada’s framework for the recognition and implementation of the rights of Indigenous peoples.” 3(3) ”The strategy must include: (a) a study that includes (i) an examination of the link between race, socio-economic status and environmental risk, and (ii) information and statistics relating to the location of environmental hazards; and (b) measures that can be taken to advance environmental justice and assess, prevent and address environmental racism and that may include (i) possible amendments to federal laws, policies and programs, (ii) the involvement of community groups in environmental policy-making, (iii) compensation for individuals or communities, and (iv) the collection of information and statistics relating to health outcomes in communities located in proximity to environmental hazards.

⁵¹⁸ ERA *Supra* note 8 sec 3.

⁵¹⁹ ERA *Supra* note 8 sec 3. The Conversation, "Meaningful Engagement is the Key to Achieving Bill C-226’s Goal of Ending Environmental Racism in Canada" (2023), online: *The Conversation* <https://theconversation.com/meaningful-engagement-is-the-key-to-achieving-bill-c-226s-goal-of-ending-environmental-racism-in-canada-227855>.

⁵²⁰ This study intentionally uses the term “Indigenous communities” here because section 3 (2) specifically mentions consultations be done for the “recognition and implementation of the rights of Indigenous peoples”. This wording, however, may open section 3 to criticism for potentially neglecting other marginalized communities, such as African Nova Scotians. See discussion in chapter four of this study.

⁵²¹ ERA *Supra* note 8 sec 3 (2). See also secs 5, 6 and 7 of INDRIP Act *Supra* note 55 which elaborates on framework for the recognition and implementation of the rights of Indigenous peoples as required by section 3(2) of Bill C-226. The Conversation, "Meaningful Engagement is the Key to Achieving Bill C-226’s Goal of Ending Environmental Racism in Canada" (2023), online: The Conversation <https://theconversation.com/meaningful-engagement-is-the-key-to-achieving-bill-c-226s-goal-of-ending-environmental-racism-in-canada-227855>.

⁵²² ERA *Supra* note 8 sec 4. Ecojustice, "Environmental Racism in Canada" (2023), online: Ecojustice <https://ecojustice.ca/news/environmental-racism-in-canada/>.

taken to address identified issues.⁵²³ Subsequent reports are to be submitted every five years, providing ongoing oversight and evaluation of the strategy's effectiveness.⁵²⁴

Section 4 of the Environmental Racism Act is crucial for ensuring transparency and accountability in addressing environmental racism. The mandate to submit a report is intended to provide a detailed account of the progress made in developing and implementing the national strategy. This highlights the outcomes of consultations with affected communities and any measures taken to address identified issues. Additionally, the requirement in section 5 for subsequent reports every five years ensures ongoing oversight and evaluation of the strategy's effectiveness. This regular reporting mechanism is essential for tracking progress, making necessary adjustments, and maintaining public and parliamentary scrutiny over the government's efforts to combat environmental racism.

By mandating the creation of a national strategy, ensuring community involvement, and establishing mechanisms for accountability and ongoing improvement, the Environmental Racism Act aims to rectify historical injustices and promote environmental equity. The enactment of the Environmental Racism Act will not only improve the health and well-being of marginalized communities but will also contribute to a more just and inclusive society. Together, these provisions reflect a comprehensive approach to addressing environmental racism, underscoring the government's commitment to creating meaningful change and ensuring that progress is both measurable and sustained over time.

3.4 So how does the Environmental Racism Act Complement Current Legislation in Canada

Having discussed the purpose and scope of the Environmental Racism Act, this thesis will now examine how the Act fits into the broader fabric of Canadian environmental legislation. Although the Environmental Racism Act was introduced as a critical measure to tackle environmental racism, it does not operate in isolation. Instead, it strategically aligns with and enhances foundational environmental laws such as CEPA, IAA and Nova Scotia's EGSPA. The Environmental Racism Act builds on these existing frameworks by introducing specific measures

⁵²³ ERA *Supra* note 8 sec 4. The Conversation *Supra* note 521.

⁵²⁴ ERA *Supra* note 8 sec 5. The Conversation *Supra* note 521.

that address the gaps left by current statutes, particularly in protecting marginalized and racialized communities from disproportionate environmental impacts.

3.4.1 The Environmental Racism Act and CEPA

As already noted in the preceding sections, CEPA is a cornerstone of Canada's environmental legislation.⁵²⁵ CEPA's focus on pollution prevention, risk management, and public participation is key to fostering environmental justice. Notable is that CEPA emphasizes the prevention of pollution as a national goal by prioritizing measures that reduce or eliminate the creation of pollutants and waste at the source.⁵²⁶ This proactive approach seeks to minimize the release of harmful substances before they can cause environmental damage. Furthermore, sections 64 and 67 of CEPA detail the process for assessing substances to determine if they are toxic, as defined under CEPA.⁵²⁷ This approach is designed to protect the environment and public health from the adverse effects of dangerous chemicals. In addition, CEPA encourages public involvement in environmental decision-making.⁵²⁸ This inclusion is crucial for ensuring that all stakeholders, particularly those from affected communities, can voice their concerns and influence environmental policy.⁵²⁹

Nevertheless, while the aforementioned provisions reflect environmental justice, CEPA lacks explicit measures that are tailored to address the specific challenges of environmental racism. This presents a gap that needs to be filled by a relevant statute. Thus, CEPA's provisions do not specifically address the disproportionate impact of pollution on marginalized and racialized communities. Instead, CEPA's general approach to pollution prevention and risk management may not adequately account for the unique vulnerabilities of these populations. Additionally, the pollution prevention plans mandated under section 56 focus primarily on toxic substances but may not encompass broader social and environmental factors that contribute to environmental racism. Also, although CEPA encourages public participation, there is no specific requirement to ensure

⁵²⁵ Given that CEPA's provisions have already been discussed in section 3.2.1, this section will not rehash them but will instead provide a concise overview to facilitate understanding of how the ERA complements the legislation.

⁵²⁶ CEPA *Supra* note 46, preamble and sec 2. Ewing *Supra* note 382 at 5-15.

⁵²⁷ CEPA *Supra* note 46 sec 64 and 67. Davies *Supra* note 386 at 1111-1113; Meek & Armstrong *Supra* note 389 at 591-621

⁵²⁸ CEPA *Supra* note 46 Preamble and secs 2,22, 78, 313. Valiante *Supra* note 401 at 81-112.

⁵²⁹ Filzah Belal, "Why We Need a Constitutional Right to Healthy Environment in Canada" (2022) 34 *Fordham Envtl L Rev* 31 at 31-57; David Boyd, "The Right to a Healthy Environment: Revitalizing Canada's" (2013) 51 *Alta L Rev* 201 at 201-205.

that marginalized communities, which are often most affected by environmental policies, are adequately represented and heard in the decision-making process.

Given these shortcomings, the Environmental Racism Act steps in to fill these gaps by specifically targeting the systemic inequities that lead to environmental racism. For instance, the Environmental Racism Act proposes the collection of detailed data on how environmental hazards affect marginalized communities.⁵³⁰ The Act also mandates inclusive public consultations that ensure these communities concerns are addressed and incorporated into environmental policies.⁵³¹ Unlike CEPA, the Environmental Racism Act explicitly aims to redress environmental racism, providing a clear legislative focus that addresses the specific needs and challenges of racialized and marginalized communities.

Building on the public participation provisions in CEPA, the Environmental Racism Act seeks to enhance the engagement mechanisms to be more inclusive and effective, ensuring that vulnerable populations have a significant role in environmental governance.⁵³² In essence, while CEPA lays a strong foundation for environmental protection in Canada, the Environmental Racism Act is designed to enhance this framework by introducing specific measures that are aimed at combating environmental racism. By doing so, it ensures a more comprehensive and just approach to environmental legislation, aligning Canada's environmental policies with broader social justice objectives.

3.4.2 The Environmental Racism Act and the IAA/EAR

As highlighted earlier, the IAA and EAR represent significant advancements in Canada's approach to evaluating major projects and their environmental, health, social, and economic effects.⁵³³ Worthy of mention is that the IAA and EAR mandate comprehensive assessments for major projects that include not only environmental impacts but also social, health, and economic effects.⁵³⁴ The IAA and EAR also emphasize the need for decisions to be based on robust science, Indigenous knowledge, and community input, reflecting a multi-faceted approach to understanding

⁵³⁰ ERA *Supra* note 8 secs 3 (2) (a) (b) (c).

⁵³¹ ERA *Supra* note 8.

⁵³² ERA *Supra* note 8 Preamble, sec 3.

⁵³³ IAA *Supra* note 414; EAR *Supra* note 434.

⁵³⁴ IAA *Supra* note 414 sec 16(2), 19 (1) (a), 22; EAR *Supra* note 415 sec 11, 12.

impacts.⁵³⁵ The IAA further embeds sustainability as a core objective, aiming to ensure that approved projects contribute positively to Canada's environmental obligations and societal well-being.⁵³⁶ This aligns with environmental justice by attempting to balance development with the need to protect and sustain natural and human environments.

A pivotal element of the IAA and EAR is the requirement for meaningful consultation with Indigenous communities.⁵³⁷ This is not merely about engagement but ensuring that Indigenous knowledge and perspectives are integrated into the assessment process. Although the IAA represents a significant step forward, it has notable limitations in fully addressing environmental justice. Of importance is that, apart from Indigenous consultations, the IAA lacks specific provisions that focus on the unique challenges faced by other marginalized and racialized communities.⁵³⁸ There is, therefore, a need for broader engagement strategies that directly address the impacts of projects on all vulnerable populations.

The Environmental Racism Act seeks to address this gap by introducing targeted measures specifically designed to enhance environmental justice provisions. For instance, the Environmental Racism Act proposes more structured and enforceable mechanisms for community engagement, ensuring that all vulnerable communities have a voice in the assessment processes, not just Indigenous groups.⁵³⁹ This would strengthen the public participation framework of the IAA by making it more inclusive and responsive. Moreover, the Environmental Racism Act has a specific focus on environmental racism. Unlike the IAA, the Environmental Racism Act explicitly aims to combat environmental racism by incorporating measures that assess and address the disproportionate impacts of environmental decisions on racialized communities.⁵⁴⁰ This focus ensures that environmental justice is not just a byproduct of environmental protection but a primary objective.

In essence, while the IAA has significantly advanced Canada's approach to impact assessments by incorporating considerations for environmental justice, the Environmental Racism

⁵³⁵ IAA *Supra* note 414 Preamble, sec 6(1); EAR *Supra* note 415 sec 12.

⁵³⁶ IAA *Supra* note 414 Preamble, sec 6(1).

⁵³⁷ IAA *Supra* note 414 sec 22 (c), (e). See also Eckert *et al* note 416 at 67-90; Couch *et al Supra* note 416 at 41-59; Lawrence *Supra* note 418 at 219-222; Doyle *Supra* note 422 at 135-153. EAR *Supra* note 415 sec 9, 12. See also Noble *Supra* note 436 at 66-75; Hickey *et al Supra* note 432 at 315-329.

⁵³⁸ See section 3.2.2 above for a critic on the IAA and EAR in this regard.

⁵³⁹ ERA *Supra* note 8 Preamble and sec 3.

⁵⁴⁰ ERA *Supra* note 8 Preamble and sec 3.

Act is poised to further this by filling in critical gaps, particularly in addressing the needs of all marginalized communities. Together, these legislative measures can provide a more comprehensive and just framework for managing Canada's environmental policies and major project assessments.

3.4.3 The Environmental Racism Act and the EGSPA

As already established, the EGSPA was enacted to integrate Nova Scotia's environmental policies on sustainability with economic well-being.⁵⁴¹ Of importance is that the EGSPA sets ambitious environmental targets that are aimed at reducing greenhouse gas emissions, increasing renewable energy usage, and enhancing waste management.⁵⁴² These goals are designed to foster a sustainable environment that benefits all Nova Scotians. The Act's focus on sustainability inherently supports environmental justice by promoting healthier and more sustainable communities, which can lead to improved quality of life for all residents, particularly those in vulnerable areas.⁵⁴³

EGSPA also encourages public participation in environmental decision-making.⁵⁴⁴ The aim is to involve communities in the processes that affect their local environments. This involvement is crucial for ensuring that environmental policies reflect the needs and concerns of all stakeholders, including marginalized and underserved communities. Nonetheless, while EGSPA is progressive in its environmental targets and sustainability focus, it has several limitations when it comes to addressing the specific concerns of environmental justice. Key considerations are that EGSPA does not specifically address the needs of marginalized or racialized communities. While EGSPA provides for public participation, it does not mandate specific measures to ensure that these communities, which are often most affected by environmental issues, have sufficient representation or influence in decision-making processes.

⁵⁴¹ EGSPA *Supra* note 464. Doelle & Lahey *Supra* note 464 at 69-76; Tirone *et al Supra* note 467 at 72-80; Lahey & Doelle *Supra* note 465 at 1-31.

⁵⁴² EGSPA *Supra* note 464 sec 4 (2) (a), (b), (f). Doelle & Lahey *Supra* note 464 at 69-76; Tirone *et al Supra* note 467 at 72-80; Lahey & Doelle *Supra* note 465 at 1-31.

⁵⁴³ EGSPA *Supra* note 464 secs 3, 4 (1), 4 (2) (I). Doelle & Lahey *Supra* note 464 at 69-76; Tirone *et al Supra* note 467 at 72-80; Lahey & Doelle *Supra* note 465 at 1-31.

⁵⁴⁴ EGSPA *Supra* note sec 4 (2) (m). Doelle & Lahey *Supra* note 464 at 69-76; Tirone *et al Supra* note 467 at 72-80; Lahey & Doelle *Supra* note 465 at 1-31.

Additionally, EGSPA lacks explicit measures to identify and combat environmental racism. This is a significant oversight, as environmental justice not only involves the equitable distribution of environmental benefits but also requires proactive measures to prevent the disproportionate environmental burdens often placed on racialized and marginalized groups. Further to this, EGSPA sets out commendable goals and frameworks, but the details on how these goals are to be enforced and monitored over the long term are vague. Without strong enforcement mechanisms, the intended benefits of the Act might not fully materialize, particularly for those in vulnerable positions.

In this light, the Environmental Racism Act is a legislative instrument that ensures that environmental policies proactively address the needs of marginalized and racialized communities. In this light, the Environmental Racism Act requires mandatory assessments of environmental impacts on marginalized communities and ensuring that they have significant input into the planning and execution of projects that affect their environment.⁵⁴⁵ Moreover, the Environmental Racism Act emphasizes the creation of a national strategy to redress environmental racism, filling a critical gap in EGSPA.⁵⁴⁶ This strategy will involve detailed data collection, community consultations, and policy implementations that are specifically designed to mitigate the impacts of environmental decisions on vulnerable populations.⁵⁴⁷

Furthermore, by mandating clear, enforceable mechanisms and enhancing transparency in environmental governance,⁵⁴⁸ the Environmental Racism Act ensures that the goals of EGSPA are not only pursued but achieved with equity and justice in mind. This includes ongoing monitoring and public reporting on the progress toward environmental targets, specifically evaluating the impact on environmental justice.⁵⁴⁹ Accordingly, while the EGSPA sets a solid foundation for environmental sustainability in Nova Scotia, its effectiveness in promoting environmental justice can be significantly strengthened through the provisions of the Environmental Racism Act which mandates the developing of necessary measures to ensure that environmental benefits are equitably shared and that the burdens of environmental harm do not disproportionately fall on marginalized

⁵⁴⁵ ERA *Supra* note 8 sec 3.

⁵⁴⁶ ERA *Supra* note 8 sec 3.

⁵⁴⁷ ERA *Supra* note 8 sec 3.

⁵⁴⁸ ERA *Supra* note 8 sec 3.

⁵⁴⁹ ERA *Supra* note 8 sec 4 and 5.

communities only, thereby achieving a more just and inclusive approach to environmental governance.

3.5 Conclusion

This chapter was an attempt at understanding the legislative steps Canada is taking to achieve environmental justice and mitigate the effects of environmental racism. Initially, the chapter explored the foundations and objectives existing environmental law legislation, which set the backdrop for environmental protection and risk management in Canada. These Acts are designed to safeguard the environment by managing pollutants and assessing environmental impacts of major projects, emphasizing pollution prevention, public participation, and a comprehensive assessment approach.

The analysis then delved into Nova Scotia's environmental legislation. These provincial laws are aimed at setting ambitious environmental targets and ensuring public involvement in environmental governance. However, the chapter identified gaps in these laws, particularly in addressing environmental racism and ensuring that the rights and concerns of marginalized communities are adequately represented and acted upon. Upon such exposition, this chapter noted that the Environmental Racism Act is a transformative piece of legislation that is designed to specifically address these gaps.

In this respect, the chapter detailed how the Environmental Racism Act complements existing laws by introducing specific measures aimed at protecting vulnerable communities from environmental harms. It argued that while current laws establish a framework for environmental protection, they often fall short in addressing the nuanced issues of environmental racism. Furthermore, by mandating the development of a national strategy to combat environmental racism, the Environmental Racism Act ensures that environmental justice is woven into the fabric of Canada's environmental policy landscape. This comprehensive approach not only seeks to remedy past oversights but also sets a proactive path forward for achieving true environmental justice across Canada, marking a crucial step toward ensuring that all Canadians, regardless of their background, have equal access to a safe and healthy environment. Building upon this chapter's exploration of legislative frameworks and the Environmental Racism Act's role in enhancing environmental justice, the next chapter shifts focus towards the practical aspects of implementing this transformative legislation.

Chapter Four

Predicting Implementation Strategies and Anticipating Challenges

4.1 Introduction

Building on the preceding chapter's discussion of the Environmental Racism Act's statutory framework and aims, this chapter shifts focus to the practical aspects of implementing the Act. This chapter focuses on predicting the strategies required for the effective implementation of the Environmental Racism Act and anticipates the hurdles that could impede the Act's success. Therefore, this chapter begins by analyzing how federal, provincial, and local entities can coordinate and collaborate in bringing the Environmental Racism Act to life.⁵⁵⁰ The chapter assesses how these government bodies can work together to ensure seamless implementation of the Act.

Chapter four will also provide a novel perspective by incorporating comparative case study examples from two jurisdictions with similar legislative or policy frameworks.⁵⁵¹ These case studies will offer valuable insights into the implementation strategies adopted elsewhere. The goal of such exploration is to draw lessons and best practices that can be adapted to the Canadian context. Consequently, this chapter offers a pragmatic roadmap for translating the Environmental Racism Act's provisions into tangible outcomes, ensuring that the fight against environmental racism in Canada is both effective and sustainable.

4.2 Predicting Implementation Strategies

Before delving into how the Environmental Racism Act can be implemented, this thesis finds it prudent to note one shortcoming of the Environmental Racism Act.⁵⁵² This shortcoming could present problems in how the Act is executed, depending on the vantage point of the interpreter. On this note, although the Environmental Racism Act represents a crucial step towards addressing environmental racism,⁵⁵³ it faces its own set of challenges and potential shortcomings

⁵⁵⁰ See section 4.2.1 below.

⁵⁵¹ See section 4.3 below.

⁵⁵² ERA *Supra* note 8.

⁵⁵³ Ecojustice. "Addressing environmental racism in Canada." Ecojustice, 2022, <https://ecojustice.ca/addressing-environmental-racism-in-canada/>.

that could impact its effective implementation. One notable challenge relates to the language used in certain provisions of the Act. One example is section 3 of the Environmental Racism Act, which outlines the purpose of the national strategy.⁵⁵⁴ The Preamble also states that “the Government of Canada is committed to assessing and preventing environmental racism” in affected marginalized communities.⁵⁵⁵ While this inclusive language in the Act is commendable, there is a notable specificity in section 3(2) of the Act that might limit its scope.

For instance, section 3(2) mandates the Minister to create a strategy by consulting or cooperating with any interested persons and ensuring that such strategy is “consistent with the Government of Canada’s framework for the recognition and implementation of the rights of Indigenous peoples”.⁵⁵⁶ This specific mention of Indigenous communities, while crucial, may inadvertently overshadow the rights of other racialized communities who also face significant environmental injustices. Although the preamble recognizes the broader spectrum of racialized persons, the explicit focus on implementing the rights of Indigenous peoples in subsequent sections could lead to varied interpretations and applications of the law, potentially marginalizing non-Indigenous racialized groups. This challenge could be addressed by ensuring that any strategies or policies enacted as per the Environmental Racism Act’s mandate have uniform language throughout their sections. The strategies and policies should explicitly include Indigenous persons as well as all racialized communities in every provision. This would help avoid any ambiguity and ensure that all affected groups are equally considered and supported.⁵⁵⁷

Further to the above, section 2 of the Environmental Racism Act defines the term “Minister” as the Minister of Environment and Climate Change.⁵⁵⁸ This definition is crucial for identifying the responsible authority for the development and implementation of the national strategy to address environmental racism. However, it is noteworthy that the Act does not define other key terms such as “environmental racism” or “affected communities”. This omission could have significant implications for the clarity and effectiveness of the legislation. The absence of

⁵⁵⁴ ERA *Supra* note 8 sec 3.

⁵⁵⁵ ERA *Supra* note 8 Preamble.

⁵⁵⁶ ERA *Supra* note 8 sec 3(2).

⁵⁵⁷ For a general overview on the impact of language in the interpretation of statutes see Elmer A. Driedger, *The Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at xvi-385.

⁵⁵⁸ ERA *Supra* note 8.

these definitions may lead to varied interpretations and inconsistencies in the implementation of the Act's provisions.⁵⁵⁹

The decision not to define critical terms like “environmental racism” within the Environmental Racism Act can be seen both positively and negatively. On the positive side, the lack of specific definitions allows for flexibility in interpretation, which could be beneficial in adapting to a broad range of situations and evolving understandings of environmental racism. This flexibility might enable more comprehensive and context-sensitive approaches to addressing the issues as they arise. However, the lack of clear definitions can also pose significant challenges. It may lead to ambiguity and inconsistencies in how the Act is implemented and enforced. Different stakeholders, including government agencies, affected communities, and advocacy groups, might have varying interpretations of what constitutes environmental racism and the appropriate measures to address it. This could undermine the Act's effectiveness and the intended uniformity in addressing environmental justice issues across Canada. Nevertheless, the Environmental Racism Act is groundbreaking and will need well-structured strategies and measures for its implementation.

4.2.1 Government and Agency Roles

This chapter acknowledges that the successful implementation of the Environmental Racism Act hinges on effective coordination and collaboration among various levels of government and agencies.⁵⁶⁰ Given the multifaceted nature of environmental justice and environmental racism, it is crucial to examine how federal, provincial, and local government bodies will synchronize their efforts to enforce the Act's provisions. This study argues that federal oversight will be critical in setting nationwide standards and ensuring consistency in the Environmental Racism Act's application across provinces.⁵⁶¹ Key ministries and departments will

⁵⁵⁹ For a general overview of the role of definitions in statutes and how precise definitions within statutes can guide judicial interpretation and influence legal outcomes see William Baude & Stephen E. Sachs, "The Law of Interpretation" (2017) 130 *Harv L Rev* at 1079-1147.

⁵⁶⁰ For general insights into the structural and practical nuances of managing and implementing policy within complex governmental frameworks, and the importance of cooperation and integration in achieving effective governance, see the works of Jodi Sandfort and Stephanie Moulton, *Effective Implementation in Practice: Integrating Public Policy and Management* (John Wiley & Sons, 2014); R. Agranoff, "Intergovernmental policy management: cooperative practices in federal systems," in *The dynamics of federalism in national and supranational political systems*, (London: Palgrave Macmillan UK, 2007), 248-283.

⁵⁶¹ See the general works of Richard B. Stewart, "Pyramids of sacrifice—problems of federalism in mandating state implementations of National Environmental Policy," *Yale Lj* 86 (1976) at 1196-1272 who critically examines the

have distinct roles in the implementation process.⁵⁶² To this end, the Ministry of Environment will play a pivotal role in developing guidelines, monitoring compliance, and providing technical support in the Act's application.⁵⁶³ This ministry will likely collaborate closely with other federal entities, such as Health Canada and Indigenous Services Canada, to address the diverse impacts of environmental racism.⁵⁶⁴

In this context, Health Canada will have to play a significant role in assessing the health impacts of environmental racism and developing public health interventions.⁵⁶⁵ This department will need to work closely with environmental agencies to identify communities at risk and implement measures to mitigate health hazards. The integration of health and environmental data will be crucial for a comprehensive understanding of the impacts of the Environmental Racism Act and for devising effective solutions.

Once federal guidelines have been developed, provincial governments, along with their environmental agencies, will be responsible for adapting these guidelines to local contexts.⁵⁶⁶

challenges and implications of federal mandates requiring state implementation of national environmental policies. The author also explores the legal and administrative conflicts that arise between different levels of government, particularly focusing on the burdens these mandates place on state governments. The work discusses the balance of power, the effectiveness of policy enforcement, and the potential sacrifices required by states to meet federal environmental objectives.

⁵⁶² See the general works of OECD, "The Role of Ministries in the Policy System" (2018), online: OECD iLibrary https://www.oecd-ilibrary.org/governance/the-role-of-ministries-in-the-policy-system_5kml60qkg9g7-en;jsessionid=0co-LlQIwYKaUBMMi_M1DPsr-juGwE4bVJ00LsZ.ip-10-240-5-90. This report mentions that implementation is typically the responsibility of individual ministers and their ministries or agencies. As a side note, the report also notes that about half of the countries surveyed lacked a formal process for ministries to monitor implementation, highlighting this as a weakness in many policy systems.

⁵⁶³ See ERA *Supra* note 8 at sec 2.

⁵⁶⁴ Indigenous Services Canada (ISC) is a department within the Government of Canada responsible for policies and services related to Indigenous peoples, including First Nations, Inuit, and Métis. ISC was established in 2019 following the dissolution of the Department of Indian Affairs and Northern Development. The department's creation was part of a broader restructuring aimed at addressing the paternalistic and colonial approaches of the past, as recommended by the 1996 Royal Commission on Aboriginal Peoples. See Government of Canada, "Indigenous Services Canada" (2024), online: Government of Canada <https://www.canada.ca/en/indigenous-services-canada.html>. In the context of this thesis, Indigenous Services Canada will have to focus on ensuring that the specific needs and rights of Indigenous communities are addressed. This department will collaborate with Indigenous leaders and organizations to develop culturally appropriate strategies for implementing Bill C-226. Ensuring that Indigenous knowledge and perspectives are incorporated into environmental assessments and policymaking will be vital for the success of the bill.

⁵⁶⁵ Health Canada is the federal department responsible for national health policy in Canada. Its primary mission is to help Canadians maintain and improve their health while ensuring that high-quality health services are accessible and health risks are minimized. See Government of Canada, "Health Canada" (2024), online: Government of Canada <https://www.canada.ca/en/health-canada.html>.

⁵⁶⁶ Kathryn Harrison, *Passing the Buck: Federalism and Canadian Environmental Policy* (Vancouver: UBC Press, 1996) at 3-12, 12-30.

These guidelines could be achieved through federal-provincial agreements.⁵⁶⁷ This ensures that the unique environmental and socio-economic conditions of each region are considered when applying the Environmental Racism Act. Provincial governments will also need to coordinate with municipal authorities to implement local initiatives and monitor compliance.⁵⁶⁸ For example, provincial ministries of environment could establish dedicated task forces to oversee the rollout of the Act, ensuring that the specific needs of marginalized communities within their jurisdictions are met.

In Nova Scotia, the implementation of the Environmental Racism Act is particularly relevant for addressing historical and ongoing environmental racism faced by marginalized communities, such as those in Africville as well as Indigenous populations.⁵⁶⁹ As already discussed in the preceding chapters, Africville experienced severe environmental injustices.⁵⁷⁰ Under the Environmental Racism Act, provincial environmental agencies can create specific guidelines to address the contamination and environmental degradation in Africville. These guidelines should prioritize cleanup efforts and the restoration of the area to benefit current and future residents.

For Indigenous communities, such as the Mi'kmaq, the Environmental Racism Act can facilitate a more inclusive and respectful approach to environmental governance. The Act mandates federal and provincial collaboration to ensure that Indigenous knowledge and land

⁵⁶⁷ The integration of health and environmental data, along with the implementation of measures to mitigate health hazards in the context of Bill C-226, will likely involve federal-provincial agreements. Such agreements are known as federal-provincial-territorial (FPT) agreements and have been instrumental in the past for harmonizing policies across different levels of government. For instance, the Canada-Wide Accord on Environmental Harmonization exemplifies how federal and provincial governments collaborate to set common environmental goals while allowing for regional adaptations. A practical example of this process is the Pan-Canadian Framework on Clean Growth and Climate Change, which outlines how different jurisdictions can work together to achieve national climate objectives while considering local circumstances. Therefore, it is highly plausible that similar federal-provincial mechanisms will be employed to address the health impacts of environmental racism under Bill C-226. See Canada, "Canada-Wide Accord on Environmental Harmonization," online: UNEP Law and Environment Assistance Platform <https://leap.unep.org/en/countries/ca/national-legislation/canada-wide-accord-environmental-harmonization>; Carolyn M. Johns, Patricia L. O'Reilly & Gregory J. Inwood, "Intergovernmental Innovation and the Administrative State in Canada" (2006) 19:4 *Governance* at 627-640; Canada, Immigration, Refugees and Citizenship Canada, "Federal-Provincial/Territorial Agreements," online: Government of Canada <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/federal-provincial-territorial.html>.

⁵⁶⁸ Canada, "Canada-Wide Accord on Environmental Harmonization," online: UNEP Law and Environment Assistance Platform <https://leap.unep.org/en/countries/ca/national-legislation/canada-wide-accord-environmental-harmonization>; Carolyn Johns, Patricia O'Reilly & Gregory Inwood, "Intergovernmental Innovation and the Administrative State in Canada" (2006) 19:4 *Governance* at 627-640.

⁵⁶⁹ See the discussion in chapter two, section 2.3.

⁵⁷⁰ See the discussion in chapter two, section 2.3.

stewardship practices are integrated into environmental policies.⁵⁷¹ Provincial task forces⁵⁷² can work closely with Mi'kmaq leaders to develop and implement strategies that honour traditional practices and protect culturally significant sites from further environmental harm.⁵⁷³

To effectively implement the Environmental Racism Act, Nova Scotia's provincial government must also focus on comprehensive community engagement.⁵⁷⁴ This includes establishing forums for regular dialogue with marginalized communities, ensuring their voices are heard and their concerns are addressed in environmental decision-making processes. For instance, holding community consultations and workshops in Africville and Mi'kmaq territories can facilitate the co-creation of solutions tailored to the specific needs of these communities.

Furthermore, the Environmental Racism Act emphasizes the need for transparency and accountability in environmental governance.⁵⁷⁵ Provincial ministries can achieve this by implementing robust monitoring and reporting mechanisms.⁵⁷⁶ These mechanisms should track

⁵⁷¹ ERA *Supra* note 8 Preamble. The Preamble of the ERA states that “the Government of Canada recognizes that collaboration and a coordinated national strategy are key to promoting effective change and achieving environmental justice”. See also section 3(2) of the ERA *Supra* note 8.

⁵⁷² In Nova Scotia, provincial task forces within the Ministry of Environment and Climate Change play a significant role in addressing environmental issues and promoting sustainability. Some key examples of provincial taskforces in Nova Scotia include Nova Scotia, Department of Environment and Climate Change, Environmental Goals and Climate Change Reduction Act- Annual Progress Reporting (Halifax: Department of Environment and Climate Change, 2021), online: <https://novascotia.ca/nse/progress-report/> (Government of Nova Scotia); Nova Scotia, Department of Environment and Climate Change, Department of Environment and Climate Change (Halifax: Department of Environment and Climate Change, 2021), online: <https://novascotia.ca/nse/dept/Default.asp> (Government of Nova Scotia); Nova Scotia, Department of Environment and Climate Change, Regional and District Office Locations (Halifax: Department of Environment and Climate Change, 2021), online: <https://novascotia.ca/nse/dept/regional-office-locations.asp> (Government of Nova Scotia); Nova Scotia, Department of Environment and Climate Change, Province Releases Climate Change Plan for Clean Growth (Halifax: Department of Environment and Climate Change, 2022), online: <https://novascotia.ca/news/release/?id=20220315001> (Government of Nova Scotia).

⁵⁷³ Provincial task forces, as proposed under Bill C-226, would be specialized groups established within the provincial ministries of environment. See the general works of Anderson, George. "The new focus on the policy capacity of the federal government." (1996) 39:4 *Can Pub Admin* 469-488. These task forces could be composed of experts in environmental science, public health, legal advisors, and representatives from marginalized communities, including Indigenous leaders and members of affected communities such as Africville.

⁵⁷⁴ See the general works of Brent Epperson, Britta Baron & Carl G. Amrhein, “Canada in a global system of higher education: The role of community engagement”, in Gordon Redding, Antony Drew & Stephen Crump, eds, *The Oxford Handbook of Higher Education Systems and University Management* (Oxford: Oxford University Press, 2019) at 268-280; Katherine Graham & Susan Phillips, *Citizen engagement: Lessons in participation from local government*, No. 22 (Toronto: Institute of Public Administration of Canada, 1998) at 1-240 who write on public participation as well as the role of government in engaging the community.

⁵⁷⁵ This can be extrapolated from sections 4 and 5 of ERA *Supra* note 8.

⁵⁷⁶ In this respect, public reporting mechanisms enhance transparency and accountability in the implementation of ERA. This also enables, stakeholders to track progress and provide feedback on the ERA's implementation. For a general overview on how reporting is a means of accountability and transparency see Augustine Osho & Matthew. Afolabi, "The effects and effectiveness of Accountability and Transparency in Government Sectors" (2014) 16:4 *IOSR J Bus & Mgmt* 46.

progress in reducing environmental hazards in marginalized communities and publicly share data on environmental quality and health outcomes. This approach not only holds the government accountable but also empowers communities with information to advocate for their rights and wellbeing.

The Act also highlights the importance of equitable resource allocation.⁵⁷⁷ Provincial task forces can ensure that funding and resources are directed toward the most affected communities, supporting initiatives such as improved waste management, access to clean water, and enhanced green spaces. By prioritizing these investments, Nova Scotia can work towards rectifying historical injustices and promoting environmental equity.

In addition to the roles of the federal and provincial governments in implementing the Environmental Racism Act, the collaboration between different agencies is crucial.⁵⁷⁸ Various federal agencies, including the Impact Assessment Agency (CEAA)⁵⁷⁹ and the Public Health Agency of Canada (PHAC),⁵⁸⁰ will need to work together to conduct comprehensive environmental assessments and health impact studies among vulnerable communities. These assessments will be vital for identifying areas most affected by environmental racism and prioritizing interventions. In assessing these areas, interagency collaboration will facilitate the sharing of resources, data, and expertise.

For example, environmental data collected by federal agencies can be shared with provincial and local authorities to enhance monitoring and enforcement efforts. This collaboration can be formalized through the establishment of interagency working groups or committees tasked with overseeing the implementation of the Environmental Racism Act. These groups can meet regularly to discuss progress, share best practices, and address any emerging issues. By fostering a collaborative environment, these agencies can ensure a coordinated and effective response to the complex and interrelated issues of environmental racism.

⁵⁷⁷ This can be gleaned from the Preamble of ERA which promotes environmental justice and the elimination of racism and racial discrimination.

⁵⁷⁸ Regarding the role of collaboration from different agencies in implementing policies, see John M. Bryson, Barbara C. Crosby & Melissa Middleton Stone, "Designing and implementing cross-sector collaborations: Needed and challenging" (2015) 75:5 *Pub Admin Rev* at 647-663.

⁵⁷⁹ Government of Canada, Impact Assessment Agency, About the Agency, (Ottawa: Canadian Environmental Assessment Agency, 2024), online: <https://www.canada.ca/en/impact-assessment-agency.html>.

⁵⁸⁰ Government of Canada, Public Health Agency of Canada, About the Agency, (Ottawa: Public Health Agency of Canada, 2024), online: <https://www.canada.ca/en/public-health/corporate/mandate/about-agency.html>.

Moreover, leveraging existing frameworks and agreements can enhance interagency collaboration. For instance, the Canadian Council of Ministers of the Environment (CCME), which brings together environmental ministers from federal, provincial, and territorial governments, can serve as a platform for coordinating efforts and ensuring alignment with national environmental objectives.⁵⁸¹ By utilizing such platforms, agencies can streamline their efforts, avoid duplication of work, and ensure a cohesive approach to implementing the Act. This organized collaboration is instrumental in setting a unified direction and facilitating the shared use of resources and information.

Building on this foundation of structured interagency collaboration, establishing clear and effective communication channels becomes crucial for the coordination of various government bodies and agencies in implementing the Environmental Racism Act.⁵⁸² Regular interagency meetings, joint task forces, and centralized databases for information sharing are vital tools that can facilitate this coordination.

Effective communication is particularly critical when addressing the concerns of marginalized communities, who may have historically experienced a lack of transparency and engagement from government authorities.⁵⁸³ Ensuring regular updates, community meetings, and accessible information dissemination helps build trust and ensures that these populations are not only informed but also actively involved in the implementation process. By maintaining open lines of communication and fostering robust engagement strategies, the Environmental Racism Act can achieve successful implementation, thereby fostering a sense of trust and community partnership essential for lasting environmental and social improvements. These efforts underscore the Act's commitment to inclusive and equitable environmental governance, aiming to rectify historical injustices and improve the quality of life for all affected communities.

4.3 Learning from Case Studies

Having established that the effective implementation of the Environmental Racism Act requires not only robust legislation but also strategic interagency collaboration and open lines of

⁵⁸¹ Canadian Council of Ministers of the Environment, About the CCME, (Winnipeg: Canadian Council of Ministers of the Environment, 2024), online: <https://ccme.ca/en/about>.

⁵⁸² See the works of Sandfort and Moulton *Supra* note 560 at 225-260 who write on communication as part of public policy implementation.

⁵⁸³ Sandfort and Moulton *Supra* note 560 at 225-260.

communication, this study now focuses on case studies that exemplify these principles in action. These case studies are instrumental in illustrating how theoretical strategies are applied in real-world scenarios, providing valuable insights into the dynamics of successful environmental policy implementation.⁵⁸⁴

By examining case studies in various jurisdictions where similar environmental policies on combating environmental racism have been enacted, this chapter will shed light on some practical challenges and successes encountered. It is worth noting that no country has, to date, formally embedded the term “environmental racism” within the specific language its legislation. Instead, legislatures worldwide have generally addressed the issue under the broader umbrella of environmental justice.⁵⁸⁵ This broader concept encompasses initiatives aimed at ensuring fair treatment and active involvement of all people, regardless of race, color, national origin, or income, in the environmental legislative process.⁵⁸⁶ The goal is to develop, implement, and enforce environmental laws, regulations, and policies that do not disproportionately harm any particular group, thus implicitly tackling environmental racism as part of a wider and more inclusive effort.⁵⁸⁷

In the context of this thesis, Canada, through the introduction of the Environmental Racism Act, is poised to take a groundbreaking step by explicitly focusing its environmental legislation on combating environmental injustices, including those defined by environmental racism. The Environmental Racism Act is the first piece of legislation to directly and explicitly address the disproportionate impact of environmental issues on marginalized communities under the term environmental racism.⁵⁸⁸ This approach not only sets a significant precedent but also serves as a strong commitment to addressing and rectifying historical and ongoing inequalities in environmental policy and its execution. It marks a pivotal moment in the formal recognition of environmental racism as a distinct and actionable issue within a legal framework.

⁵⁸⁴ Yves Ridde, "Case Studies – Policy Evaluation: Methods and Approaches", in Policy Evaluation: Methods and Approaches (2021), online: Science et Bien Commun <https://scienceetbiencommun.pressbooks.pub/policyevaluation/chapter/case-studies/>.

⁵⁸⁵ See the discussion below on jurisdictions like The United States of America and South Africa.

⁵⁸⁶ See chapter two above, section 2.4.

⁵⁸⁷ David Schlosberg, "Reconceiving environmental justice: global movements and political theories" (2004) 13:3 *Environmental Politics* at 517; Gordon Walker, *Environmental Justice: Concepts, Evidence and Politics* (Routledge, 2012) at 1-15.

⁵⁸⁸ Canada already has a legal framework on environmental justice e.g. CEPA. See the discussion in chapter three, section 3.2.1.

While the explicit use of the term “environmental racism” in legislation is uncommon globally, numerous initiatives and policies indirectly address the dynamics at play.⁵⁸⁹ Given the nature of this thesis and the constraints of both brevity and time, it is necessary to focus on a limited number of case studies. Therefore, this thesis will concentrate on the United States⁵⁹⁰ and South Africa⁵⁹¹ as the primary case studies for examining environmental racism and its legislative responses. These two countries offer rich and diverse examples of how environmental racism has been identified, addressed, and managed within their respective legal frameworks, making them particularly relevant for the analysis of the Environmental Racism Act in Canada.

4.3.1 The U.S. Environmental Protection Agency (EPA) and Environmental Justice

The Environmental Protection Agency (EPA) in the United States plays a pivotal role in addressing environmental issues, including those related to environmental racism.⁵⁹² The EPA was established in 1970 under the Nixon administration, the EPA's mission is to protect human health and the environment.⁵⁹³ The agency is tasked with crafting regulations based on laws passed by

⁵⁸⁹ For example, in the United States of America, the Environmental Protection Agency (EPA) has integrated environmental justice frameworks into its operations, particularly following the Executive Order on Environmental Justice issued in 1994. This order emphasizes the necessity for federal agencies to consider the environmental and health effects of their actions on minority and low-income groups.

⁵⁹⁰ The United States provides a robust case study due to its long history of environmental justice advocacy and the significant legislative and executive actions taken to address environmental racism. The implementation of Executive Order 12898 in 1994, which directed federal agencies to focus on the environmental and health conditions in minority and low-income populations, marks a critical turning point in environmental policy. The establishment of the Environmental Protection Agency's (EPA) Office of Environmental Justice further highlights the country's ongoing commitment to addressing these issues. The comprehensive nature of U.S. policies, coupled with extensive research and documented outcomes, provides a wealth of data and insights that are directly applicable to understanding and enhancing the implementation of ERA in Canada.

⁵⁹¹ South Africa's legislative response to environmental racism, rooted in its Constitution and articulated through laws like the National Environmental Management Act (NEMA), offers invaluable lessons. South Africa's approach to integrating environmental justice into its legal framework, driven by the need to address the deep-seated inequalities left by apartheid, demonstrates how environmental protection can be aligned with social justice objectives. The specific inclusion of environmental rights in the South African Constitution provides a powerful example of how constitutional mandates can guide and enforce comprehensive environmental policies. Examining South Africa's successes and challenges in this area provides practical insights into the structural and institutional requirements necessary for effective environmental justice legislation.

⁵⁹² U.S. Environmental Protection Agency, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*, (2003), online: The Center for Regulatory Effectiveness <https://www.thecre.com/quality/spring2003/epa.pdf>; The Editors of Encyclopaedia Britannica, "Environmental Protection Agency (EPA)," Britannica (2024), online: <https://www.britannica.com/topic/Environmental-Protection-Agency>; James Barnes, John D. Graham & David M. Konisky, eds., *Fifty Years at the US Environmental Protection Agency: Progress, Retrenchment, and Opportunities* (Lanham, MD: Rowman & Littlefield, 2021) 41-44.

⁵⁹³ Barnes *et al Supra* note 592 at 41-44

Congress, such as the Clean Air Act,⁵⁹⁴ the Clean Water Act,⁵⁹⁵ and the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund).⁵⁹⁶ Its scope covers a wide range of environmental areas including air quality, water quality, chemical safety, and waste management.

As already established, environmental racism refers to the disproportionate impact of environmental hazards on marginalized and minority communities.⁵⁹⁷ In the United States of America (the U.S.), industries and waste facilities have historically been situated near communities of color and economically disadvantaged areas.⁵⁹⁸ This led to heightened exposures to pollutants and associated health risks.⁵⁹⁹ Recognizing this disparity, the EPA has increasingly focused on environmental justice, which seeks to ensure that all communities, regardless of race or socioeconomic status, enjoy the same degree of protection from environmental and health hazards.⁶⁰⁰

This commitment was formalized in 1994 when President Bill Clinton signed Executive Order 12898, titled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”.⁶⁰¹ This Executive Order specifically mandated that every federal agency, including the EPA, make achieving environmental justice part of its mission.⁶⁰² It emphasized the need for these agencies to consider the disproportionately high and adverse human

⁵⁹⁴ *Clean Air Act*, 42 U.S.C. §7401 et seq. (1970); Barnes *et al Supra* note 592 at 41-120.

⁵⁹⁵ *Clean Water Act*, 33 U.S.C. §1251 et seq. (1972); Barnes *et al Supra* note 592 at 167-240.

⁵⁹⁶ *Comprehensive Environmental Response, Compensation, and Liability Act*, 42 U.S.C. §9601 et seq. (1980).

⁵⁹⁷ See chapter two, section 2.3.

⁵⁹⁸ Robert Bullard, "Environmental Justice in the 21st Century: Race Still Matters," (2001) *Phylon* 49 at 151-163; Robert Bullard *et al*, *Toxic Wastes and Race at Twenty: 1987–2007: A Report Prepared for the United Church of Christ Justice & Witness Ministries* (2007), online: http://www.ucc.org/environmental-ministries_toxic-waste-20 at vii, viii, 1-4.

⁵⁹⁹ Bullard *et al Ibid*.

⁶⁰⁰ Barnes *et al* Bullard *et al* note 598 at 241-350.

⁶⁰¹ United States, Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 16, 1994); United States, Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, The American Presidency Project, online: [https://www.fema.gov/fact-sheet/executive-order-12898-environmental-justice#:~:text=FEMA%20considers%20environmental%20justice%20\(EJ.low%2Dincome%20and%20minority%20populations](https://www.fema.gov/fact-sheet/executive-order-12898-environmental-justice#:~:text=FEMA%20considers%20environmental%20justice%20(EJ.low%2Dincome%20and%20minority%20populations); Dennis Cory *et al*, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations: Executive Order 12898" in Dennis Cory *et al*, eds, *Environmental Justice and Federalism* (Cheltenham, UK: Edward Elgar Publishing, 2012) at 159-165.

⁶⁰² Cory *et al Ibid* at 159-165.

health or environmental effects of their actions on minority and low-income populations, thereby directly addressing the core concerns of environmental racism.⁶⁰³

Following this order, the EPA established the Office of Environmental Justice (OEJ), which works to ensure fair treatment and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.⁶⁰⁴ Fair treatment means no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies.⁶⁰⁵

In practice, the EPA, through its Office of Environmental Justice, has launched various initiatives and grants to support community-based projects that are aimed at improving environmental conditions in marginalized areas.⁶⁰⁶ These initiatives often involve cleaning up pollutants, monitoring air and water quality, and ensuring that local populations are informed and engaged in decision-making processes.⁶⁰⁷ For example, the Environmental Justice Small Grants Program provides funding for community-driven projects that help residents of underserved communities understand and act on environmental issues impacting their areas.⁶⁰⁸ Additionally, the EPA further supports and sometimes funds Community-Based Participatory Research (CBPR) to involve community members in the study of environmental health issues affecting them. CBPR projects help gather local knowledge and insights, which are crucial for understanding the nuanced impacts of environmental policies and practices.⁶⁰⁹ These projects also empower communities to voice their concerns and propose solutions based on lived experiences.

⁶⁰³ Cory *et al Supra* note 601 at 159-165.

⁶⁰⁴ United States, Environmental Protection Agency, "About the Office of Environmental Justice and External Civil Rights," U.S. Environmental Protection Agency (27 June 2023), online: EPA <https://www.epa.gov/aboutepa/about-office-environmental-justice-and-external-civil-rights>.

⁶⁰⁵ Dennis Cory *et al*, *Environmental Justice and Federalism* (Cheltenham, UK: Edward Elgar Publishing, 2012) at 1-224; Barnes *et al Supra* note 592 at 41-350.

⁶⁰⁶ United States Environmental Protection Agency. "Environmental Justice Grants, Funding and Technical Assistance." US EPA (2023). Online: <https://www.epa.gov/environmentaljustice/environmental-justice-grants-funding-and-technical-assistance>; United States, Environmental Protection Agency, "Environmental Justice Program Funded Projects," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/environmental-justice-program-funded-projects>.

⁶⁰⁷ United States Environmental Protection Agency *Ibid*.

⁶⁰⁸ United States, Environmental Protection Agency, "Environmental Justice Small Grants Program," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/environmental-justice-small-grants-program>.

⁶⁰⁹ United States, Environmental Protection Agency, "EPA Announces \$50 Million to Fund Environmental Justice Initiatives Under the American Rescue Plan," US EPA (2021), online: <https://www.epa.gov/newsreleases/epa-announces-50-million-fund-environmental-justice-initiatives-under-american-rescue-plan>.

Moreover, the EPA engages in rule-making processes that consider the impacts on low-income and minority communities.⁶¹⁰ For instance, in regulating air emissions from industrial plants, the EPA analyzes the potential health impacts on nearby communities, which often include vulnerable populations, and implements stricter controls and monitoring requirements if necessary to protect these communities.⁶¹¹ Expanding further on the actions and provisions by the EPA in addressing environmental racism, several other aspects of its work are notable.

For instance, the National Environmental Policy Act (NEPA).⁶¹² The EPA ensures compliance with NEPA, which mandates federal agencies to integrate environmental values into their decision-making processes through the evaluation of the environmental impacts of their proposed actions.⁶¹³ NEPA reviews are critical in considering the socio-economic and health impacts on local communities, particularly minority and low-income populations.⁶¹⁴ These assessments help identify potential adverse effects and mitigate them before any federal action is approved, thus addressing environmental racism by preventing disproportionately negative impacts on marginalized communities.⁶¹⁵

In addition, the EPA uses strategic enforcement of existing environmental laws to protect vulnerable communities.⁶¹⁶ This involves prioritizing actions against facilities that violate

⁶¹⁰ United States, Environmental Protection Agency, "Guidance on Considering Environmental Justice During the Development of an Action," US EPA (2023), online: <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>; United States, Environmental Protection Agency, "Setting Emissions Standards for Major Sources of Toxic Air Pollutants," US EPA (2023), online: <https://www.epa.gov/air-toxics/setting-emissions-standards-major-sources-toxic-air-pollutants>.

⁶¹¹ United States, Environmental Protection Agency *Ibid*.

⁶¹² *National Environmental Policy Act*, 42 U.S.C. §4321 et seq. (1969) (NEPA).

⁶¹³ NEPA *Ibid*; United States, Environmental Protection Agency, "Summary of the National Environmental Policy Act," US EPA (2023), online: <https://www.epa.gov/nepa/summary-national-environmental-policy-act>; United States, Environmental Protection Agency, "Environmental Justice and National Environmental Policy Act," US EPA (2023), online: <https://www.epa.gov/nepa/environmental-justice-and-national-environmental-policy-act>; United States, Environmental Protection Agency, "Guidance on Considering Environmental Justice During the Development of an Action," US EPA (2023), online: <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>.

⁶¹⁴ United States, Environmental Protection Agency *Ibid*.

⁶¹⁵ United States, Environmental Protection Agency *Supra note 613*.

⁶¹⁶ United States, Environmental Protection Agency, "Environmental Justice in Enforcement and Compliance Assurance," US EPA (2023), online: <https://www.epa.gov/enforcement/environmental-justice-enforcement-and-compliance-assurance>; United States, Environmental Protection Agency, "National Enforcement and Compliance Initiatives," US EPA (2024), online: <https://www.epa.gov/enforcement/national-enforcement-and-compliance-initiatives>; United States, Environmental Protection Agency, "Enforcement and Compliance Annual Results for FY 2022," US EPA (2023), online: <https://www.epa.gov/enforcement/enforcement-and-compliance-annual-results-fy-2022>.

environmental standards in areas burdened by pollution and health risks.⁶¹⁷ For instance, the EPA's enforcement initiatives often target industries known for pollution that affects air and water quality in nearby communities, which are frequently low-income or predominantly inhabited by racial minorities.⁶¹⁸

Furthermore, the EPA developed EJSCREEN, an environmental justice screening and mapping tool.⁶¹⁹ This tool uses high-quality, nationally consistent data to highlight areas with environmental and health burdens.⁶²⁰ Policymakers and communities can use EJSCREEN to visualize the intersection of environmental and demographic indicators, which is crucial for identifying and addressing instances of environmental racism. To add on to this, the EPA often collaborates with other federal agencies to address the multifaceted nature of environmental racism.⁶²¹ For example, joint initiatives with the Department of Housing and Urban Development (HUD) look at how housing conditions intersect with environmental health, focusing on issues like lead poisoning and indoor air quality in public housing.⁶²²

Additionally, in recent years, the EPA has increasingly considered the impacts of climate change through an environmental justice lens. Recognizing that climate change disproportionately affects poor and minority communities, the agency has integrated climate resilience measures into its environmental justice framework.⁶²³ This includes enhancing infrastructure resilience in vulnerable areas and supporting adaptation projects that help these communities withstand and recover from climate-related events.⁶²⁴ Further to this, under recent administrations, there has been

⁶¹⁷ United States, Environmental Protection Agency *Ibid.*

⁶¹⁸ United States, Environmental Protection Agency *Supra* note 616.

⁶¹⁹ United States, Environmental Protection Agency, "EJSCREEN: Environmental Justice Screening and Mapping Tool," US EPA (2024), online: <https://www.epa.gov/ejscreen>; United States, Environmental Protection Agency, "What is EJSCREEN?" US EPA (2024), online: <https://www.epa.gov/ejscreen/what-ejscreen>; United States, Environmental Protection Agency, "EPA Launches Updates to Environmental Justice Mapping Tool EJScreen," US EPA (2023), online: <https://www.epa.gov/newsreleases/epa-launches-updates-environmental-justice-mapping-tool-ejscreen>; United States, Environmental Protection Agency, "Environmental Justice in Action," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/environmental-justice-action>; United States, Environmental Protection Agency, "Federal Interagency Working Group on Environmental Justice," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/federal-interagency-working-group-environmental-justice>.

⁶²⁰ United States, Environmental Protection Agency *Ibid.*

⁶²¹ United States, Environmental Protection Agency *Supra* note 619.

⁶²² United States, Environmental Protection Agency *Supra* note 619.

⁶²³ United States, Environmental Protection Agency, "Climate Resiliency at EPA," *US EPA* (2023), online: <https://www.epa.gov/climate-resilience>; Barnes *et al Supra* note 592 at 121-168.

⁶²⁴ United States Environmental Protection Agency, "Small Communities, Big Challenges" (27 June 2024), online: US EPA <https://www.epa.gov/innovation/small-communities-big-challenges>; United States, Environmental Protection Agency, "Research on Community Resilience to Climate Change," *US EPA* (2023), online:

a renewed focus on strengthening the EPA's commitment to environmental justice.⁶²⁵ This includes revisiting and strengthening regulations and policies to ensure that they more effectively address the needs and challenges of environmental racism. Such revisions aim to enhance transparency, increase community engagement, and ensure more robust enforcement of environmental laws.

Despite these efforts, the EPA faces several significant challenges and shortcomings in its efforts to combat environmental racism and enforce environmental justice. These issues are complex and multifaceted, often intertwined with broader social, economic, and political factors. One of the primary challenges the EPA faces is securing consistent funding and resources.⁶²⁶ Environmental justice initiatives demand substantial investment for effective research, community engagement, enforcement, and remediation activities.⁶²⁷ Budget constraints often restrict the agency's ability to fully implement these programs, leading to reduced capacity for inspections and enforcement.⁶²⁸ For instance, budget cuts in past years have diminished the number of EPA

<https://www.epa.gov/climate-research/research-community-resilience-climate-change>; United States, Environmental Protection Agency, "Environmental Justice," US EPA (2023), online: <https://www.epa.gov/environmentaljustice>; United States, Environmental Protection Agency, "EPA's 2024-2027 Climate Adaptation Plan," US EPA (2024), online: <https://www.epa.gov/climate-adaptation/epas-2024-2027-climate-adaptation-plan>.

⁶²⁵ United States, Environmental Protection Agency *Ibid*.

⁶²⁶ See Barnes *et al Supra* note 592 at 393-484; United States Environmental Protection Agency, "Small Communities, Big Challenges" (27 June 2024), online: US EPA <https://www.epa.gov/innovation/small-communities-big-challenges>; United States, Environmental Protection Agency, "Funding Resources for Watershed Protection and Restoration," US EPA (2022), online: https://www.epa.gov/system/files/documents/2022-06/Water%20System%20Partnerships%20Funding%20Resources_508_April2022.pdf; United States, Environmental Protection Agency, "Resources for Creating Healthy, Sustainable, and Equitable Communities," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/resources-creating-healthy-sustainable-and-equitable-communities>; United States, Environmental Protection Agency, "Closing America's Wastewater Access Gap," US EPA (2023), online: <https://www.epa.gov/water-infrastructure/closing-americas-wastewater-access-gap>; United States, Environmental Protection Agency, "EPA Invests \$41 million in New Technical Assistance to Help Communities Address Wastewater Challenges," US EPA (2023), online: <https://www.epa.gov/newsreleases/epa-invests-41-million-new-technical-assistance-help-communities-address-wastewater>; United States, Environmental Protection Agency, "EPA's 2024-2027 Climate Adaptation Plan," US EPA (2024), online: <https://www.epa.gov/climate-adaptation/epas-2024-2027-climate-adaptation-plan>; United States, Environmental Protection Agency, "Environmental Justice," US EPA (2023), online: <https://www.epa.gov/environmentaljustice>; United States, Environmental Protection Agency, "Resources for Creating Healthy, Sustainable, and Equitable Communities," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/resources-creating-healthy-sustainable-and-equitable-communities>; United States, Environmental Protection Agency, "Environmental Justice in Action," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/environmental-justice-action>.

⁶²⁷ United States, Environmental Protection Agency, "EPA's 2024-2027 Climate Adaptation Plan," US EPA (2024), online: <https://www.epa.gov/climate-adaptation/epas-2024-2027-climate-adaptation-plan>.

⁶²⁸ United States, Environmental Protection Agency *Ibid*.

inspections and led to staffing reductions, impacting the agency's ability to monitor and address environmental violations that disproportionately affect marginalized communities.⁶²⁹

Complicating the EPA's mission further is the influence of political changes, which can significantly shift priorities and weaken enforcement rigor.⁶³⁰ Different administrations may prioritize deregulation, undermining the protections intended to combat environmental racism. This variability not only affects long-term environmental justice strategies but also erodes the trust communities place in the EPA.⁶³¹ Moreover, environmental racism presents a complex challenge that involves not just environmental factors but also social, economic, and racial dimensions.⁶³² For example, effectively addressing air pollution in minority-dominated areas requires more than regulatory action on emissions; it necessitates a holistic approach that considers socioeconomic factors such as healthcare accessibility, housing quality, and economic opportunities.⁶³³ The interplay of these issues adds layers of complexity to crafting effective interventions.

Additionally, the EPA often operates under legal and regulatory frameworks that do not provide sufficient authority to comprehensively tackle environmental racism.⁶³⁴ These frameworks can be limited in scope, and the agency frequently encounters legal challenges from industries that delay or obstruct the enforcement of crucial regulations.⁶³⁵ For instance, when stricter pollution

⁶²⁹ United States, Environmental Protection Agency, "Environmental Justice," US EPA (2023), online: <https://www.epa.gov/environmentaljustice>; United States, Environmental Protection Agency, "Resources for Creating Healthy, Sustainable, and Equitable Communities," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/resources-creating-healthy-sustainable-and-equitable-communities>; United States, Environmental Protection Agency, "Environmental Justice in Action," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/environmental-justice-action>.

⁶³⁰ United States, Environmental Protection Agency *Ibid.*

⁶³¹ United States, Environmental Protection Agency, "Funding Resources for Watershed Protection and Restoration," US EPA (2022), online: https://www.epa.gov/system/files/documents/2022-06/Water%20System%20Partnerships%20Funding%20Resources_508_April2022.pdf; United States, Environmental Protection Agency, "Resources for Creating Healthy, Sustainable, and Equitable Communities," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/resources-creating-healthy-sustainable-and-equitable-communities>.

⁶³² United States, Environmental Protection Agency *Ibid.*

⁶³³ United States, Environmental Protection Agency, "Resources for Creating Healthy, Sustainable, and Equitable Communities," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/resources-creating-healthy-sustainable-and-equitable-communities>.

⁶³⁴ United States Environmental Protection Agency, "Small Communities, Big Challenges" (27 June 2024), online: US EPA <https://www.epa.gov/innovation/small-communities-big-challenges>; United States, Environmental Protection Agency, "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis>.

⁶³⁵ United States, Environmental Protection Agency, "Environmental Legal Frameworks: What Are They and Why Do They Matter?" School of Marine and Environmental Affairs (2023), online: <https://smea.uw.edu/environmental-legal-frameworks-what-are-they-and-why-do-they-matter>.

controls are implemented, companies may litigate these regulations, causing significant delays in their enactment and enforcement.⁶³⁶ Another significant challenge is the difficulty in measuring the direct impacts of environmental policies on health outcomes and establishing causation in cases of environmental racism.⁶³⁷ Environmental health effects can take years to manifest and may be influenced by a myriad of factors, complicating the direct linkage of health outcomes to specific environmental injustices.⁶³⁸

Furthermore, maintaining the trust of communities affected by environmental racism is pivotal yet challenging. Historically, there have been instances where communities felt that the EPA had inadequately addressed their concerns.⁶³⁹ Effective community engagement involves not only transparent communication and consistent involvement in decision-making processes, but also tangible actions based on community feedback.⁶⁴⁰ Failures, whether perceived or real, can foster scepticism and resistance among community members, hindering collaborative efforts and the overall effectiveness of environmental justice initiatives.

Lastly, the EPA is tasked with the significant challenge of addressing legacy pollution issues i.e., decades of accumulated environmental degradation in marginalized communities.⁶⁴¹ Remediation efforts are often hampered by bureaucratic complexities and the vast scale of pollution, requiring expensive and time-consuming clean-up efforts.⁶⁴² For instance, remediating contaminated urban land can be an arduous process, fraught with regulatory and logistical obstacles.⁶⁴³ Each of these challenges underscores the need for a robust, adaptive, and well-resourced approach to effectively combat environmental racism and fulfill the broader goals of environmental justice.

⁶³⁶ Center for Public Integrity, "EPA promised to address environmental racism. Then states pushed back," Public Integrity (2023), online: <https://publicintegrity.org/environment/epa-promised-to-address-environmental-racism-then-states-pushed-back/>.

⁶³⁷ United States, Environmental Protection Agency, "Guidance on Considering Environmental Justice During the Development of an Action," US EPA (2023), online: <https://www.epa.gov/environmentaljustice/guidance-considering-environmental-justice-during-development-action>.

⁶³⁸ Center for Public Integrity *Ibid* note 636.

⁶³⁹ United States Environmental Protection Agency, "Small Communities, Big Challenges" (27 June 2024), online: US EPA <https://www.epa.gov/innovation/small-communities-big-challenges>.

⁶⁴⁰ United States, Environmental Protection Agency *Ibid*.

⁶⁴¹ United States, Environmental Protection Agency *Supra* note 639; United States Department of the Interior, "Legacy Pollution" (27 June 2024), online: DOI <https://www.doi.gov/priorities/investing-americas-infrastructure/legacy-pollution>.

⁶⁴² United States Department of the Interior *Ibid*.

⁶⁴³ United States Department of the Interior *Supra* note 642.

4.3.1.1 Lessons for Canada

The EPA in the U.S provides a rich case study from which Canadian policymakers can draw lessons as they implement the Environmental Racism Act. From funding issues to legal challenges, the experiences of the EPA underscore the need for a well-rounded and resilient approach to such groundbreaking legislation as the Environmental Racism Act. One of the foremost lessons from the EPA's strategies is the necessity for stable and adequate funding.⁶⁴⁴ The effectiveness of the EPA has often been hampered by fluctuating resources, which impacts its ability to consistently enforce environmental justice initiatives.⁶⁴⁵ For the Environmental Racism Act to avoid similar pitfalls, Canada must ensure that the legislation is backed by secured funding that is insulated from political changes.⁶⁴⁶

In addition, the EPA's struggle with measuring and proving the direct impacts of environmental policies also emphasizes the need for comprehensive impact assessments in the Environmental Racism Act. These assessments should be thorough and ongoing, involving a range of experts to ensure all potential effects (environmental, health, and socioeconomic) are accurately evaluated. Such meticulous documentation would aid in creating a transparent and evidence-based approach to addressing environmental injustices.

Community engagement is another area where the EPA's efforts can inform the Environmental Racism Act's implementation. Genuine involvement of affected communities in the decision-making process is crucial. This means not only consulting these communities but also ensuring their active participation and influence over outcomes. Regular, meaningful interaction that goes beyond token consultation can help build trust, a critical component that the EPA has found challenging to maintain.

Lastly, the success of environmental justice initiatives often hinges on the ability to coordinate across various governmental agencies. The EPA's experience shows that tackling environmental racism requires a holistic approach that spans health, housing, and economic

⁶⁴⁴ EPA *Supra* note 637 and 639.

⁶⁴⁵ EPA *Supra* note 637 and 639.

⁶⁴⁶ See the recommendations in chapter 5 below.

sectors. The Environmental Racism Act should, therefore, mandate or facilitate strong interagency collaboration to ensure a cohesive strategy that addresses all facets of environmental justice.⁶⁴⁷

4.3.2 South Africa's Constitution and National Environmental Management Act (NEMA)

South Africa's approach to environmental legislation is deeply rooted in its history, particularly the legacy of apartheid, which created profound social and economic divisions along racial lines.⁶⁴⁸ This context has shaped the country's legal framework regarding environmental management, making it a compelling example of legislation that targets environmental racism directly through constitutional mandates and specific environmental policies.⁶⁴⁹ It is important to note that the cornerstone of South Africa's environmental legal framework is the Constitution of the Republic of South Africa 1994 (herein the Constitution of RSA).⁶⁵⁰

The Constitution of RSA was pivotal in transforming the country's legal landscape to address the inequalities of the past. Section 24 of the Constitution of RSA guarantees everyone the right to an environment that is not harmful to their health or well-being.⁶⁵¹ The section also guarantees the right to have the “environment protected for the benefit of present and future generations through reasonable legislative and other measures that prevent pollution and ecological degradation”.⁶⁵² These measures must also promote “conservation; secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development”.⁶⁵³ This constitutional right is significant because it acknowledges the nexus between a healthy environment, human well-being, and the broader goal of social justice, thereby laying a foundational principle that guides all subsequent environmental legislation and policy.⁶⁵⁴

⁶⁴⁷ For further discussion on this point, see the recommendations in chapter 5 below.

⁶⁴⁸ Grast Botero J & Ponce WJP Rule of Law Index (2011), online: World Justice Project https://worldjusticeproject.org/sites/default/files/documents/WJP_Rule_of_Law_Index_2011_Report.pdf (accessed 12 December 2020).

⁶⁴⁹ See the *Constitution of the Republic of South Africa*, 1996; *National Environment Management Act* 107 of 1998 (herein NEMA).

⁶⁵⁰ *Constitution of the Republic of South Africa*, 1996 (herein Constitution of RSA).

⁶⁵¹ Constitution of RSA *Supra* note 650 sec 24.

⁶⁵² Constitution of RSA *Supra* note 650 sec 24.

⁶⁵³ Constitution of RSA *Supra* note 650 sec 24.

⁶⁵⁴ Without diverting from the scope of this argument, this thesis would like to bring to the attention of the reader the fact that the *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982 being Schedule B to the Canada Act 1982 (UK)*, 1982, c 11, does not explicitly include a right to a healthy environment. However, it provides a framework for addressing issues related to environmental justice and environmental racism through its broader rights provisions, such as equality rights and the right to life, liberty, and security of the person. This contrasts with South Africa's approach, where section 24 of the Constitution explicitly guarantees the right to an environment that is not

The significance of Section 24 lies in its holistic approach to environmental rights. It recognizes the interdependence between environmental health, human well-being, and social justice.⁶⁵⁵ This recognition is crucial in South Africa, where the legacy of apartheid has left deep socio-economic and environmental disparities.⁶⁵⁶ During apartheid, industrial facilities, waste dumps, and other environmentally hazardous sites were often located near non-white communities, exposing these populations to disproportionate levels of pollution and environmental degradation.⁶⁵⁷ This legacy continues to affect these communities, making environmental justice a pressing issue.

By enshrining the right to a healthy environment in the Constitution, South Africa has laid a foundational principle that guides all subsequent environmental legislation and policy.⁶⁵⁸ This principle is inherently tied to addressing environmental racism, as it requires the state to ensure that no group bears an undue burden of environmental harm.⁶⁵⁹ The constitutional guarantee compels the government to take active steps to rectify past injustices and prevent future environmental discrimination.

harmful to health or well-being. This provision directly addresses environmental justice by acknowledging the link between a healthy environment and social justice, particularly in the context of the apartheid legacy. In Canada, environmental issues are often addressed through other rights provided in the Charter, such as section 7, which guarantees the right to life, liberty, and security of the person, and section 15, which prohibits discrimination and can be used to address environmental racism. Instead of the Charter, environmental protection in Canada is primarily legislated through federal and provincial laws, such as CEPA. In this respect, the absence of a specific environmental provision may limit the direct legal recourse for environmental issues. On a different note, the explicit constitutional guarantee of environmental rights in South Africa provides a strong legal basis for addressing environmental justice by compelling legislative and governmental action to protect environmental rights and rectify past injustices. Nevertheless, while South Africa has a robust constitutional basis for environmental rights, Canada is moving towards addressing environmental racism through targeted legislation like ERA and leveraging existing rights within the Charter. For a general discussion on the right to a healthy environment in Canada's Constitution, see David R. Boyd, *The Right to a Healthy Environment: Revitalizing Canada's Constitution* (Vancouver: University of British Columbia Press, 2012); Lynda Collins and David Boyd, "Non-Regression and the Charter Right to a Healthy Environment," *Journal of Environmental Law and Practice* 29 (2016) at 285-304.

⁶⁵⁵ Kotzé LJ "Sustainable Development and the Rule of Law for Nature: A Constitutional Reading" in Voigt C (ed) *Rule of Law for Nature* (Cambridge University Press Cambridge 2013) at 130-140.

⁶⁵⁶ Chaskalson A "Human Dignity as a Foundational Value of Our Constitutional Order" 2000 *SAJHR* at 193-196.

⁶⁵⁷ Stull Bell MM and Ncwadi M "Environmental Apartheid: Eco-Health and Rural Marginalization in South Africa" 2016 *J Rural Stud* at 369-375.

⁶⁵⁸ Constitution of RSA *Supra* note 650 sec 24; *NEMA Supra* note 649 Preamble and sec 2(4).

⁶⁵⁹ On this note, see section 2(4)(c) of NEMA which states: "(4) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably. (c) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons; See also DA McDonald "What Is Environmental Justice?" in McDonald DA (ed) *Environmental Justice in South Africa* (University of Cape Town Press Cape Town 2002) 1-12 .

Furthermore, the constitutional right to a healthy environment has empowered communities and civil society organizations to hold the government and private entities accountable for environmental injustices.⁶⁶⁰ Legal actions and advocacy efforts have been instrumental in challenging environmentally harmful practices and ensuring that marginalized communities have a voice in environmental governance.⁶⁶¹ For example, the landmark case of *Fuel Retailers Association of Southern Africa v. Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* highlighted the need to consider socio-economic and environmental factors in decision-making processes, reinforcing the link between environmental justice and the right to a healthy environment.⁶⁶²

Building on the constitutional mandate, the National Environmental Management Act of 1998 (herein NEMA) stands out as a critical legislative framework that aims to enforce the environmental rights enshrined in the Constitution of RSA.⁶⁶³ NEMA's primary objective is to provide for cooperative governance by all those responsible for the environment and to ensure that development is sustainable and equitable.⁶⁶⁴ It explicitly addresses the need to rectify decisions that previously favored environmentally harmful practices, which often disproportionately affected disadvantaged and marginalized communities.⁶⁶⁵ NEMA introduces the concept of “duty of care” which obligates anyone who causes significant pollution or environmental degradation to take reasonable measures to prevent such damage from occurring or to minimize and rectify such pollution or degradation.⁶⁶⁶

Moreover, NEMA integrates principles of environmental justice and equitability into all decisions affecting the environment, which is crucial in addressing environmental racism.⁶⁶⁷ This involves ensuring that the impacts of environmental decisions do not disproportionately burden any one group, especially marginalized and historically disadvantaged communities.⁶⁶⁸ The Act

⁶⁶⁰ *Fuel Retailers Association of Southern Africa V Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 6 SA 4 (CC).

⁶⁶¹ *Company Secretary of Arcelormittal South Africa v Vaal Environmental Justice Alliance* 2015 (1) SA 515 (SCA) 2015 (1) SA 515 (SCA).

⁶⁶² *Fuel Retailers* *Supra* note 660 at para 30, 31, 71, 93, 102-113.

⁶⁶³ NEMA *Supra* note 649 sec 2(4).

⁶⁶⁴ NEMA *Supra* note 649 sec 2(4) (i).

⁶⁶⁵ NEMA *Supra* note 649 sec 2(4) (c).

⁶⁶⁶ NEMA *Supra* note 649 sec 28(1).

⁶⁶⁷ NEMA *Supra* note 649 sec 2(4) (c).

⁶⁶⁸ NEMA *Supra* note 649 sec 2(4) (c).

also promotes public participation in environmental governance, enabling communities to have a say in the matters that directly impact their environment and health, thus fostering transparency and accountability.⁶⁶⁹

Of importance is that the implementation of NEMA and related policies requires active involvement from various sectors of government and society, necessitating a multi-layered approach to governance.⁶⁷⁰ This is further supported by specific policies such as the Air Quality Act and the Integrated Coastal Management Act,⁶⁷¹ which address particular aspects of environmental management and also prioritize protecting vulnerable communities from disproportionate environmental harm.

In addition to the foundational legislation provided by the Constitution of RSA and NEMA, South Africa has developed specific regulations and policies to further refine its approach to addressing environmental racism. These include the Development Facilitation Act⁶⁷² and the National Water Act,⁶⁷³ which together enhance the legislative framework aimed at equitable access to natural resources and sustainable development. The Development Facilitation Act focuses on expediting sustainable land development processes that comply with the principles of justice and equity.⁶⁷⁴ It's particularly relevant in addressing the spatial legacy of apartheid, which segregated populations and limited access to resources and economic opportunities for non-white citizens.⁶⁷⁵ By promoting fair land use and development, this Act plays a crucial role in restructuring urban and rural spaces to be more inclusive and environmentally sustainable.⁶⁷⁶ It encourages developments that do not only meet economic needs but also consider environmental impacts and community well-being, promoting a balance that is often overlooked in fast-tracked development projects.⁶⁷⁷

⁶⁶⁹ NEMA *Supra* note 649 sec 2(4) (f) (g).

⁶⁷⁰ E Zhakata, SR Gundani, V Chauke & KO Odeku, "A critic of NEMA: Waste Act 59 of 2008, so many promises, little implementation and enforcement" (2016) *SAAPAM Limpopo* at 1-9.

⁶⁷¹ *Air Quality Act* 39 of 2004; *Integrated Coastal Management Act* 24 of 2008.

⁶⁷² *Development Facilitation Act* 67 of 1995.

⁶⁷³ *National Water Act* 36 of 1998.

⁶⁷⁴ *Development Facilitation Act Supra* note 672, sec 3 and 4.

⁶⁷⁵ *Development Facilitation Act Supra* note 672 sec 3(b) (c).

⁶⁷⁶ *Development Facilitation Act Supra* note 672 sec 3.

⁶⁷⁷ *Development Facilitation Act Supra* note 672sec 3, 5 and 15.

The National Water Act is another critical piece of legislation, which reforms the law relating to water resources in South Africa.⁶⁷⁸ It recognizes water as a basic human right and prioritizes providing equitable access to water resources, an issue directly impacting many disadvantaged communities.⁶⁷⁹ The Act establishes a framework for water resource management that includes strategies to protect, use, develop, conserve, manage, and control water resources in a way that fosters sustainable social and economic development.⁶⁸⁰ Importantly, it introduces the concept of public trusteeship of water resources, ensuring that water management is transparent and involves community participation.⁶⁸¹ This approach is vital in regions where water resources have been historically mismanaged or where access has been racially biased.

While these laws provide a robust legal framework for environmental protection, the implementation often reveals gaps, particularly in the areas of capacity and compliance enforcement, which present significant challenges in achieving environmental justice.⁶⁸² These challenges stem from various systemic, institutional, and social issues that persist despite progressive laws like the Constitution of RSA, NEMA, the National Water Act, and the Development Facilitation Act to mention but a few.

One of the primary challenges is the enforcement of these laws. Despite the progressive nature of South Africa's environmental policies, there is often a disconnect between the legislation on the books and the reality on the ground.⁶⁸³ This gap is primarily due to insufficient resources and capacities within local governments tasked with enforcement.⁶⁸⁴ Many local authorities struggle with limited financial resources, inadequate staffing, and sometimes a lack of specialized knowledge necessary to enforce complex environmental regulations.⁶⁸⁵ For instance, local governments are typically responsible for the enforcement of these policies but may lack the resources, training, or infrastructure to effectively manage and execute their duties.⁶⁸⁶ This

⁶⁷⁸ *National Water Act Supra* note 673 sec 2.

⁶⁷⁹ *National Water Act Supra* note 673sec 2(b).

⁶⁸⁰ *National Water Act Supra* note 673 sec 2 and 3.

⁶⁸¹ *National Water Act Supra* note 673 sec 3.

⁶⁸² See Munzhedzi Pandelani Harry. "Evaluating the efficacy of municipal policy implementation in South Africa: Challenges and prospects" (2020) 9:1 *African Journal of Governance and Development* at 89-105; Gutto Shadrack BO. "Beyond justiciability: Challenges of implementing/enforcing socio-economic rights in South Africa" (1998) 4 *Buff Hum Rts L Rev* at 79-102.

⁶⁸³ Shadrack *Supra* note 682 at 79-102.

⁶⁸⁴ Shadrack *Supra* note 682 at 79-102.

⁶⁸⁵ Munzhedzi *Supra* note 682 at 89-100.

⁶⁸⁶ Munzhedzi *Supra* note 682 at 89-100.

shortfall can lead to inconsistencies in how environmental laws are applied, particularly in impoverished or marginalized areas, where residents may lack the political influence or legal literacy to demand enforcement.

Additionally, the legacy of apartheid has left enduring marks on the spatial and social fabric of South Africa, contributing to significant disparities in how environmental harms and benefits are distributed.⁶⁸⁷ Historically marginalized communities continue to live in environments that are more susceptible to pollution and ecological degradation.⁶⁸⁸ Industrial facilities, mines, and waste disposal sites are disproportionately located near these communities, exacerbating health and environmental risks.⁶⁸⁹ Addressing these deeply ingrained issues requires more than legislation; it demands comprehensive social and economic reforms.⁶⁹⁰

Corruption and governance issues also pose significant barriers to environmental justice.⁶⁹¹ Instances of corruption within various levels of government can undermine efforts to enforce environmental laws effectively.⁶⁹² When officials are swayed by private interests, enforcement can become selectively applied, further disadvantaging marginalized communities that lack the economic or political clout to advocate for their rights.⁶⁹³ Further reflecting on the challenges and shortcomings in addressing environmental racism in South Africa, another notable issue is the scale and scope of industrial compliance with environmental regulations.⁶⁹⁴ Large-scale industrial operations, such as mining and manufacturing, which historically have been placed near marginalized communities, are often slow to adapt to new regulations that require significant changes to reduce environmental impacts.⁶⁹⁵ The financial cost and operational shifts required can

⁶⁸⁷ V Stull, Bell MM and Newadi M "Environmental Apartheid: Eco-Health and Rural Marginalization in South Africa" 2016 *J Rural Stud* 370-372.

⁶⁸⁸ Stull *et al Ibid*.

⁶⁸⁹ Stull *et al Supra* note 687 at 370-372.

⁶⁹⁰ Stull *et al Supra* note 687 at 370-372.

⁶⁹¹ Bond Patrick. "Economic growth, ecological modernization or environmental justice? Conflicting discourses in post-apartheid South Africa" (2000) 11:1 *Capitalism Nature Socialism* 33 -61; Sundström, Aksel. "Corruption in the commons: why bribery hampers enforcement of environmental regulations in South African fisheries" (2012) at 1-20.

⁶⁹² Bond *Supra* note 691 at 33 -61; Sundström *Supra* note 691 at 1-20.

⁶⁹³ Bond *Supra* note 691 at 33 -61; Sundström *Supra* note 691 at 1-20.

⁶⁹⁴ Du Plessis Willemien & Johan Nel, "Driving compliance to and enforcement of South African legislation by means of a hybrid of 'new' environmental governance instruments" in *Compliance and Enforcement in Environmental Law* (Edward Elgar Publishing, 2011) at 720; Smit, N. P. "Environmental legal compliance through self-regulation in the petrochemical industry in South Africa" (2020) *PhD diss, North-West University* (South Africa).

⁶⁹⁵ Du Plessis & Nel *Supra* note 694 at 720.

lead to resistance from these industries, and without rigorous enforcement, compliance may be inadequate.

Additionally, the broader issue of land use and access to natural resources remains a significant challenge.⁶⁹⁶ Land dispossession during apartheid disproportionately affected non-white communities, limiting their access to natural resources and land for sustainable practices.⁶⁹⁷ Despite reforms, the slow pace of land redistribution and restoration of land rights has hampered the ability of these communities to manage local resources sustainably and protect their environments from degradation.⁶⁹⁸

Furthermore, the integration of environmental policies with other areas of policymaking, such as housing, transportation, and public health, is often fragmented.⁶⁹⁹ This siloed approach can prevent the comprehensive policy coherence necessary to address environmental racism effectively. For instance, policies that improve housing and reduce overcrowding can significantly reduce environmental health risks, yet if these policies are not aligned with environmental strategies, the overall impact on marginalized communities can be lessened.⁷⁰⁰

To address these challenges, South Africa has instituted several mechanisms for environmental monitoring and enforcement. One such mechanism is the establishment of the Green Scorpions, formally known as the Environmental Management Inspectorate.⁷⁰¹ This network of environmental enforcement officers operates under the Department of Environmental Affairs and is tasked with ensuring compliance with environmental laws across the country.⁷⁰² The Green Scorpions play a crucial role in bridging the gap between legislation and its on-the-ground

⁶⁹⁶ Ndlovu-Gatsheni, Sabelo & Chimusoro Kenneth Tafira, "The land question in South Africa: History of dispossession, political discourse, and post-apartheid government policy" in *Land Reforms and Natural Resource Conflicts in Africa* (Routledge, 2015) 121-134; Wynberg, R. P. & Merle Sowman, "Environmental sustainability and land reform in South Africa: A neglected dimension" (2007) 50:6 *Journal of Environmental Planning and Management* at 783-802; Stull *Supra* note 657 at 370-375.

⁶⁹⁷ Ndlovu-Gatsheni *et al Supra* note 696 at 121-134; Wynberg & Sowman *Supra* note 696 at 370-375.

⁶⁹⁸ Ndlovu-Gatsheni *et al Supra* note 696 at 121-134; Wynberg & Sowman *Supra* note 696 at 370-375.

⁶⁹⁹ See generally Ney Steven, *Resolving Messy Policy Problems: Handling Conflict in Environmental, Transport, Health and Ageing Policy* (Routledge, 2012).

⁷⁰⁰ Steven *Ibid*.

⁷⁰¹ Jenny Hall, "Taking the sting out of the (green) Scorpions' tail: latest developments in the adjudication of waste management enforcement disputes" (2019) 25:1 *South African Journal of Environmental Law and Policy* 73- 101; Kabai, Mpho. "The search and seizure powers of environmental management inspectors" (2016) *PhD diss, North-West University* (South Africa), Potchefstroom Campus.

⁷⁰² Hall *Supra* note 701 at 73- 101.

implementation.⁷⁰³ They conduct inspections, investigate complaints of environmental violations, and have the authority to initiate enforcement actions, which are critical in holding both public and private entities accountable.⁷⁰⁴

In addition to government-led initiatives, civil society in South Africa plays an active role in environmental advocacy. Numerous non-governmental organizations (NGOs) work closely with communities to raise awareness about environmental rights and provide legal support to challenge discriminatory practices and hold polluters accountable.⁷⁰⁵ These organizations are vital in empowering communities, particularly those that have been historically disadvantaged, to use the legal tools at their disposal to fight environmental racism.⁷⁰⁶ Environmental NGOs and community groups also step in to fill the gaps left by governmental inaction, providing oversight and sometimes legal action against non-compliance with environmental laws.⁷⁰⁷ In this light, the judiciary, too, plays a crucial role in interpreting environmental legislation and has often been a bulwark against the erosion of environmental rights, providing a check on governmental and corporate actions.

Public participation is another critical area of focus. Ensuring that affected communities are involved in environmental decision-making processes is crucial for the legitimacy and effectiveness of environmental governance.⁷⁰⁸ The South African government and various non-governmental organizations are working to enhance community engagement through educational programs that inform citizens of their environmental rights and the legal recourses available to them.⁷⁰⁹ This empowerment is vital for communities to demand accountability and take an active role in environmental monitoring.

⁷⁰³ Hall *Supra* note 701 at 73- 101.

⁷⁰⁴ Hall *Supra* note 701 at 73- 101.

⁷⁰⁵ Lund-Thomsen, Peter. "Corporate accountability in South Africa: the role of community mobilizing in environmental governance" (2005) 81:3 *International Affairs* at 619-628; Robins Steven, *From Revolution to Rights in South Africa: Social Movements, NGOs & Popular Politics after Apartheid* (Boydell & Brewer Ltd, 2008) at 29-50, 77-90.

⁷⁰⁶ Steven *Ibid.*

⁷⁰⁷ Steven *Ibid.*

⁷⁰⁸ Du Plessis Anél, "Public Participation, Good Environmental Governance and Fulfilment of Environmental Rights" (2008) 2 *PER* 12 at 25; Murombo Tumai & Herbert Valentine, "SLAPP Suits: An Emerging Obstacle to Public Interest Environmental Litigation in South Africa" (2011) 27 *SAJHR* at 85.

⁷⁰⁹ Murombo *Ibid.*

Furthermore, on the industrial compliance front, strengthening the enforcement mechanisms by equipping the Green Scorpions and other relevant bodies with more resources and authority can ensure stricter adherence to environmental laws.⁷¹⁰ Additionally, incentivizing industries through tax breaks, subsidies, or public recognition programs to adopt cleaner technologies and practices can accelerate compliance and reduce environmental impacts.⁷¹¹

Regarding land use and natural resource access, accelerating land reform processes and ensuring that they include provisions for environmental stewardship is crucial. Land redistribution policies that are sensitive to the historical context and current environmental challenges can help restore equity and promote sustainable development.⁷¹² These policies should be designed to empower communities not only by transferring land but also by providing the necessary support for sustainable land use practices.

To overcome the challenge of policy integration, South Africa has been establishing a more centralized approach to environmental policy-making that involves different sectors.⁷¹³ This involves the creation of inter-ministerial committees or task forces that work on aligning policies across different domains such as climate change and environmental justice.⁷¹⁴ Such bodies ensure that policies not only address specific environmental issues but also contribute to broader social and economic objectives, making environmental justice a shared goal across all areas of governance.⁷¹⁵ Through these enhanced strategies and a commitment to addressing the complex layers of environmental injustice, South Africa can make significant progress toward mitigating the impacts of environmental racism and achieving true environmental justice for all its citizens.

⁷¹⁰ Hall *Supra* note 701 at 73-101.

⁷¹¹ Dippenaar, Mareli. "The role of tax incentives in encouraging energy efficiency in the largest listed South African businesses" (2018) 21:1 *South African Journal of Economic and Management Sciences* 1 at 12.

⁷¹² Nhamo Luxon *et al*, "A framework for sustainable land redistribution to ensure water and land tenure security: Focus on South Africa" (2021) *South African Water Research Commission Working Paper* at 1-13. See also the general works of Amanor Kojo Sebastian & Sam Moyo, eds. *Land and Sustainable Development in Africa* (Bloomsbury Publishing, 2008).

⁷¹³ See the general works of Giordano, Thierry *et al*, *Governance of Climate Change in South Africa* (Pretoria: Department of Environmental Affairs, 2011); Lowitt Sandy, "A Just Transition Finance Roadmap for South Africa: A First Iteration" (2021) at 1-65, online (pdf): https://justtransitionforall.com/wp-content/uploads/2022/12/TIPS_UK_PACT_A_Just_Transition_Finance_Roadmap_for_South_Africa_First_Iteration_December_2021.pdf.

⁷¹⁴ Thierry *et al Ibid*.

⁷¹⁵ Thierry *et al Ibid*.

4.3.2.1 Lessons for Canada

As Canada moves forward with implementing the Environmental Racism Act, there are several lessons it can draw from South Africa's experience. Observing both the achievements and challenges faced by South Africa can guide Canada in crafting a robust and effective framework that avoids similar pitfalls. Firstly, the importance of comprehensive enforcement mechanisms cannot be overstated. South Africa's struggle with consistent enforcement of environmental laws highlights the need for Canada to ensure that the Environmental Racism Act is backed by strong and well-resourced institutions. Canada should consider establishing a dedicated body or enhancing the capacity of existing agencies to oversee the implementation of the Environmental Racism Act, ensuring that these bodies are equipped with the necessary legal authority and resources to implement the law effectively.⁷¹⁶ This would help prevent the issue of implementation failures which has been a significant challenge in South Africa due to resource constraints.

Additionally, the experience in South Africa demonstrates the value of integrating environmental justice into broader policy areas.⁷¹⁷ For Canada, this means designing the Environmental Racism Act not just as a standalone piece of environmental legislation, but as a component of a larger policy framework that includes housing, health, and economic development. By coordinating policies across different sectors, Canada can address the multifaceted nature of environmental racism more effectively. This integrated approach ensures that environmental justice is considered in all relevant areas of government action, reducing the risk of policy fragmentation and increasing the overall impact of the legislation.

Another lesson from South Africa is the critical role of public participation in shaping and implementing environmental policies.⁷¹⁸ To avoid the pitfalls of disconnect between legislation and community needs, Canada should prioritize meaningful community engagement in the entire process of the Environmental Racism Act's implementation. This includes not only consultation

⁷¹⁶ The existing agencies here include, but are not limited to, Environment and Climate Change Canada, the Canadian Environmental Assessment Agency, Health Canada, Indigenous Services Canada, provincial and territorial Ministries of Environment, the Public Health Agency of Canada, and the Office of the Auditor General of Canada.

⁷¹⁷ See generally Ney Steven, *Resolving Messy Policy Problems: Handling Conflict in Environmental, Transport, Health and Ageing Policy* (Routledge, 2012).

⁷¹⁸ Du Plessis Anél, "Public Participation, Good Environmental Governance and Fulfilment of Environmental Rights" (2008) 2 *PER* 12 at 25; Murombo Tumai & Herbert Valentine, "SLAPP Suits: An Emerging Obstacle to Public Interest Environmental Litigation in South Africa" (2011) 27 *SAJHR* at 85.

but active involvement in decision-making processes, particularly for Indigenous communities and other marginalized groups that are most affected by environmental issues.

Furthermore, addressing legacy pollution and ensuring equitable access to natural resources are crucial elements seen in South Africa's environmental policies.⁷¹⁹ Canada can learn from this by incorporating provisions within the Environmental Racism Act that focus on remediation of contaminated lands and equitable distribution of natural resources. Such measures would help rectify historical injustices and prevent new ones from occurring, thereby reinforcing the Act's effectiveness in combating environmental racism.

Also, Canada can avoid the pitfalls of inadequate policy coherence seen in South Africa by ensuring that the Environmental Racism Act is adaptable and responsive to emerging environmental justice issues. This can be achieved by ensuring that the strategies developed to implement the Act acknowledge community feedback and the evolving nature of scientific advancements. Such flexibility ensures that the legislation remains relevant and effective in addressing the dynamic nature of environmental challenges and social equity concerns.

In addition, the implementation of environmental laws in South Africa has often been prevented by a lack of specific, actionable goals and timelines.⁷²⁰ For the Environmental Racism Act to be effective, it should include clear, measurable objectives and set deadlines for achieving these goals. This not only facilitates better planning and implementation but also provides a clear basis for evaluating effectiveness and areas for improvement. It would also be beneficial for Canada to establish transparent monitoring systems that regularly report progress to the public, maintaining accountability and keeping the citizens informed and engaged.

Furthermore, the experience in South Africa has shown that environmental policies can sometimes inadvertently lead to economic hardships for those they aim to protect, especially when industries face stringent new regulations. To mitigate such outcomes, Canada could integrate economic support measures within the Environmental Racism Act, such as job training programs and economic incentives that help communities transition to sustainable practices without

⁷¹⁹ NEMA addresses legacy pollution and equitable access to natural resources as crucial elements. See NEMA *Supra* note 649 sec 2(4)(a)(i) and (vii), 2(4)(c), 2(4)(d), 23, 24, and 28.

⁷²⁰ See generally the works of Du Plessis Anél, "Environmental compliance and enforcement measures: Opportunities and challenges of local authorities in South Africa." in *Compliance and Enforcement in Environmental Law* (2011).

economic disenfranchisement. Such support could ensure that the transition towards environmental justice also promotes economic resilience, reducing the likelihood of opposition from affected stakeholders.

Moreover, continuous learning and adaptation are crucial. South Africa's policies have had to evolve in response to ongoing challenges and changing environmental conditions. Similarly, Canada should embed mechanisms for continuous learning, research, and adaptation in the Act's implementation strategy. Collaborations with academic institutions and international bodies can be particularly valuable, providing insights and innovative approaches to complex issues of environmental justice. This adaptive approach would ensure that the legislation remains effective and relevant in the face of evolving environmental and social contexts. By drawing on these lessons from South Africa, Canada can enhance the effectiveness of the Environmental Racism Act, ensuring that it not only addresses the symptoms of environmental racism but also contributes to a broader transformative change towards sustainability and equity in environmental governance.

4.4 Conclusion

In conclusion, addressing environmental racism through comprehensive legislation such as Canada's the Environmental Racism Act requires an intricate and multifaceted approach. The discussions and insights derived from examining the experiences of the US and South Africa highlight both the challenges and opportunities in implementing effective environmental justice policies. By learning from these international case studies, Canada can better tailor the implementation strategy of the Environmental Racism Act to avoid common pitfalls and ensure a more equitable and impactful application.

However, while these efforts from the U.S and South Africa are not labelled directly as environmental racism legislation, they contribute fundamentally to the fight against the systemic issues underlying environmental racism. They represent a collective acknowledgment that environmental harms and benefits are often distributed along lines that are demarcated by racial and economic disparities. Thus, the initiatives serve to address the root causes of environmental racism by promoting inclusivity and justice in environmental policy. By enacting the Environmental Racism Act, Canada not only reinforces these principles within its borders but also inspires other nations to consider similar explicit measures in their legal approaches to environmental justice.

Chapter Five: Conclusion

5.1 Summary of findings

The preceding chapters have explored the critical concepts of environmental racism and environmental justice, and how the latter can be a theoretical framework that is essential for understanding and applying the Environmental Racism Act. This thesis has also outlined the specific challenges faced by marginalized communities, and how such challenges necessitate a focused approach that targets the unique manifestations of environmental justice and ultimately environmental racism in Canada. In a bid to get a focused approach on addressing environmental racism, this thesis also outlined the legislative steps Canada is taking to achieve environmental justice and mitigate the effects of environmental racism. The thesis first explored the foundations and objectives in existing environmental legislation, which set the backdrop for environmental protection and risk management in Canada.

The analysis then delved into Nova Scotia's environmental legislation which provide ambitious environmental targets and ensure public involvement in environmental governance. However, the thesis identified gaps in these laws, particularly in addressing environmental racism and ensuring that the rights and concerns of marginalized communities are adequately represented and acted upon. Upon such exposition, this thesis noted that the Environmental Racism Act is a transformative piece of legislation that is designed to specifically address these gaps. In this respect, this thesis detailed how the Environmental Racism Act complements existing laws by introducing specific measures aimed at protecting vulnerable communities from environmental harms. It argued that while current laws establish a framework for environmental protection, they often fall short in addressing the nuanced issues of environmental racism. To address the nuances of environmental racism, this thesis noted that, to better implement the Environmental Racism Act, it is necessary to understand the roles various government bodies and agencies will play in executing the Environmental Racism Act's mandate.

To this end, this thesis analyzed how federal, provincial, and local entities can coordinate and collaborate in bringing the Environmental Racism Act to life. The thesis assessed how these government bodies can work together to ensure seamless implementation of the Act. Furthermore, this study incorporated comparative case study examples from the U.S and South Africa. These

case studies offered valuable insights into the implementation strategies adopted elsewhere. The goal of such exploration was to draw lessons and best practices that can be adapted to the Canadian context. Consequently, this thesis has been an attempt at offering a pragmatic roadmap for translating the Environmental Racism Act's provisions into tangible outcomes that ensure that the fight against environmental racism in Canada is both effective and sustainable.

5.2 Limitations of the study

While this thesis provides a valuable analysis, several limitations must be acknowledged. These constraints have influenced the breadth and depth of the research and the conclusions drawn. One significant limitation is the inability to cover all relevant federal and provincial legislation comprehensively. Environmental law in Canada is a complex and multifaceted field, with numerous statutes and regulations at various governmental levels. While this thesis has focused on key legislative instruments like the Environmental Racism Act and specific provincial laws in Nova Scotia, a complete review of all applicable laws would require an extensive, multi-volume study. This limitation means that some potentially significant legislative frameworks and regional nuances may not have been fully addressed, which could impact the overall analysis of environmental justice in Canada.

Another notable limitation is the scarcity of scholarly works on the Environmental Racism Act. This is primarily because it recently navigated its way into becoming law. As a result, scholars have not yet had the opportunity to extensively examine or critique the Act, leaving a gap in the existing literature. Consequently, there was limited academic material to rely on when analyzing this specific piece of legislation. This research, therefore, stands as one of the first to consider the Environmental Racism Act, contributing to the foundational scholarly discussion on its potential impact on environmental justice and racism in Canada.

Furthermore, given that this research is conducted within the scope of a master's thesis, there are inherent limitations in terms of time and scope. The academic requirements and timeframe of a master's program necessitate a focused and concise approach to the subject matter. Therefore, it was not feasible to explore the complexity of federalism and jurisdictional challenges in the Canadian context. This thesis was also unable to examine how the implementation strategies proposed herein may face challenges in court from reluctant provinces.

A significant limitation of this thesis is the exclusion of an analysis of the Hansard record, which details the parliamentary debates surrounding the Environmental Racism Act. The Hansard record is crucial for statutory interpretation as it provides insights into legislators' intentions, discussions on key definitions, and the broader context in which the Act was debated. While this thesis primarily employs a textual analysis of the Act itself, the absence of a detailed examination of the Hansard record means that some interpretative nuances may not be fully captured. Future research could benefit from incorporating this resource to provide a more comprehensive understanding of the Act's potential impact on combating environmental racism in Canada.

Another notable limitation is the absence, to the author's knowledge, of direct comparative legislation specifically addressing environmental racism in any country. Most nations, including those examined in this thesis, have broader environmental justice laws rather than targeted legislation on environmental racism. Consequently, there was no existing legal framework explicitly dedicated to environmental racism that could be analyzed for comparative purposes. This lack of direct comparatives meant that the thesis had to rely on examining environmental justice legislation, which, while relevant, does not precisely address the unique aspects of environmental racism.

The reliance on environmental justice laws, rather than specific environmental racism legislation, presents a challenge in drawing direct parallels and assessing the effectiveness of targeted interventions. Environmental justice laws, although aimed at addressing disparities in environmental protection and access, do not always explicitly focus on the racial and socio-economic dimensions of environmental harm. As a result, the thesis had to infer and extrapolate findings from the broader context of environmental justice, which may not fully capture the specific mechanisms and outcomes of legislation targeting environmental racism.

This limitation underscores the need for more targeted research and policy development in the field of environmental racism. Future studies could benefit from the emergence of specific laws addressing environmental racism, allowing for more precise comparative analyses and evaluations of their implementation and success. In the meantime, this research provides valuable insights by leveraging the closest available legal frameworks and highlighting the critical intersections between environmental justice and environmental racism.

5.3 Recommendations for Improving the Implementation of the Environmental Racism Act

The preceding chapters have argued that the Environmental Racism Act holds significant potential to advance environmental justice and address environmental racism in Canada. To effectively implement this Act, several actions must be taken to ensure its goals are met. Firstly, the Act should establish a comprehensive framework for identifying and addressing areas disproportionately affected by environmental hazards. This framework must include robust data collection and analysis to pinpoint vulnerable communities and the specific environmental threats they face. This data collection and analysis must integrate advanced technology for monitoring and compliance, which could significantly strengthen the legislation's impact. Thus, there is a need to explore technology that can provide air and water quality data, which could, in turn, provide accurate, timely information that helps identify pollution sources and assess environmental impacts rigorously. Such technological integration would allow for better documentation of baseline and post-activity environmental conditions, facilitating more precise impact assessments.

Additionally, to avoid the difficulties of having legislation that does not address community needs, Canada should prioritize meaningful community engagement in the entire process of the Environmental Racism Act's implementation. This includes consultation and active involvement in decision-making processes, particularly for Indigenous communities and other marginalized groups that are most affected by environmental issues. Ensuring that these communities have a voice in shaping the policies that affect their environment can lead to more effective and equitable outcomes.

Furthermore, to strengthen the Act's efficacy, the government must ensure that the legislation is backed by secured funding that is insulated from political changes. Establishing a dedicated fund for environmental justice within its strategies could provide the necessary financial support for enforcement, community projects, and ongoing research, thereby laying a stronger foundation for its objectives.

To add on to the above, strategies developed on addressing legacy pollution, as per the Environmental Racism Act's mandate in section 3, are crucial as they demonstrate the importance of proactive measures in environmental legislation. The Environmental Racism Act's strategy should include specific provisions for the remediation of existing environmental damages and emphasize preventative measures to minimize future legacy issues. This approach will help avoid

the complex, costly, and time-consuming clean-up efforts that could burden the Act's implementation.

Addressing the unique needs of Indigenous communities is another crucial element. Given Canada's diverse cultural landscape, the Environmental Racism Act's implementation strategy should include specific provisions that integrate traditional ecological knowledge in environmental decision-making. This approach would respect and utilize the deep-rooted understanding that Indigenous communities have of their environments, providing valuable insights into sustainable practices and enhancing long-term ecological health.

Moreover, the success of environmental justice initiatives often depends on coordination across various governmental agencies. Building on the insights from the case studies discussed herein, this thesis argues that tackling environmental racism requires a holistic approach that spans health, housing, and economic sectors. The Environmental Racism Act's implementation strategy should, therefore, mandate or facilitate strong interagency collaboration to ensure a cohesive strategy that addresses all facets of environmental justice.

Furthermore, given that environmental challenges often transcend national borders, incorporating international perspectives and standards into its strategy could further enhance the Act's effectiveness. Collaboration with international bodies such as the United Nations Environment Programme (UNEP) or the World Health Organization (WHO) could introduce global best practices and innovative solutions to environmental racism. This not only improves Canada's domestic policies but also contributes to a broader global effort towards environmental justice.

In addition, the real-world application of the Environmental Racism Act necessitates strong, independent judicial oversight to ensure that the legislation is implemented as intended. Canada can benefit from establishing a robust mechanism for judicial review and oversight within the implementation strategy of the Environmental Racism Act. This would involve empowering courts or special tribunals to oversee compliance and resolve disputes related to environmental justice. Such a judiciary role could serve as a critical check on administrative actions, ensuring that the spirit and letter of the law are adhered to, and that any governmental inaction or mis-action, such as failure to enforce regulations or improper implementation of policies, can be effectively challenged and rectified.

In sum, it is important to clearly design the Environmental Racism Act's strategy with the intention of making it a cohesive and comprehensive instrument to addressing environmental injustices. That is to say, policy measures should be designed with the understanding that environmental protection and human rights are deeply interconnected. For example, ensuring access to clean water and air should be seen not only as an environmental goal but also as a human right essential for health and dignity. This integrated approach can help to structure more effective and equitable solutions, ensuring that environmental justice initiatives are grounded in a broader commitment to human rights and social equity.

5.4 Future Research Directions

Once the Environmental Racism Act is implemented, several areas warrant further research to maximize its impact and adapt to emerging challenges. These future research directions should continue to be informed by the linkages between environmental justice, environmental racism, and an environmental human rights framework.

1. Longitudinal Studies on Health Outcomes

One of the most critical areas for future research is the long-term health outcomes of communities impacted by environmental racism. Longitudinal studies can provide valuable insights into how interventions under the Environmental Racism Act affect health disparities over time. Researchers should focus on tracking changes in disease prevalence, mortality rates, and overall health indicators in communities before and after the implementation of the Act. These studies can help assess the effectiveness of specific interventions and identify areas where additional support may be needed.

2. Economic Implications of Environmental Justice Initiatives

Another important area for research is the economic implications of environmental justice initiatives under the Environmental Racism Act. Researchers should analyze the economic benefits of improving environmental conditions in marginalized communities, such as increased property values, job creation, and reduced healthcare costs. Understanding these economic impacts can strengthen the case for continued investment in environmental justice and demonstrate the broader societal benefits of addressing environmental racism.

3. Adaptive Management and Policy Flexibility

Given the dynamic nature of environmental challenges, future research should focus on adaptive management and policy flexibility. Researchers should investigate how policies under the Environmental Racism Act can be continuously monitored and adapted to address new environmental threats and changing community needs. This research can provide insights into creating resilient and responsive policy frameworks that can effectively manage uncertainty and change.

4. Social and Cultural Dimensions of Environmental Justice

Understanding the social and cultural dimensions of environmental justice is crucial for designing effective interventions. Future research should explore how cultural practices, social networks, and community identities influence environmental behaviours and responses to policy measures under the Environmental Racism Act. This research can help tailor interventions to be more culturally appropriate and sensitive, ensuring that they resonate with the values and practices of different communities.

5. Technological Innovations in Environmental Monitoring

Future research should explore the role of technological innovations in enhancing environmental monitoring and data collection. Advances in remote sensing, artificial intelligence, and mobile technologies can provide new tools for tracking environmental conditions and identifying hotspots of environmental injustice and racism. Research in this area can help integrate cutting-edge technologies into the implementation of the Environmental Racism Act, improving the accuracy and efficiency of environmental assessments.

6. The Impact of Disability, Age, and Gender on Environmental Justice

Understanding the impact of disability, age, and gender on environmental justice is crucial for designing an effective strategy under the Environmental Racism Act. Future research should explore how these variables intersect with environmental policies to affect marginalized communities. This research can highlight the unique vulnerabilities and needs of individuals with disabilities, the elderly, and women, ensuring that interventions are inclusive and equitable. Tailoring policies to address these specific factors can enhance the effectiveness of the Environmental Racism Act, fostering a more just and comprehensive approach to environmental justice.

5.5 Conclusion

In sum, this thesis has highlighted the importance of addressing environmental racism through the Environmental Racism Act. By examining environmental justice and the unique challenges faced by marginalized communities in Canada, this work has highlighted the gaps in existing legislation and the need for a focused approach that targets environmental racism. The analysis of select federal and provincial environmental legislation has shown that, while there are ambitious targets for environmental protection, these often fall short in addressing the nuanced and systemic issues of environmental racism.

The Environmental Racism Act represents a significant step forward in filling these legislative gaps by offering specific measures that are designed to protect vulnerable communities from environmental harm. This thesis has argued for the need for coordinated efforts among federal, provincial, and local government entities to effectively implement the Act's provisions. By drawing lessons from comparative case studies in the U.S. and South Africa, this research has provided a pragmatic roadmap for translating the Act's objectives into tangible outcomes that ensure the fight against environmental racism is both effective and sustainable.

The recommendations provided herein emphasize the importance of robust data collection, community engagement, and strong interagency collaboration. These elements are crucial for the successful implementation of the Environmental Racism Act and for fostering an inclusive and equitable approach to environmental governance in Canada. Future research should build on this work by exploring the long-term health outcomes of affected communities, the economic implications of environmental justice initiatives, and the social and cultural dimensions of environmental policies. These research directions will provide valuable insights for refining and strengthening the implementation of the Environmental Racism Act, ensuring it remains responsive to emerging challenges and continues to protect the rights and well-being of marginalized communities.

Ultimately, the pursuit of environmental justice and the eradication of environmental racism require sustained and collaborative efforts across all levels of society. The Environmental Racism Act, with its focused approach and comprehensive framework, offers a promising path forward. However, its success will depend on the collective will and commitment of policymakers, communities, and stakeholders to uphold the principles of justice, equity, and sustainability. By

embracing these values, Canada can make significant strides towards a more just and environmentally resilient future.

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