A RHETORICAL ANALYSIS OF SLOW VIOLENCE AND SPATIAL AMNESIA THROUGH ENVIRONMENTAL LEGISLATION IN POST-APARTHEID ERA SOUTH AFRICA

A Thesis
by
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Abstract

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The socio-political sphere of South Africa is deeply entrenched in the nation's history with human rights law and historic, racialized violence. Despite the abolishment of the Apartheid system in the early 1990s, effects of the regime still remain intact implicitly through the country's foundational legal documents. After making the claim that human rights and environmental rights are intrinsically bound to one another, this thesis identifies South African environmental legislation as a proponent of racialized Apartheid-esque violence. Furthermore, this thesis proves the existence of several human rights-based theories such as slow violence, spatial amnesia, and everyday violence via the examination of real-world impacts resulting from documented environmental law. This thesis uses the genre of a rhetorical analysis to unpack the verbiage used in environmental legal documents and then determine how this language functions as both a threat as well as an act of violence that impacts indigenous and historically disadvantaged communities of South Africans.

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Firstly, I would like to thank my chairperson, Dr. Belinda Walzer, for her relentless dedication to this project. From the initial conceptions of this project that began when I took her human rights and rhetoric course in 2019, to the final iteration of what is now a far more complex thesis, Dr. Walzer has been a consistent source of scholarly and mental support through what has been an undeniably unforgettable year. Her role as director over this thesis was absolutely critical and, without her guidance and advice, this project would not have been remotely possible.

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Dedication

For Mom and Dad, who have supported me and all of my endeavors relentlessly and ferociously since I can remember.

Additionally, for Dexter, whose furry, rotund body I have to thank for keeping me company on my lap at my computer while I worked on this project.

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Introduction: A Rhetorical Analysis of Slow Violence and Spatial Amnesia through Environmental Legislation in Post-Apartheid Era South Africa

As a country whose history is deeply and inextricably woven into racialized violence, the state of South Africa continues to encounter human rights-based issues that impact the everyday wellbeing of citizens. The end of Apartheid in 1998 marks a major shift for the trajectory of human rights and racial equity for South Africa, however, that is not to say that the impacts of the Apartheid system are not still present in some ways. Though the Apartheid regime has been formally eradicated, echoes of Apartheid law still remain in the language of South African policy. Considering that the early legal systems that bolstered the Apartheid regime initially took control through means of the revocation of environmental rights (e.g., land dispossession and water allocation), contemporary South African environmental legislation has been under major speculation and many claim that the legislation perpetuates the same racialized violence that powered the Apartheid regime. Despite the intention of these laws being supposedly geared towards resolving histories and after-effects of Apartheid injustice and protecting those that may suffer at its hand, these documents continue to be structured in a way that damages marginalized communities, namely Black South African people living in independent settlements, while relatively rich, white South Africans benefit from them. It should be noted that there have been severe environmental impacts that have also resulted from the rhetorical structure of these legal documents. In this thesis, I use instances of biopiracy of indigenous intellectual property, abusive gendering of water and sanitation rights, and the unlawful prioritization of mining economies over human rights to support my argument that the current foundation of South African environmental law is legislatively bound to its Apartheid-era origins. This binding is directly linked to Rob

Nixon's theory of "spatial amnesia," which I use as the primary theoretical instrument to situate my argument within the broader scope of human rights-based discourses. Even with various amendments made to the legal documents in question since the abolishment of the Apartheid system in 1994, several environmental policies that were constructed with the intent of protecting marginalized populations of South Africans as well as related environmental resources remain rhetorically and linguistically structured to do exactly the opposite. As I have found through my research in this thesis, the decision to structure legal documents in this way is usually executed for the benefit of an oppressive party, thereby emulating the same effects of legal operations that facilitated the parameters of human rights from the Apartheid.

This thesis offers a selection of case studies that each demonstrate the effects of specific pieces of environmental legislation and, likewise, how the rhetorical structure of such documents has directly impacted the everyday lives of South African citizens. These direct impacts function as concrete evidence for the presence of a legal system with implications that are not inherently malicious, but the implications of which are co opted and used for malicious purposes. I use a rhetorical and discourse analysis methodology as well as a theoretical process for analyzing documents regarding legal policy in tandem with their "real life" consequences. First, I examine and relay the details of these acts of destruction (including both environmental and legal timelines). After this, I identify the scale of people who have been affected in various ways by these events; in doing so, I demonstrate just how multi-faceted these issues are, thereby reasoning that the legislative policies that guide these issues should be far more complex from how they exist currently. Finally, I locate the phrasing in the respective document and unpack not only how this wording is damaging,

referencing the real-world consequences that have resulted from such intentions, but additionally how this phrasing may be adapted or altered to better suit the needs of the people and the environmental factors that the document originally intended to protect.

The history of environmental law in South Africa is built upon a foundation that revolves around several interlocking understandings of human rights, environmental justice, and the various discourses of law and government. I give an overview of South Africa's history, both pre and post-Apartheid, to contextualize the central argument of my thesis, which relies upon the notion that environmental law, as a genre and as a legal entity in general, underscores the relationship between Black South African disempowerment and disenfranchisement. Recognizing the nation's developing understanding of past and present legal systems is essential and further evidences the claim that current environmental policy seems to "echo" the socio-economic objectives of the former Apartheid system as enacted through rhetorical means in pieces of environmental legislation. Considering these objectives evokes a number of questions, including: "What legal documents are prioritized by the governing party?" "Which documents are most effectively enforced in praxis?" and, perhaps most critically, "Which documents prioritize human rights-based needs over other factors, and how have these documents managed this alongside greater issues of environmental justice?" These questions seem to mimic those of Judith Butler's thoughts concerning the violence of precarity, mourning and violence: "Who counts as human? Whose lives count as lives? [...] What makes for a grievable life?" (20). That is to say that the words and phrasing which make up the bodies of legal documents are not merely words, but more so, instruments of violence that can incite pain, loss, and injustice. This term, "justice," often holds broad and indiscernible connotations to a general audience, thereby inevitably falling into issues of

misrecognition, exclusion and, consequently, targeted environmental disadvantage. Similar circumstances arise in the rhetorical decisions made in the construction of legal documents relating to environmental policy. As a result, this underscoring confirms that human rights communities across the globe should be looking far more closely at the relationships that have developed and are developing between systems of racialized disempowerment, disenfranchisement, especially as they are enacted through environmental law.

Finally, I also position matters of South Africa's environmental history and issues of environmental injustice alongside theoretical frameworks that dictate human rights-centered implications of intentional environmental disadvantage. More specifically, I examine how theories of slow violence, everyday violence, and spatial amnesia may be used as a lens through which to critique the documentation of human and environmental rights. This thesis traces the concurrent events that shape the history of environmental law in South Africa; as such, I argue that these adaptations have resulted in pieces of legislation that are neither just nor cognisant of matters of human rights as they relate to environmental circumstance, thereby resulting in what I argue functions as methodical, highly-restrictive, and deeply racialized legislation mimicking that of the previous Apartheid system.

The Impact of Colonial History on Environmental Injustice

To effectively understand the environmental crisis in 21st-century South Africa, it is imperative to delve deeper into the longer, colonial histories of this violence as environmentalism is an undeniably interdisciplinary subject. Jane Carruthers cautions that complications of environmental history tend to lie at the "non-desired" crossroads of many philosophies and ideologies. That is to say that the so-called "grey area" between environmental legislation and human rights presents several legal and, for the most part,

ethical issues that are difficult to initially encounter and then determine the most just responsive action for. Moreover, balance between human and environmental rights cannot be separated and are intrinsically bound as one cannot be encountered and dealt with without also affecting the progress or wellbeing of the other. However, there are a number of environmental conservation organizations that work to resolve these matters of balance, or at least better them in some capacity. Legal scholars have come to agree that though the history of South African environmentalism dates earlier, the late nineteenth century marks when the first environmental conservation organizations were founded, and, as a result, the majority of policies that disempowered Black South Africans from having active voices in their environment.

South Africa was initially colonized in 1652 when the Dutch East India Company, under the instruction of Jan van Riebeeck, established a refreshment outpost in Cape Town and subsequently brought slavery and forced labor onto South Africa's shores. The composition of the colonial impact in this era was further supplemented by tribal African rulers maintaining relations with European colonialists for benefits that mostly revolved around new technologies and obtaining firearms, which effectively functioned as a symbol of political power. Both the San and the Khoikhoi communities were present in 4th century South Africa, long before any European populations. Though they would reject the now-derogatory term, these communities were colloquially known as "bushmen" by European colonists (which translates roughly to "bandit" or "outlaw"). They have since been identified as the first "hunter-gatherer" groups in the region. Upon their arrival, the Dutch (whose officials were known as the "free burghers") were seeking to gain labor forces for their ships and to improve their agricultural production. However, there was massive conflict between

the economies and agricultural traditions between the free burghers and the Khoikhoi people. As such, the Dutch forcibly introduced members of the Khoikhoi community as servants to the free burghers with minimal rights and low status in society. The Khoikhoi communities were completely disintegrated by the end of the eighteenth century by Dutch livestock farmers.

Such cultural genocide is unfortunately repetitive in terms of the "solutions" found to "resolve" conflicts between commercial stock farming groups and hunter-gatherer communities. Mohamed Adhikari describes the effects of the Dutch stock farming, their motivations, as well as the rate of stock farmer destruction in South African hunter-gatherer communities:

> Commercial stock farmers [...] were driven primarily by profit, treated stock as commodities and sought to maximise economic returns. Linked to world markets, they were generally incentivised to produce as much as possible, whatever the environmental and human cost, particularly during economic boom. Thus when subsistence herders entered the lands of hunter-gatherers, conflict was far less intense as invasion were more gradual, conflict localised and the impact less destructive of foraging activities. Although such interaction tended towards displacement of hunter-gatherers and often resulted in bloodshed, it also included incorporation, clientship and even symbioses. With commercial stock farmers, however, the incursions were much more rapid, intent on thoroughgoing and permanent confiscation of land and resources, and far less compromising in dealing with indigenous resistance. (3)

This massive destruction caused by the Dutch disrupted thousands of years of agricultural traditions, shared cultures, and relations between these communities and their land. In particular, the evolution of the cattle industry in this region would continue between the 17th and 19th centuries to take a severe toll on indigenous communities, as regulated by the local Tswana kingdoms. These ruling kingdoms banned indigenous communities from local politics and land ownership, effectively reducing their legal identity to comply with standards similar to that of serfdom and even slavery.

Amidst the Napoleonic wars in 1806, Britain took control of the colonies previously "belonging" to the Dutch Cape Colony, thus spurring a major rift between Britain and the Boers. "Boers," a term which translates to "farmer" in Afrikaans, refers to populations of Afrikans, or descendants from original Dutch settlers. In the years following the initial dispute, the Boers continued through African tribal territories and subsequently founded both the Orange Free State as well as the Transvaal State. The Boers fought several wars against the indigenous Khoi and San communities living in these areas for power over land that they sought to use for cattle farming purposes. In doing so, adult members of these communities were frequently slaughtered and their children were stripped of their indigenous culture in favor of a European substitute. For example, children of Khoi and San communities were often taught to speak Dutch instead of their native language and were redirected to follow Christian religious practices. This practice especially highlights the recurring theme of the malicious acts of colonization executed ultimately for the long-term benefit of white South Africans, the spread of European culture, and the eradication of indigenous existence. In 1867, with the eruption of diamond and gold mining in South Africa, the Orange Free and

Transvaal States engaged in major conflict with British forces during what is now known as the South African Boer War. By the turn of the century, the majority of Boer territories had been abducted by the British and, despite a Boer uprising that led to a guerrilla war, the Boer resistance was ultimately dismantled by British forces. The Peace of Vereeniging treaty confirmed British military administration over both Boer republics and gave way for general amnesty for the Boers.

The slave trade in South Africa and the ethnic and racial complexity of the nation is also built on the enslavement of South Asian people by British forces during the mid-19th century in order to maintain the labor forces working for sugar, cotton, and tea plantations as well as railroad construction sites in the Natal Colony. The Indian indenture system effectively functioned as a substitute for slave labor at the time, growing rapidly after slavery was abolished in the British Empire in 1833. What's more, to structure the argument of the historied denial of human rights in South Africa strictly in terms of white versus Black experiences of South Africans is to completely deny the existence and experiences of the indentured servants from South Asia who are also, undeniably, South Africans. To do so would perpetuate the same violent acts of identity denial, classification of "surplus people," and non-recognition that I argue exist through environmental legislation and should be more closely examined by the human rights discourse community.

A contributing factor to Apartheid, aside from land dispossession, was the establishment of environmental organizations that were run completely by the white elite members of South African society at this time. Environmentalism is often whitewashed, however, so this is not to say that nonviolent resistance stands as an exclusively white practice. Though, the rise of environmentalism in this particular instance, was beginning

during a time in which both colonization and Apartheid were rampant social, political, and economic forces that touched all parts of South African society. Initial environmental protection organizations were inarguably geared towards protecting the environment for the benefit of the privileged, for the white population; this is of particular interest as the same "well-intentioned, but criminally executed" series of events play out in the development and revision of environmental legal documents. Both these documents as well as early environmental protection organizations tend towards using rhetoric that vilifies Black South Africans, despite possessing the knowledge that white South Africans were the primary culprits in exploiting and often destroying the land. Along the same train of thought, this theme seems to dispel the romanticization of native lives and their stereotypically portrayed relationship to the land and other elements of "the natural." Associations such as the Natal Game Association (1883), the Western Districts Game Protection Association (1886), and the Mountain Club (1891) were primarily facilitated by support bases that were largely neglectful and even destructive of the needs of disadvantaged South Africans as they related to environmental maintenance. For example, these organizations were known to prioritize white game hunting for sport over Black game hunting for subsistence, thus exemplifying socially accepted attitudes during this time period that systematically put disadvantaged South Africans at a significant disadvantage for the comfort and benefit for privileged South Africans.

One of the aforementioned attitudes that was widely held during the 1800s and onward was the concept that Black South Africans were "environmentally destructive," thus leading to another factor that deepened the gap between Black South Africans and conservation movements. The founding of nature reserves and national parks in South Africa

actively embodied white ideals and worked to conserve the environment for the benefit of affluent, white South Africans. Not only were Black South Africans prohibited from hunting to feed themselves and their families in these settings, but Black South Africans who were living around these areas were forcibly evicted and displaced to make way for their construction. Both of these elements contributed to a shared mindset amongst Black South Africans that connected conservation to resource deprivation and land dispossession. Protected natural areas such as these were created with the intention of accommodating white South Africans, but seem to stand as a symbolic meeting point between Eurocentric colonial ideologies and idealized notions of what it means to preserve "the environment."

This rebranding of environmental protection and conservatism works rhetorically, similarly to revisions of South African environmental policy, to accomplish two objectives. Firstly, the positioning of who may be seen as the "protagonist" in the lengthy narrative of environmental conservation favors white South Africans and also works as a cover for work that is ultimately detrimental to both the environment as well as historically disadvantaged populations of South Africans. Secondly, the employment of rhetoric that facilitates the aforementioned objective also works to perpetuate the acceptance of misleading rhetoric that allocates significantly more socio-political power to populations of white South Africans in terms of the ability that they possess in order to manipulate environmental jurisdiction for their own consumption.

South African Apartheid & Nonviolent Resistance

The most destructive and lasting environmental effect of this movement was the forced eradication of Black South Africans from their homes in primarily rural areas. These areas were then classified as "white" by the South African government and sold to white

farmers for exponentially lower prices. Many displaced Black South Africans were reallocated in the Bantustans. There, their futures were designed to be impoverished, desperate, and, above all, voiceless. However, this is not to discredit the work of several activist organizations and voices who risked and, in some cases, lost their lives in order to subvert these oppressive policies.

After an unexpected win against the United Party (UP) in the parliamentary election in South Africa on May 26th, 1948, the rise of the National Party stands as a critical point in the nation's history that would change life for Black South Africans indefinitely. Daniel François Malan, who would serve as the South African prime minister for nearly six years after the election, led the National Party on the imposition of the Apartheid system. Malan and the Nationalists built their campaign off of the notion that the legal enforcement of "separate development" between the races would bolster the unique customs and lifestyles of these respective cultures. Of course, this was a malicious guise for a racialized legal system that would legally permit the removal of rights from Black South Africans by white South Africans, only furthering the rule of white supremacy through the South African government.

These results were largely impacted by a number of factors, one of the most influential being the 1936 Representation of Natives Act which removed Black Africans from the common roll, thereby obliging them to remain on a separate roll and elect "three white representatives to the House of Representatives" (3). With this in mind, it seems even more evident that the implementation of Apartheid and the racialized effects that resulted from its institution were preconceived with the intent of gleaning profit at the expense of South Africans of color. This victory would be the prologue to forty years of legal racial fanaticism, ethnic cleansing, systematic discrimination and oppression. Furthermore, it was

the populations of white South Africans, who were the minority by far, who possessed a ruling role over the Black, colored and indigenous communities.

The Land Act, also known as the Natives Land Act, was enacted through South Africa's Union Parliament in 1913. The Land Act was introduced to prevent Black South Africans from buying land outside of their reserves, leaving them with only 7.3% of land that was suitable for growing crops; the act also prevented white South Africans from selling their territories to Black South Africans (and vice versa). This instance of territorial segregation was passed into legal documentation by the Union in three years; the Natives Land Act was a major pillar of Apartheid law that jeopardized various legal structures essential to the architecture of the entire Apartheid system. Though members of the Union Parliament claimed that this Act was authorized with the intention of "reducing friction" between white and Black populations, it seems more likely that the Land Act presented an opportunity for white-owned industries to take advantage of Black South African laborers. Harvey M. Feinberg identifies a number of scholars that feel otherwise about the intentions of the Native Land Act, citing Lacey, Keegan, and Wolpe, and continues to suggest that, "the Natives Land Act was passed to prevent squatting by Africans on white-owned land, to promote segregation, or to bring about a uniformity of laws (and policy) concerning Africans in the recently formed Union of South Africa" (66).

Following 1948, policies dictating racial segregation were immediately enforced by white governments, ultimately creating an institutionalized separation with racist intent. Such policies dictated further implementation of their new citizenships as "Bantustans," rather than South Africans. "Bantustan" refers to the historical territory of "Bantu" homeland, commonly referred to as the "Black state" in South Africa and was used heavily as a mechanism with

which to exert control over populations of Black South Africans during Apartheid by administrative bodies of South African government. The term itself acts as a classification tool that benefits the racialized motives of European colonists at the time. Similarly, in 1950, the Population Registration Act was put in place as a mechanism to classify and register South African inhabitants on the basis of their racial characteristics through order of the Apartheid system and were then regulated through the Office for Race Classification. "Bantustans" were typically grouped on the basis of linguistic or ethnic distinction, for which the parameters were, of course, determined by white ethnographers. This system was impossibly absurd, especially with the context of the racial and ethnic complexity which resulted from initial European colonization, the import of slaves, and the creation of the "colored" population in South Africa. After considering these differences, groups of indigenous South African communities were assigned designated homelands arbitrarily by white colonizing forces. For instance, the Zulu people were assigned to KwaZulu, Transkei and Ciskei were attributed to the Xhosa people, and so on and so forth based on the Bantustan grouping system that was in place during the Apartheid regime. This distinction between groups of South Africans was made supposedly for the delivery of "full political rights," but instead permitted the South African government to claim there was no Black majority and, therefore, remove them from the nation's political body.

A Brief History of Environmental Injustice under Apartheid

Under Apartheid rule and the discretion of D.F. Malan, a South African politician who served as the prime minister of South Africa from 1948 to 1954, two primary acts were passed through Parliament that would severely limit the interactions of Black South Africans with not only white South Africans physically, but also their nation's political sphere

verbally. These acts would hold greater implications for the interactions between Black South Africans and their environment, determine how the logistics of this interaction would be communicated through law, and carry forward the previously laid groundwork of legal systems that propelled acts of racism. In 1950, Malan set forth the Group Areas Act, creating "white" and "Black" areas where the respective populations of races could inhibit, manage businesses, and work separately. "Pass laws," also played a key role in this network of labor, requiring all citizens to carry a form of documented identification (i.e., "pass books") when traveling outside of these designated areas. The Group Areas Act and the non-revision of pass laws worked in tandem as the supporting framework to remove "Black spots" and create purely white areas of people. The list of damages that resulted from the land eradications set forth by the Group Areas Act did not stop with those that were evicted. The "homelands," a term used to describe the areas where Black South Africans were relocated, were devastated because of this Act and the overpopulation that ensued. By 1980, it was estimated that 10.5 million Black South Africans lived in these homelands that made up less than 13% of South Africa's total land surface. Following this logic means that the average population density in the homelands was 66 people per square kilometer.

The history of South African environmental legislation is deeply embedded in Apartheid and its history with international isolation. Regardless of other nations participating in their own respective constructive efforts to remedy environmental issues, South Africa, on several occasions, proved that they would not follow suit. Despite the spike in international environmental movements throughout the 1970s and '80s, South Africa remained detached from these motions as grass-roots organizations promoting political activism were severely discouraged. South Africa was one of the only nations that did not

participate in the preparatory processes for the 1972 United Nations Conference on the Human Environment. Making similar appearances at other environmental debates and conferences, South Africa was not invited to become a member of the Governing Council of the United National Environment Programme (UNEP) in 1973 because of the Apartheid sanctions. This would continue to be the case until 1994; this non-involvement would become problematic for the country. Though, that is not to say that environmental conservation movements were rationally or ethically-geared in their motivations. In reality, many environmental groups were perpetuating racialized violence via the supposed positive work that they were accomplishing on the behalf of the preservation of environmental life. As is highly discussed in the discourse between human rights and environmental justice legislation, there are frequent trade-offs between the two linked protection systems, and injustices usually peak at the crossroads of negotiations between these two entities.

Towards the latter half of the 1980s, there was growing talk of incorporating environmental matters into South African policy. However, these issues were confined to matters that dealt solely with wildlife and nature conservation, as a means of complying with white intrigue rather than Black necessity (i.e. matters of human rights in relation to the environment). Early environmental movements focused on the protection of "charismatic megafauna," referring to elements of the "natural" world. These elements were typically endangered species of plants or, more often, animals that hold appeal for a global audience, usually because they are easily recognizable (e.g., pandas, tigers, or elephants). Because these creatures held the interest of white audiences for sentimental or even sympathetic reasons, protecting these species was at the forefront of the objectives for South African game parks, overshadowing issues that should have been considered far more pressing.

Contrasting this colonialist prioritization of selective animal rights over human rights, issues of industrial pollution, waste management, environmental health, and land degradation were deemed 'brown' issues, referencing the "brown agenda," a term that denotes pollution, waste, or toxin-related environmental concerns, and were, therefore, not included in the changes to policy at this time (Williams 17).

Post-Apartheid Environmental Injustice & Legislation

In 1994, after more than twenty years in prison at Robben Island, Nelson Mandela was inaugurated as the first Black president of the African National Congress in South Africa. In Mandela's inaugural address, he declared that, "the time for the healing of the wounds has come," marking a major shift in South Africa's political climate (Mandela). Through 1996 and 1997, roughly two years after the abolishment of Apartheid, the Constitution of the Republic of South Africa was approved by the Constitutional Court (CC) on December 4th, 1996 when put into effect by President Mandela, but took official effect on February 4th, 1997.

This document replaced that of the Interim Constitution of 1993, which was an instrumental document in terms of establishing the various practices adopted to negotiate the end of Apartheid in South Africa. In a more modern context, this set of documents is known to be the "supreme law of the land," meaning that no other law or government action has the ability to override what is detailed in the South African Constitution, and this continues to be the case. This document was one of the first to make a statement on the validity of environmental justice and other rights-related issues, however it also brought up a number of problems regarding the overlapping of both of these issues (human rights and environment) with one another. The African National Congress worked to create a 'triple helix' of

initiatives to cover three basic principles of sustainability as they pertain to the crossover between the environment and matters of human rights, and each are listed in this document. Section 24 of this statute defends:

> the right to an environment that is not harmful to health or wellbeing and calls on the government to take legislative and other actions to:
>
> (1) Prevent pollution and ecological degradation;
>
> (2) Promote conservation;
>
> (3) Secure ecologically sustainable development; and
>
> (4) Use natural resources while promoting justifiable economic and social Development. (23)

Since 1994, this new Constitution has formed the foundation upon which several shifts in environmental policy have occurred. Following this document, several pieces of legislation have been enacted, and fulfill roles that target varying elements of the sphere of environmental justice. The majority of these documents have been constructed under NEMA, otherwise known as the National Environmental Management Act No. 107 of 1998. Hamann et al. surmise that:

> Of importance here is the recognition that the drive towards civil rights for all South Africans, as enshrined in the 1996 Constitution, the push towards equity in affirmative action over jobs, training and education, and the process of empowerment of civil groupings in an integrated development process are central elements of the link between ideological reform and the transition to sustainability. (2)

Here, Hamann et al. expertly identify the larger implications of this new Constitution and the positive impact that it envisioned for the rest of the nation. The Constitution stands as a document that functions to explain the difference between "implementive politics" and "transformational politics" in South Africa during a time that required them to focus on a transition to sustainability. The distinction between these two terms, of course, is that of progress and the speed at which change may occur over a certain period of time. While “implementive” suggests immediate alterations to a current system, “transformational” seems to allude to some sort of process attached to the aforementioned change. Similarly, the difference between the words “implementive” and “transformational” remains applicable to patterned instances of racialized environmental violence as they may be enacted through both slow and everyday violence. In this metaphor, everyday violence acts as the “implementive” law and slow violence acts as “transformational” as it typically occurs over a more drawn out timeline.

During South Africa’s “transformation” to adopting more sustainable practices, historically disadvantaged groups of indigenous people were facing the brunt of the consequences that are necessitated of sustainable practices. Historically, the European dispossession of indigenous land, which then spurred South Africa’s move towards more sustainable practices, is thought of as the most impactful example of environmental racism and European colonialism that still impacts populations of indigenous communities today. As such, these groups of historically disadvantaged people are caught between the crossroads of desperately needing more sustainable practices as they benefit the global environment, but also being actively oppressed by the policies that govern the same supposedly sustainable practices in question. This, of course, may then be largely attributed to infrastructures left

over from the Apartheid regime as the access to and use of land is foundational to Apartheid era policy. Oppression through land dispossession creates what is known as “spatial discrimination” which is most distinctly seen through the townships that grew following land dispossession. Townships are typically “underdeveloped” and racially segregated, as they were initially forced to be during Apartheid, reserving said township areas for Indian, African, and Coloured people. By dividing citizens in this way and through legally documented means, the South African legal system was implicitly contributing to the rise and continuation of spatial amnesia, everyday violence, and slow violence via the physical displacement of human bodies. All are acts of violence that underscore the beginnings of the Apartheid regime, but remain deeply embedded in the South African socio-political sphere.

Defining the Terms: Literature Review

One major, overarching question to consider when determining the parameters of environmental law is the question of how to define the "environment," what exactly this word means, and whether or not it includes the presence of humans. "Environment," as noted by Caldwell, seems to have become a term that "everyone understands and no one is able to define" (170). As a result of this inability to define such a seemingly all-encompassing term, the environment and matters associated with it seem to have become major issues of legal dispute. If humanity is inherently linked to the environment, this not be reflected in the legislation surrounding both human rights *and* environmental rights. In cases of environmental and human exploitation, such as the independent settlements in South Africa, this definition should be clarified for the sake of the safety of both entities as they relate to the law that is ostensibly in place to protect them. A re some humans more protected than others under these circumstances? With these various areas of contention and legal

implication in mind, inarguably, the environment seems to be intrinsically connected to matters of law, violence, and humanity, no matter the definition.

How Caldwell's definition of "environment" functions within a legal setting largely depends on how legal policy plays out in a real world context in the lives of human beings. For instance, when using "environment" to protect resources that may be endangered by the presence or actions of humans (e.g., trees in the rainforest or endangered plant and/or animal species), humans themselves are intentionally excluded from the definition. While some may claim that this has been done in order to simplify legal action, in cases such as the resource distribution in South Africa, it appears that this exclusion may have been executed for the purpose of favoring one group of humans over another. To further this particular goal, one might use a definition such as the liability regime statement released during the Lugano Convention, which in Article 2 reads, "Natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; property which forms part of the cultural heritage; and the characteristic aspects of that landscape" (10). While putting the safety of these particular elements at the forefront of the issue, this definition may fall short as it does not recognize matters of just natural resource distribution amongst humans, human labor associated with environmental preservation, or a number of other issues that include human intervention alongside environmental need in some way.

Contrarily, if an organization were advocating for *human rights* in relation to their access to natural resources (e.g., water, air, energy, etc), their definition of the environment may be more congruent with the one offered twenty years earlier, during the Declaration of the 1972 Stockholm Conference on the Human Environment (UNCHE). Here, in the preamble of the document, they refer to the environment as the "man's environment," adding,

"both aspects of man's environment, the natural and the man-made are essential for his well-being and enjoyment of basic human rights" (4). Such a declaration, while focusing on rights-based issues of environmental justice, could be interpreted as ignorant of issues such as air and water pollution that are often by-products of human-made and maintained industries. This latter definition is almost assuredly more anthropocentric than the former definition, but still brings up issues that humans will continue to encounter on a legally-bound front if they are not recognized and dealt with justly.

Comparing these two applications of definitions clarifies the presence of the "primary purpose" of agreements. Both of these definitions may be seen as correct in their respective contexts, but the intended effects of their differing objectives are each made clear through the use of rhetorically strategized language. The issue of flexible definitions is made apparent when applying this tendency to the field of law. Many legal documents attempt to avoid this controversy altogether because, if not, they face the obstacle of offering a definition that is either too narrow or too broad in scope; a decision such as this one can result in legal "grey area," that permits for loopholes and unclear legislative action in the case of circumstances that are not explicitly or implicitly included in the law for the ultimate benefit of more privileged parties. For this reason, when it comes to dictating and enforcing protective environmental policy, it is crucial that governments come to an agreement of what they believe to be the meaning of the "environment" that balances both matters of human and environmental justice. With this in mind, perhaps the document known as the Environmental Protection Organs Establishment Proclamation No. 295 of 2002 provides the most dynamic definition of what exactly defines the parameters of what may be considered the "environment," relaying that it is:

> […] the totality of all materials whether in their natural state or modified or changed by human, their external spaces and interactions which affected their quality or quantity and the welfare of human or other living things, including but not restricted to, land, atmosphere, weather and climate, water, living things, sound, odor, taste, social factors, and aesthetics. (3)

This definition is certainly more conscious of the fact that both sustainable development and environmental justice encompass multifaceted problems. To use Soyapi and Kotzé's phrasing, sustainable development "relates to not only the sustainable use and exploitation of natural resources, but also to the enhancement of the quality of peoples' lives through inter alia constitutional governance" (393). Using this quote permits a ground-level understanding of the system that intentionally benefits rich populations of white South Africans, at the expense of Black South Africans.

Rob Nixon offers terms such as "slow violence" and "environmental amnesia" to explicate the ties that *cannot* be overlooked and that play a crucial part in human rights law as it related to the historical connotation that land distribution holds in South Africa. Nixon defines slow violence as, "[...] a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all" (2). However, this definition begs the question, who is this violence "out of sight" to? Relating back to South Africa's environmental policy, the same populations that were given access to national parks, essential environmental resources (energy, water, land, etc.), and permitted to voice their opinions about environmental justice seem to be the ones who lack the sight to comprehend the effects of systematic slow violence

that have been enacted upon Black South Africans in independent settlements. Nixon's observation of slow violence as related to environmentalism in these poor and, arguably, gendered communities, provides readers insight regarding the implicit connection between environmental pasts and environmental presents, thus, the term "environmental time." Considering the qualifying adjective in the term, "slow," has helped me to further develop my argument that environmental legislation under post-Apartheid governance cannot be rhetorically analyzed without first analyzing the influence of the colonialist powers that enacted Apartheid initially.

To further expand on the relevance of this term, Nixon offers the additional term "environmental amnesia," which they define as an, "environmental dynamic between seeing and not seeing, between remembering and forgetting [...], but it has broader pertinence to the challenges of reconciling environmental justice, political transformation, biodiversity, and touristic expectations that have been shaped by the international marketing of nature" (88). Nixon's transnational perspective reveals that slow violence, when conducted through the guise of "well-intentioned' environmental movements, arises gradually and often invisibly due to the lack of attention paid to lethal environmental crises and the marketing of the spectacle of environmental activism. This is especially relevant to the conservation movements in South Africa that identify independent settlements of poor Black South Africans as the culprits of various occurrences of environmental degradation, rather than populations of rich white South Africans, who have the resources to live more comfortably, but are not asked to adapt to a more environmentally-conscious lifestyle. Ultimately, it is populations of the poor, the disadvantaged, and the vulnerable that will face the consequences of these inactions.

Natalia Cecire confirms the critical implications associated with environmental timelines alongside environmental amnesia, and introduces the concept of environmental innocence; this is a concept that seems to point the finger at no one and everyone simultaneously in terms of who is to blame for environmental crises. Scholars have determined that this innocence does not work productively towards either human justice or environmental justice. Building off of Nixon's basic principles of temporality, Cecire remarks that temporality is instrumental in "disallowing environmental innocence: not urgencies reveal innocence as a false belief in *having time*, to be supplanted by the environmental text's call to present responsibility for either past or future" (166). In summation, "belatedness" gains priority over the temporality of innocence. This is to say that timelines of both environmental and human-rights based degradation are likewise completely reliant upon, and, therefore, *vulnerable* to, those whose bodies, timelines, and personal motives are deemed more important by rights-based legislation and, afterwards, active enforcement of the legislation in question. Such belatedness has deeper implications for the well-being and *legal* problems of said "vulnerable bodies" that Judith Butler focuses on in her research of notions of precarity, violence, and vulnerability.

These factors make up what Butler calls our "legal identity." As in the case of many Black South Africans, their "legal identity" is likely severely disadvantaged, as they have been controlled by several generations of racialized legislation that actively facilitates white protection and white interest. The possession of a "legal identity" is integral to the process of accessing one's rights, benefits, and other national responsibilities. In fact, the term "legal identity" may be directly related to the South African "pass laws," the mandatory identification system notoriously belonging to the Apartheid era. Not only are these

conditions inextricably linked, but they are also inextricably *maintained* by social fields and ethical encounters, similar to theories of the development of slow violence. Following this logic, inarguably, Black women are the most vulnerable populations of individuals on the basis of their legal identity and the publicity that follows this. Black women, their bodies, and the implications of their legal identity leave them severely disadvantaged in terms of their legal representation and recognition and their ability in voicing corresponding issues. Despite the attributes seeming supposedly personal to the individual, Butler affirms that there is an implicit dimension of publicity to the human body as well. However, Butler considers this publicity more on a global-social level and encourages questions such as: "How do we represent ourselves within the public sphere?" and "Who 'are' we and how do we relate ourselves to others during instances of rights-based injustices" (15)? This examination of publicity complies with Nixon's observations of slow violence and our inattention as a whole to its presence, describing instances of this behavior as, "calamities that are slow and long lasting, calamities that patiently dispense their devastation while remaining outside our flickering attention spans-- and outside the purview of a spectacle-driven corporate media." (6) By drawing attention to the selective perception of the human public in general, Nixon makes a strong case for the notion that slow violence is precariously located at the crossroads of interaction between humans and the environment, while simultaneously relating to themes of temporality, relationships between the oppressor and the oppressed, and social hierarchies that dehumanize the poor. This sentiment, naturally, is embedded in time and its relationality to human behavior, leading most directly to what Nixon calls "spatial amnesia."

These matters of relationality provoke a more in-depth investigation of human autonomy as it pertains to international politics, legislative recognition, and mindfulness of

vulnerability and how such vulnerability may be intensified under varying social and political conditions through human rights crises. This is especially pertinent when investigating environmental issues and conservation movements that promote vulnerability. Theories on vulnerability provide a framework of thought that directs us to understand that precarity is a state of insecurity or inequality that develops from the construction of social hierarchies. This thesis will direct the sentiments of these three theorists to environmental legislation in South Africa, and determine whether or not this is true, and how each of their definitions of precarity (and who is to be blamed, or, rather, who is responsible) must be adapted in order to promote a more just understanding of the term itself. Furthermore, Butler supposes that such an investigation would provide a basis of information to answer such critical questions including:

> What is real? Whose lives are real? How might reality be remade? Those who are unreal have, in a sense, already suffered the violence of derealization. What, then, is the relation between violence and those lives considered 'unreal?' Does violence affect that unreality? Does violence take place on the condition of that unreality? (33)

In summation, Butler seems to draw connections between matters of vulnerability and issues of humanization and dehumanization, issues that stand at the helm of both human rights-based and environmentally-centered controversies. As many scholars have come to agree, human rights and environmental protection are interdependent of one another; they have backed this claim with the logic that, although the maintenance of a health, safe, and clean environmental is integral to the preservation of human well-being and human rights, the

ability to exercise one's human rights is equally as critical in terms of gaining freedoms that allow humans to participate in and protect the environment. In this reciprocal scenario, both parties are just as vulnerable to the effects and needs of the other and, for this reason, they cannot be logically nor non-violently separated, at least legally speaking.

Catherine Mills recognizes Butler's conditions of vulnerability, and the normative forces that create them, as ones that rework the ethics of recognition and "bodily ontology." Continuing, Mills critiques the pragmatism behind Butler's claim that pursuing the ethics of vulnerability may be conducted through non-violence, and whether Butler's ethics may even be deemed "non-violent" in the first place. Moreover, Mills differentiates the varieties of precarity, which Butler uses as a term that is interchangeable with the word "vulnerability;" Mills instead determines that there are "ontological and ontic, or universal and situational" precarities (41). This allows for deeper discussion regarding types and levels of precarity amongst people of different races, gender identities, nationalities, and socioeconomic statuses. Furthermore, Butler's conditions of vulnerability and autonomy, especially when observed through the legal sphere, are assuredly threatened, both in terms of human vulnerability as well as environmental vulnerability and sustainability.

As mentioned earlier, Black women face higher levels of precarity and disadvantage as a result of prioritization of white South African needs as rhetorically accounted for in law. As such, seeing these consequences through a transnational ecofeminist perspective is crucial in order to fully comprehend the environmental and human rights based issues and implications present in South African environmental legislation. To see through this lens effectively, Eileen S. Schell explains how one must, "engage in cross-border organizing work, building linkages and 'feminist solidarities across the divisions of place, identity, class,

work and belief.' Thus, transnational feminisms involve significant attention to rhetorical advocacy work," developing this understanding of women's bodies and how they may work within different settings helps to better negotiate matters of human rights as compared to matters of environmental rights (561). Vandana Shiva offers a metaphor to compare these various types of violence and how they may be linked:

> I have repeatedly stressed that the rape of the Earth and rape of women are intimately linked- both metaphorically, in shaping world-views, and materially, is shaping women's everyday lives. The deepening economic vulnerability of women makes them more vulnerable to all forms of violence… (9)

This shared violence is key to my argument that not only are several South African policies rhetorically written in order to profit economically at the expense of the health of the environment, but also that they are deeply gendered and racialized as to privilege the voices of rich, white South African men and at the expense of Black South African women. In doing so, this makes clear the defined boundaries between the oppressor and the oppressed and lays the groundwork for the need for a feminist rewriting of the laws that harm and restrain both women and the natural environment. The disadvantage of accessibility, representation, and involvement of Black South African women is most distinctly apparent in the rhetoric of legislation regarding the parameters of water allocation and sanitation law considering the role of "provider" or "head of the household," so to speak, that many of these women seem to fill within their respective homes.

Idelbar Avelar identifies various forms of violence and the status of these violences in a modern society. Using the success of the Marxist vindication of violence as an example that exhibits the stark differences between the oppressor and the oppressed that have become socially, politically, and legally normalized over the course of the twentieth century, Avelar surmises, "In the colonial world we understand that violence is ubiquitous. In its extremely atrocious nature, colonialism makes us see that violence not only happens in the colonial world" (7). Their argument follows the interactions of various scholars concerning the link between violence (more specifically, war) and the roots that Foucault believes it possesses in politics. In response, Avelar states, "Politics is, in fact, the name given to the set of struggles around the territorial and populational managing of violence" (14). This perception of politics as directly connected, and perhaps responsible for, acts of war and violence frames the issues of legalized environmental injustice as they are enacted and are related to the everyday violence experienced by South Africans.

These theoretical frameworks may be combined, thereby functioning as a mechanism that forcefully uncovers the gravity of legislative language as well as the downfalls of language that is supposedly "all encompassing." Using the rhetorical theories of violence, slow violence, and precarity develops a larger scope of visibility for underprivileged and underrepresented bodies. As a result, this identification of scope leads us to understand that the only means by which real-world change can be exerted is through the alteration of laws that were historically engineered to manipulate, impair, and exploit groups of historically disadvantaged groups of people through the manipulation and exploitation of their legal identities, human needs, and civil rights.

Research & Project Description

With attention to the rhetoric of slow violence, spatial amnesia and precarity, I observe moments of environmental injustice in selections of South African communities as results of concurrent historical, political, and social events that are inextricably tied to intentionally unclear environmental law, thereby linking historical frameworks of legal violence (and their continuing legacy) to acts of environmental justice today. This thesis will use rhetorical analysis as a foundation for unpacking the ambiguities of such violence as it stands in the existing environmental legislation in South Africa and propelling discussions of violence through the lens of past theoretical works such as that have drawn connections between national environmental injustice and their respective legislative systems. In this thesis, I will also offer hypothetical alterations to a selection of the legislative documents that are directly connected to the case studies that I have reviewed over the course of the project including legislation on water governance, the addition of energy in an amended Bill of Rights, and the recognition of biopiracy as an act of environmental injustice. It should be kept in mind that these alterations will not be constructed with the intent of implementation, but should instead be considered as a mechanism that will further prove my argument and function effectively within the context of a rhetorical analysis.

Chapter Overviews

This thesis has a number of objectives, though the most pertinent is providing adequate socio-historical foregrounding that is imperative to understand colonialism as it exists in modern-day South African legislation. Contemporary perceptions of colonialism may be thought of under the blanket term of "environmental racism," which loosely details discrimination on the basis of the disproportionate impact of environmental injustice

(hazards, pollution, etc.) as it affects groups of historically disadvantaged communities of marginalized people. In addition to these effects, though, environmental racism also explicitly encounters the institutional rules, policies, regulations, and government decisions that hold jurisdiction over either aspects of the environment itself or entities that could impact the environment. Similar to the general parameters of human rights legislation, environmental legislation is widespread, and the edges of what it may or may not cover are blurred. Furthermore, there is considerable overlap between the content that both of these legal areas of contingency cover, marking them as inseparable from one another.

Environmental injustice and racism are global issues that operate on a sliding scale of recognition. South Africa's history of colonialism runs deep from the initial colonization by the Dutch East India Company and the effects of this reach matters of economics, politics, social attitudes, and the environment. One major impact of European colonialism was the dispossession and re-allocation of the 'homelands' from indigenous groups of South Africans, which I pinpoint as a highly influential act of colonialist environmental racism and stands as a moment of injustice and violation of human rights that I draw upon throughout the rest of my argument. Additionally, in the introduction of my thesis, I introduce the major theoretical foundations of slow violence, precarity, and spatial amnesia that I use to compare pre and post-Apartheid era environmental legislation in terms of the rhetorical attention they pay towards the protection of human rights.

In the first chapter, I use the case of the benefit-sharing agreement between the indigenous San community and CSIR over the commercialization of *Hoodia gordonii* as a hunger-suppressant drug to introduce a more contemporary form of colonialism: biopiracy. The case of *Hoodia gordonii* and the ensuing patent of this plant-turned product offer a strategic legal

course of action for organizations that are looking to benefit from the position of Black South Africans living in independent settlements. Biopiracy is especially relevant to my argument that there is legislation that remains today that still works to disadvantage the same groups of people that were neglected human rights during the Apartheid regime (namely, Black South Africans); biopiracy also marks a pertinent overlap between human rights and environmental rights that is directly encountered by the TRIPS Agreement and ensuing benefit-sharing agreements. Using theory from Vandana Shiva concerning the dangers of legally-empowered nationalist governments, I identify that the implications asserted by the existence of the TRIPS Agreement and the marketing of Intellectual Property Systems in general is a structure that works systematically to benefit Europeans and, as a consequence, revoke rights from indigenous communities. Using Nixon's basis for slow violence and its inherent temporality, I argue that the exploitation of Africa's natural resources parallels the institutional exploitation that is apparent in claims of human rights violations and was apparent in law from the Apartheid regime. Furthermore, I argue that these legal moves are rhetorically situated at the crossroads between issues of environmental justice and human rights-based justice.

The second chapter of my thesis revolves around water allocation laws as well as sanitation laws in South African, which I argue are a direct result of the previously-mentioned land dispossession that characterized early European colonization over indigenous settlements. However, I use instances of unfair water allocation or sanitation laws to examine a subset of the victims of environmental injustice. Here, Benedict Anderson's identification of "imagined communities" works alongside Nixon's term "surplus people," to back my argument that despite being ostensibly recognized in the South African Constitution, those

who possess intersectional identities, women in particular, are unlawfully denied what should be human rights through rhetorical means. Moreover, women are denied human rights through material means that rhetoric underwrites within the genre of legal human rights and environmental documents. The primary legal documents that I analyze in this chapter are the South African Constitution, the Convention on the Elimination of Discrimination Against Women (CEDAW), The Protocol to the African Charter on Human and Peoples' Rights of Women in Africa (The Maputo Protocol), and a collection of legally-binding documents from the Committee on Economic, Social and Cultural Rights (CESCR). While the South African Constitution and the CESCR posit well-intentioned policy, CEDAW and the Maputo Protocol work more directly to encounter environmental injustice through a feminist lens that regards the livelihoods of those posessing intersectional identities. Finally, I use the circumstances of the COVID-19 pandemic as it has been handled legally in South Africa to demonstrate the violations of human and environmental justice that have been proven to result from inappropriate water allocation and sanitation laws.

In chapter 3, I focus on the mining industry and the legal maintenance that it requires to run the primary force that maintains South Africa's economy. In this way, the mining industry is largely profiting from acts of colonialism as enacted through environmental injustice and I argue that the elements needed to facilitate the industry's economic success are largely prioritized over matters of human rights, despite this being vehemently opposed in South Africa's Constitution, specifically in the Bill of Rights. In addition to the Constitution, I analyze segments from the Mineral and Petroleum Resources Development Act of 2002 that are pragmatic in terms of advocating for human development through financial means,

but also detrimentally hypocritical as this development calls for the systemic disadvantage of miners, most of whom come from indigenous settlements.

I build upon and recontextualize Nixon's theories of the racialized detriments of empowered nationalism and environmental racism as it plays out in countries in the Global South to more effectively demonstrate the occurrence of slow violence. Another facet of this injustice is the unfair distribution of wealth in the mining industry, especially when considering the incredible risks associated with working in these mines. If not sufficiently evidenced by the long history of union strikes by South African mine workers, I use the Reviewed Broad-Based Black Economic Empowerment Charter for the South African Mining Industry to highlight the long-awaited need for rhetorical adaptations to the law in order to effectively prevent acts of violence against Black South Africans and advocate for their health and lawful parameters of their labor-based rights.

Together, these chapters work to target environmental legislation specifically as the vehicle with which governing forces are able to exert different varieties of control over populations of historically disadvantaged groups of people, the majority of whom are indigenous. Splitting these chapters by specific executions of violence through environmental law demonstrates the frequency of acts that should be considered "slow violence," and the larger implications that force onto communities of indigenous South Africans. Although each chapter is not necessarily focused on issues of access for each resource, they are each argued through the lens of human rights rhetoric, drawing further attention to the relationship between environmental law and human rights, two areas of focus that I argue are intrinsically bound to one another as evidenced through violations of human rights through the documentation of environmental law. As environmental law and human rights law cannot be

separated, they must be considered one. I prove that separating the two only enacts further violence and violations of human rights through environmental law. This notion is re-emboldened by the inclusion of case studies and real-world experiences from South Africans who have been impacted, in some way or another, by environmental racism or environmental injustice through legislation.

Chapter 1: Intellectual Property Rights and Biopiracy, The Necessity for Self-Determination, Cultural Preservation, and Recognition in South African Environmental Policy

> "It is still true that the first part of self-determination is the self. In our minds and in our souls, we need to reject the colonists' control and authority, their definition of who we are and what our rights are, their definition of what is worthwhile and how one should live, their hypocritical and pacifying moralities. We need to rebel against what they want us to become, start remembering the qualities of our ancestors and act on those remembrances. This is the kind of spiritual revolution that will ensure our survival." (32)
>
> -- *Taiaiake Alfred, 2005*

Biodiversity, as defined by the Convention on Biological Diversity (CBD), regards, "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems" (3). From this definition, the wide scope of biodiversity in general reinforces the notion that biodiversity is *irreplaceable* and must be protected. Biodiversity upholds human life in literal, biological terms, but also plays an integral role in almost all stages of development in human-made technologies including the shifting forces of economic industrialism, normative social hierarchies, political discourse, and legislative authority. This chapter demonstrates that a nation state's economic, political, and social statuses are all undeniably and intrinsically linked to their environment and natural resources. The definition of biodiversity, especially

when understood alongside the political, economic, and social circumstances as they exist in South Africa, reveals how the jeopardization of such biodiversity is an ethically complex issue with an immense breadth of affected individuals.

Taiaiake Alfred, renowned writer, scholar, and Professor of Indigenous Governance in the Department of Political Science at the University of Victoria, actively recognizes and vehemently dismisses systemic racism and recurring colonialist behaviors on a global scale; as such, Alfred's epigraph to this chapter provides a well-balanced foundation upon which to present the argument that decisions made by systems of legislative power all too often promote racialized illegalities in the Global South, specifically in South Africa. Alfred intentionally uses words such as "pacifying" and "hypocritical" to illustrate the imbalance of priorities that governmental structures adhere to and further emphasize the calculated oppression of marginalized and imagined bodies that these systems are profiting from. The inclusion of the word "remember" here is of particular importance as it highlights Rob Nixon's theory of "spatial amnesia" and its application to contemporary communities of people whose ancestors were either defined as "colonizers" or "the colonized." Spatial amnesia relies on two factors to thrive within a space. First, it is absolutely contingent on the physical settling of an area, assumedly by a colonizing force of people. Readjusting or perhaps even destroying a physical space affirms the threat of violence upon a community and renders their experience as “invisible” through the alteration of a space that was once theirs. The second factor of spatial amnesia is the imaginative displacement of a community or a culture of people. This has been executed in South Africa specifically through both physical and imaginative racial segregation, calculated portrayals of “surplus peoples” through media outlets, and the administration of government services that enforce labor,

social, and political roles on different groups of people. Indigenous communities are often exploited imaginatively through skewed patenting systems, the employment of vague or misleading language in human rights legislation, and the use of definitions in legal documents as a means of "accounting" for their rights-based recognition and experience, but not directly alleviating the problems that continue to be historically associated with their identity.

Although not immediately as threatening as physical violence, imaginative non-recognition is a force that continues to perpetuate binaries that restrict social perceptions of historically disadvantaged people and render their experiences as "expendable" as compared to those belonging to others. Though I argue that spatial amnesia is certainly a major contributing factor to the systemic violation of human rights in South Africa, the term "amnesia" itself seems to imply a validation for the lack of accountability on the side of the oppressor. However, this revocation of liability *cannot* be applied to the legal documents that have shifted, restructured, and expanded over the course of time, but still continue to incite violence through rhetorical means, and, as such, are very much to blame for the acts of violence that they incite, whether implicitly or otherwise. The nation state of South Africa relies heavily upon economic, political, and social systems that are all undeniably and intrinsically linked to the existence of natural resources, the maintenance of the environment and biodiversity as a whole, and by proxy, the laws that govern these entities. In this chapter, I identify how the patenting of traditional knowledge and the TRIPS Agreement both condone acts of biopiracy and, thus, biocolonialism, and are in direct conflict with the environmental legislation as mandated by the Convention on Biological Diversity and the National Environmental Management Act.

South Africa is certainly based upon a history of colonialist movements, but the country is also reliant on its vastly biodiverse environment. According to the Biodiversity Finance Initiative, informally known as BIOFIN, South Africa is listed as the third most biodiverse country in the world and is home to over 95,000 known species of plant and animal life, making the area incredibly valuable to exploitative multinational corporations. South Africa's economy is largely supported by profits from the tourism, fishing, and farming industries that depend on biodiversity, thus prompting further discussion of biocolonialism within the country. While industrialization in developed countries tends to lead to a "melting pot" of genetic material, indigenous territories often house highly sought-after, preserved genetic materials. Rather than spending time, money, and excessive legal attention to collect this genetic material, they could be spending the same budget on preserving this information within their original cultures, but, unfortunately, profit seems to speak more than cultural preservation and integrity. While these resources are not generally assigned explicit monetary values, these commodities assuredly hold value and contribute to South Africa's well-being and, therefore, should not be handled otherwise as "free" or "valueless."

South Africa's laws regarding the protection of the environment and biodiversity in particular are upheld by the National Environmental Management Act (NEMA) and have been since 1998 as a means of substantiating Section 24 of the Constitution of the Republic of South Africa. Though the Act has been amended several times since the initial documentation of NEMA, it was not until 2004 that the document was amended to recognize the protection of biodiversity in South Africa through a designated Act. One of the actions in Act 10 of the 2004 NEMA that the South African government "intends to provide for" is "the management and conservation of South Africa's biodiversity within the National

Environmental Management Act, 1998" (25). Though allegedly well-intentioned, the verbiage of "conserving" the originally flawed 1998 NEMA document seems ironic here, considering that, in several ways, the framework of this document that was enacted following the abolishment of Apartheid failed in several ways to conserve South Africa's environment, their supposed primary goal. Of course, NEMA is not the only governing piece of legislation that holds weight in terms of biodiversity laws in South Africa.

Biodiversity protection practices in South Africa are also governed by internationally legally-binding law instituted by the Convention on Biological Diversity, also known as CBD. CBD is an international legal instrument that prioritizes three main goals: the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of benefits arising from genetic sources. In this chapter, I use the benefit-sharing agreement between scientists from the Counsel of Scientific and Industrial Research (CSIR) in South Africa and a selection of pharmaceutical companies over commercialization of *Hoodia*, a plant derived from knowledge created by indigenous San communities in South Africa, to support and further contextualize Rob Nixon's theories of slow violence, "surplus" people, and spatial amnesia (Laird & Wynberg). I pair instances of biopiracy and environmental misappropriation in South Africa with rhetorically flawed guidelines presented by the Convention on Biological Diversity to confirm the presence of remaining structural violence from the Apartheid system. In Article 20, Section 4, the CBD remarks that "economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties." This statement, in tandem with the absence of a statement that directly acknowledges the protection of biodiversity, discredits the supposed altruism of the CBD. Several of the issues with legal documents released by the CBD are

largely rhetorical and contingent upon the organization's failure to realize how these concepts (e.g., sustainable development, state responsibility, common heritage, etc.) realistically play out in praxis, as can be evidenced through several cases of violations of environmental human rights.

Colonialism has always been and continues to be based in matters of rhetoric. The same issues are enacted through South African environmental legislation and consequently perpetuate acts of violence against humans. The issue of "bioprospecting" or "biopiracy" is one of the most lethal contemporary threats to biodiversity in South Africa. The term "bioprospecting" is not merely a legal loophole through which commercial businesses have slipped through to make a physical profit; it stands as a representation of a much larger issue: biocolonialism. Hawthorne relays an apt description of biopiracy through a feminist lens, offering that, "in the same way that it can be argued that the bodies of the poor, people of color, and women have been colonized in the preceding centuries along with the colonization of land, so too it can be argued with bioprospecting," thus paving way for the more accurate term, "biocolonialism" (314). The word "biopiracy" is also key here, as many organizations have chosen to use the word "misappropriation" to describe this concept instead, as it does not sound as punitive. Listed in the Draft Policy Objectives and Core Principles for the Protection of Traditional Knowledge, the various principles against misappropriation are as follows:

> Any acquisition or appropriation of traditional knowledge by unfair or illicit means constitutes an act of misappropriation. Misappropriation may also include deriving commercial benefit from the acquisition or appropriation of traditional knowledge

> when the person using that knowledge knows, or is grossly negligent in failing to know, that it was acquired or appropriated by unfair means; and other commercial activities contrary to honest practices that gain inequitable benefit from traditional Knowledge. (A9B2)

This definition of misappropriation offers several areas of focus that are critical to understanding the legal frameworks that concern biocolonialism and the rhetorical issues that arise within the field. The words "traditional knowledge" are especially relevant here, and is typically referred to within legal documents as simply "TK," "indigenous knowledge," or "local knowledge." Traditional knowledge regards knowledge systems or information that are intrinsically bound or culturally embedded within indigneous or local communities. These communities are the most vulnerable in terms of being exploited through acts of biocolonialism or colonialism in general. Other words in this quote that leave something to be desired include "unfair" and "illicit," both of which seem to hint at a concept that is well-intentioned, but neither of which are effective in their rhetorical structure. "Unfair" and "illicit" are, unfortunately, objective depending on the viewer; due to this use of vague language, the concept of "fairness" can easily be manipulated to suit the needs of the party with the highest proficiency in practices of international legal rhetoric. Undeniably, this requisite of proficiency is highly skewed to favor that of parties or powerful entities generally located Global North, thereby severely disadvantaging vulnerable communities in the Global South and decreasing their methods of defense against exploitative acts of biocolonialism.

The majority of multinational corporations would likely argue that if one considers indigenous knowledge as "communal," and, therefore, "not privately owned," then all should

have the ability to use and benefit from it. Contrastingly, from the perspective of an indigenous population, this knowledge is not "unowned," nor is it appropriate to consider it to be easily transportable, translatable, or expendable. Indigenous communities use the word "communal" to regard the common practice of holding information strictly within their cultural group and pass it on *only* to future generations of San for preservation purposes; this decision to pass along information between generations strictly by word-of-mouth, although frequently taken advantage of by multinational corporations, is legally backed by the principle of self determination. Dictated explicitly in Article I of the Charter of the United Nations, one of the primary purposes of the United Nations is, "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace[...]" (3). This inclusion from the UN sheds light on the divisive nature of human rights discourse that has jeopardized the futures of indigenous populations. When multinational corporations disregard indigenous experiences, customs, and abilities, they classify claims to self determination as matters that can fit within the realm of political and/or legal entitlements. In turn, profit-seeking organizations overlook the importance of recognizing and preserving indigenous communities and their respective relationships (e.g., indigenous families, native homelands, plant and animal life, etc). Neglecting self-determination normalizes a disregard for the Global South and puts not only current, but also future, generations of indigenous people at risk of losing the elements that contribute to their right to self-determination and maintenance of indigenous nationhood.

Even with more appealing verbiage to hide "biopiracy" under the guise of the term "misappropriation," there are still major problems at the core of both bioprospecting and

biopiracy. Biopiracy and bioprospecting alike can, and often do, negatively impact source communities with the implementation of monopolies on indigenous knowledge and resources. The fact that there are existing legal documents which condone variations of bioprospecting or biopiracy is, in itself, the reason that multinational corporations and countries within the Global North are able to legally take advantage of indigenous communities in the Global South as biocolonizers. Vandana Shiva expertly identifies further systemic impacts of bioprospecting such as the "enclosure of the biological and intellectual commons through the conversion of indigenous communities' usurped biodiversity and biodiversity-related knowledge into commodities protected by intellectual property rights." This is to say that the term "bioprospecting" works intentionally and unjustly to develop legally-binding relationships between indigenous communities and larger corporations to generate profit for the benefit of the latter entity. As a result, indigenous communities who relied on information (typically for health-related or nutritional needs) are forced to pay for resources that have always belonged to them and profit the groups of colonizers that stole the resources in question. Pat Roy Mooney of the NGO Action Group on Erosion Technology and Concentration (ETC) who coined the term "biopiracy," holds firm that the difference between the terms "bioprospecting" and "biopiracy" are few. Mooney states, "[W]hatever the will and wishes of those involved, there is no 'bioprospecting.' There is only 'biopiracy'" (37). Mooney explains that without adequate international laws, standards, norms, and monitoring mechanisms, the theft of indigenous and local knowledge will only accelerate in the future. Given its history within the realm of environmentalism, "biopiracy" has come into existence as a divisive, discursive tool that describes injustice but, simultaneously, works to establish socio-political leverage for the Global North.

Debra Harry, Northern Paiute activist and executive director of the Indigenous Peoples Council on Biocolonialism, in a lecture dedicated to interactions between biocolonialism and indigenous communities, diagnoses biocolonialism as the "new frontier" of colonialism that continues to grow exponentially due to continuous funneling of funds into biotechnology-related efforts because of a rising global "knowledge economy." As the name would suggest, knowledge economies denote a system of consumption and production powered by the value of intellectual capital (i.e., knowledge or information). The success of knowledge economies depends on the quantity, quality, and accessibility of information available, rather than the means of production. As such, scholars are seeing a wide disparity between the treatment of intellectual capital from European as compared to intellectual capital from indigenous societies. While European knowledge is usually categorized into various areas of study in order to pay each subject proper attention (and, more importantly, to ensure that this knowledge is reasonably protected by specialists and scholars in the field), knowledge from indigenous sources is not given the same respect and has thus been presented as somewhat of a "free market." This "free market" is generally the most lucrative for developed countries and multinational corporations, and both are primary culprits that conduct "bioprospecting projects" that, in reality, should be rightfully classified as acts of either "misappropriation" or "biopiracy."

Hoodia gordonii is a succulent plant whose historied distribution and commercialization make a convincing case for the addition of South African environmental laws that treat acts of biopiracy as violations of human rights and, therefore, protect indigenous groups from being exploited. The San are the oldest human inhabitants in Southern Africa and have lived in small, nomadic hunter-gatherer groups for thousands of

years. Upon being forcibly evicted by Afrikaners in 1652, the San have been plagued by a lengthy history of dispossession, relocation, and genocide by European colonists, reducing a population of 300,000 indigenous people to only 100,000. These tragic events evoked a strained relationship not only between San communities and colonizers, but also between San communities and their physical environment. Following 1652, European colonists continued to appropriate, homogenize, and destroy indigenous culture and wellbeing in South Africa. Their efforts ultimately culminated in the Apartheid regime which *legally* normalized the discrimination against Black South Africans. Even after abolishing Apartheid, the regime remains as a force that underscores and is imminently linked to political endeavors in modern-day South Africa, as can be seen through the country's cyclical socio-political marginalization. I use the case of *Hoodia gordonii* as the foundation for my argument that the legal system that maintains the patenting of traditional knowledge is functioning as a catalyst for biocolonialism and, as such, is also a catalyst for the preservation of racist, Apartheid-era practices.

Hoodia gordonii is a cactus-like plant that was originally found growing in the Kalahari Desert, which extends throughout South Africa, Botswana, and Namibia. Known colloquially as "Bushman's Hat," even the name of this species recalls the racial slur, "Bushman," which was used to regard the original founders of the plant, members of the indigenous San community. *Hoodia* grows roughly six feet tall and was used for thousands of years by San communities for its hunger-suppressing effects, which were valuable for groups of San people on long hunting excursions. Ostensibly, sucking on a length of the cactus' flesh could keep a band of San hunters from feeling hungry or thirsty for several days at a time, preventing them from needing to consume the game that they killed while traveling

before arriving home. This information about *Hoodia* was passed down from generation to generation of San people only by word of mouth, as is custom within their community. However, their practice or strictly oral repetition was taken advantage of, resulting in the major exploitation of an indigenous community to profit a major multinational corporation.

The history of *Hoodia* changed rapidly when San knowledge about *Hoodia gordonii* was retrieved by the Council for Scientific and Industrial Research, CSIR, from the publishings of colonial botanists in the early 1960s. CSIR was screening over 1000 species of plants, colloquially known as "bush foods" (including *Hoodia*) that were originally founded by indigenous peoples. The organization intended to relay the results of their research about these species to the South African Defence Force to inform troops of local edible plants and their nutritional properties, in turn, completely disregarding the obligation to inform, credit, and, therefore, permit profiting by the indigenous San communities from whom they stole this information. It took four, long, profit-making years for the South African San Council to finally be informed of *Hoodia*'s commercialization. By 2001, CSIR had already conducted scientifically-validated research, filed international patents for the plant's active constituents, and orchestrated deals with large pharmaceutical companies such as Phytopharm, Pfizer, and Unilever to develop products using *Hoodia*, none of which could be accomplished without the supplemental cultural knowledge of the plant taken without the consent of indigenous San communities.

During the development stage of the *Hoodia*-based weight control supplements, CSIR was also employing a rhetorically exploitative and biocolonialist marketing strategy to sell their products. *Hoodia* products were primarily advertised through various internet platforms under the name "Bushman's Secret," which we have already determined as problematic,

alongside imagery that was taken without consent from San communities. In these advertisements, two types of contrasting images were typically shown across from one another: one image displayed a thin, white woman and the other a group of thin, male indigenous San hunters, wielding bows and arrows and wearing loin cloths. CSIR's marketing decisions seem to work from a number of oppressive angles. Firstly, intentionally using these images of San hunters on their product emboldens the consumer's assumption that this drug is both a natural botanical and is presumably benefiting the community displayed in the product's advertisement, or perhaps that it is more "natural" in some way because of their "indigenous" product endorsement. Secondly, deciding to use this undeniably colonialist imagery, CSIR was able to reap the benefits not only from a product that they stole from an indigenous community, but romanticize consumers that were effectively persuaded to purchase the drug because of propaganda stolen from a group of indigenous people. Moreover, CSIR attributes *Hoodia gordonii*'s discovery in some way to *male* San hunters, when, in reality, the plant was likely discovered by female San gatherers. Consequently, by making this rhetorical decision, CSIR was implicitly emboldening gender, ethnicity, and race hierarchies that work to maintain the oppression of these indigenous groups of people and, therefore, systemically undermine their ability to defend themselves from greedy, multinational corporations such as CSIR (Foster 4). The CSIR's decision to revoke intellectual power from the San people for the sake of gaining profit shares a similar goal as several Apartheid-era movements such as unwilling land revocation and redistributions, passed miscegenation laws, institutionalized segregation, and restrictions on physical movement: both offensive parties egregiously prioritize the stimulation of a "higher" structural power (e.g., the comfort of white South Africans, the potential profit from a new

hunger-suppressant) over human rights that *should* belong to, and be legally backed for the benefit of, indigenous Black South Africans.

This treatment of the San community exemplifies slow violence and Nixon's "environmentalism of the poor." Biocolonialism and the patenting of traditional knowledge from indigenous communities without their permission is an act of violence. In order to combat this racialized abuse of indigenous knowledge, I suggest looking towards Nixon's "plant a tree" metaphor. Nixon states, "To plant a tree is an act of intergenerational optimism, a selfless act at once practical and utopian, an investment in a communal future the planter will not see; to plant a tree is to offer shade to unborn strangers" (134). CSIR's actions, within the same metaphor, would likely function as the paper mill that rips the tree from its roots, sells the paper it produces, and then profits by selling the indigenous-owned land upon which the tree once stood. That is to say that CSIR's actions, though each individually destructive, contribute to a collective narrative of the profitability of racism that is self-motivated, slow, and socially sustainable. Berger continues the conversation of gradual cruelty in relation to zoning practices, writing, "The initial dismembering, however, always comes from elsewhere and from corporate interests pursuing their appetite for ever more accumulation, which means seizing natural resources, regardless of whom the land or water belong [...] Each year of such accumulations prolongs the Nowhere in time and space." This "Nowhere" signifies a process of forgetting, a system of displacing "surplus people" in a sort of oppressive limbo, that can be directly compared to Nixon's theories of spatial amnesia. Biocolonialism as a system thrives off of the negotiation of identity amongst those who are considered "surplus " people; likewise, spatial amnesia serves as a convenient tool for European colonialists to draw upon and use recent racist legal strategies to commit acts of violence.

Another system accountable for CSIR's methodical disruption of indigneous self-determination and violation of human rights is the system itself that permits the patenting of living organisms in general. Patents, especially within the context of biocolonialism that regard the ownership of traditional knowledge, act as a metaphor for the malice and arrogance of European civilizations. This metaphor is built off of the fact that legislative documents regarding patenting in countries in the Global South are constructed to benefit countries in the Global North and maintain the system of countries in the Global South as rightsless warehouses of culturally unique products and/or services that exist solely for consumption by countries in the Global North. Patents, especially within the context of biocolonialism, are a metaphor for the malice and arrogance of European civilizations. This metaphor is built off of the fact that legislative documents regarding patenting in countries in the Global North are constructed to benefit industrialized countries and maintain countries in the Global South as rightsless warehouses of culturally unique products and/or services that exist solely for consumption by countries in the Global North. Multinational legal patenting, while existing under the guise of offering protection for intellectual property, in reality, effectively and *intentionally* protects the rights of biopirates.

Another major proponent that stands as a legal obstacle in the way of countries in the Global South is the enforcements detailed through the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement) between all of the member nations of the World Trade Organization. Introduced on the first day of the year in 1995, the TRIPS Agreement, in the words of the WTO is "to date the most comprehensive multilateral agreement on intellectual property." As the system stands now, the TRIPS Agreement wields major power over the intricacies of international trade, economic growth, and the spread of

knowledge via an international legal agreement that was agreed upon by the World Trade Organization. The minimum standards agreement allows agreeing members to determine the standards of protection that are exerted over pieces of intellectual property. The Agreement offers a global minimum standards protecting intellectual property for all WTO members, including copyrights, trademarks, industrial designs, geographical indications, patents, integrated circuit designs, trade secrets, and anti-competitive restrictions. The TRIPS Agreement stands as an improvement from prior Intellectual Property Rights agreements, many of which required constant facilitation and enforcement. However, the Agreement also leaves room for manipulation and exploitation of intellectual property systems and associated settlement procedures.

Considering the Agreement's supposedly wide scope, adherence to non-discrimination principles, and reliable dedication to eliminating acts of piracy and counterfeiting, the TRIPS Agreement is not completely unbeneficial to producers and users in both the Global North and South. More critically, the TRIPS Agreement is based on the controversial institution that intellectual property can be owned. The TRIPS Agreement may be seen as inherently flawed because of this, considering that a business-model revolving around the patenting and pricing of knowledge inherently introduces the idea of "scarcity" in a field where it was previously not conceivable. That is to say that the TRIPS Agreement, while preaching "innovation" throughout their mission statement, simultaneously and perhaps hypocritically promotes the existence of an environment in which individuals can no longer share some pieces of knowledge without assuming legal consequences.

One of the most detrimental downfalls of the TRIPS Agreement that is especially relevant to the case of *Hoodia* and the San community is the WTO's neglect to agree upon

what exactly constitutes as "traditional knowledge" (TK), thus paving the way for biopirates to take advantage of developing countries. The ignorance of indigenous issues is reflective of the TRIPS complacency that grants permission for biopiracy thereby representing their neglect to pay attention to, "a disingenuous repackaging of traditional knowledge in order to secure monopoly rents for the biopirate while excluding the original innovator from a claim to these rents" (Isaac and Kerr). Not only does the TRIPS Agreement refrain from explicitly detailing their interpretation of what traditional knowledge is, but they also exclude ways in which traditional knowledge should be protected. Shiva, using India as an example for the basis of their position, argues that the enforcements from the TRIPS Agreement will drastically infringe upon the fundamental rights and basic needs of Indian people in three ways:

> Firstly, patent monopolies will lead to increase in prices of commodities like medicines. Secondly, patenting of indigenous knowledge will make seeds and medicines inaccessible to the poor whose survival will be threatened. Thirdly, patenting of life forms will erode the sovereign power of the Third World to their resources and will generate ethical problems related to patenting of life. The pressure to have a globally enforceable uniform patent system is not justified on the basis of empirical evidence of the impact of patents on the public good, especially in the Third World. (7-8)

Shiva's identification of the long-term effects of patenting traditional, indigenous knowledge through the TRIPS Agreement backs the argument that these systems work together to cultivate slow or everyday violence. The New South African Review details the relationship between financialization and inequality as one that "demands attention to both concepts[...] Inequality in South Africa is neither residual nor a matter of disconnection or 'exclusion;' it is the inexorable outcome of a long trajectory of skewed and uneven development" (Pillay et al. 86). Shiva presents empirical evidence that demonstrates a 15-20% recoup in research and development costs through patents in developed countries, whereas developing countries offer a figure for a domestic inverter of only 0.5-2%. Intellectual Property Rights are, in Shiva's words:

> [...] essentially a market distortion, a government sanctioned monopoly and subsidy. [Intellectual property rights] put territorial borders around technologies and other inventions so that firms can capture higher profits. In the long term, a strong Intellectual Property Rights system can result in price discriminations and many market-distorting practices like patent pooling, tied-up sales, cross licensing and refusal to licence. (5-6)

This description alludes to the various conflicts that may present themselves in the world of patents, as they tend to lie at the crossroads between the interest of the public and matters of individual human rights. As seen through the legal apparatus of Access and Benefit Sharing documents often necessitated for the patenting of traditional knowledge, the recognition of an indigneous community (or lack thereof) points to a need for drastic shifting in contemporary

human rights discourse. The patenting discrepancies amidst the *Hoodia* case occurred because of selective narratives of national development and imaginative displacement. CSIR, in both obtaining *Hoodia gordonii* and marketing of *Hoodia* products, was effectively displacing the San community and contributing to the colonialist narrative that, in essence, their existence is inconsequential. These narratives are arguably "partial," and, because of this, they intentionally fail to recognize the life experiences of imagined or unrecognized oppressed communities whose experiences contradict the public image of "progress" that the nation-state would prefer to present to the public eye. Thus, the San community, who may function here as a symbol for other oppressed populations in the Global South, was only perceived as valuable by the nation-state if they could be profited off of while simultaneously being recognized as sub or even inhuman, and, therefore, undeserving of documentation that does not legally enforce their human rights.

There are two types of displacement at work in this relationship between nation-state and indigenous community: physical and imaginative. While practices of physical displacement comprised a major aspect of the Apartheid regime, imaginative displacement is equally as damaging in terms of bolstering systemic oppression, as it typically occurs much earlier than physical acts of displacement and is more labor-intensive to dismantle because it works systemically. However, these two types of displacement work together, as Nixon concludes, to manifest a sort of spatial amnesia, which occurs when "communities, under the banner of development, are physically unsettled and imaginatively displaced, evacuated from place and time and thus uncoupled from the idea of a national future and a national memory." Spatial amnesia is a term that does not describe the perception of the colonized, but rather the colonizer. Similarly, as in the case of the patenting of *Hoodia gordonii*, the treatment of the

San communities proves the presence of recurring spatial amnesia and cultural evacuation amongst European colonizers. Furthermore, the San presence (i.e., their cultural history and knowledge of the *Hoodia* plant) was nonconsensually removed, yet also unrecognized, as an act of biopiracy that violates NEMA's objective as listed in Biodiversity Act 10 to intend "the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources" as well as the CBD's internationally-goal of managing "the conservation of biological diversity; the sustainable use of its components," for the sake of maintaining South Africa's facade as a progressive, law-abiding nation-state.

Chapter 2: A Woman's Right to Water: South African Water and Sanitation Laws, Participation, and Engendered Violence Amidst a Global Pandemic

Following the abolishment of Apartheid in 1994, 14 million people out of a population of 41 million nationwide did not have access to an adequate water supply. 21 million total did not have access to adequate sanitation resources (Abrahams et al. 72). Several reforms were made to the legal framework of water rights as the previous legislation was undeniably skewed to favor the experiences of white South African communities. Due to land evictions and redistribution laws enforced by white colonizers, most Black South Africans were relegated to living on what were dubbed "former homeland areas." These informal settlements, due entirely to actions enforced by the Group Areas Act (1913), were vastly underdeveloped in terms of infrastructure and, in turn, have left inhabitants with far fewer resources than the minority populations in South African (white South Africans). Now, 75% of the population of South Africa lives on only 13% of mostly water-scarce land that was systematically socially engineered to house indigenous populations of Black South Africans and, as a result, left them severely ill-prepared to weather conditions that are unavoidable (Abrahams et al. 72).

Though, the new legislation has not necessarily resolved issues of just water allocation in South Africa. In 2018, the City of Cape Town was threatened by one of the most damaging municipal water crises to date, calling for a fundamental rethinking of the role of water in the nation's economy, political sphere, and, most importantly, legal system. Water legislation is of particular interest within the broader context of environmental racism as water lies at the metaphorical crossroads between human needs and environmental needs.

Additionally, human rights to sanitation are largely, if not entirely, contingent on what is dictated within water rights legislation documents. The placement of water as an intersectional element in rights-based discourse poses a difficult, or rather, intimidating, question that legislative documents regarding environmental human rights are forced to consider: "What do you prioritize?" More recently, this question has become increasingly more significant and troubling in light of the circumstances surrounding the COVID-19 pandemic. The global crisis provoked further questioning of human rights legislation, with particular attention to the governmental treatment of water, sanitation, and occurrences of gender-based violence in South Africa. This chapter, unlike the former, will take a more human rights-based approach, rather than an environmental justice approach, to the gendering of water allocation in South Africa. Both chapters, like the spheres of environmental and human rights law, are intrinsically connected to one another as they each meet at the legal crossroads of these issues and demonstrate the relationship between humans and their environment.

The policy of the new South African government is primarily focused on matters of water justice, specifically concerning the public's access to freshwater, derived from the Constitution's general recognition of the human right of access to water which, in Chapter 2 of the document reads simply, "Everyone has the right to have access to sufficient food and water" (20). Despite the supposed intentions of the new legal frameworks regarding water rights, there are still large gaps in recognition in these documents that continue to disadvantage oppressed populations of people as a result of the Apartheid regime's echoing legacies through Roman-Dutch or British common law remaining from groups of European colonizers. As such, the rights of humans who possess intersectional identities have been and

continue to be grossly overlooked and marginalized as a result of intentional, violent ignorance enforced by colonizing legislation. Hellum et al. identify this systemic crisis as "intersectional discrimination;" that is to say that the experiences of intersectional populations of people are frequently brushed aside, thus resulting in repeated instances of disadvantage and discrimination that benefit populations of individuals with more identity-contingent privileges. Women in particular often fit into intersectional identities and are more likely to become subject to marginalization on the basis of gender, but also concerning their race, ethnicity, political exclusion, marital status, disabilities, sexual identity and socio-economic class. Their experiences, needs, and concerns are likewise neglected by legislative authorities on a local, national, and international basis. In this chapter, I analyze the South African Constitution as it serves as the basis for change regarding the adaptations made to Apartheid-era water legislation and how the rhetorical decisions in the original document play out practically and affect populations of South Africans in an oppressive manner that is structurally racialized and gendered. Additionally, I unpack the rhetorically violent implications of the economic approach with which water rights and, thus, human rights, have been systematically understood and managed by within South Africa's legal system. Rob Nixon's theory of spatial amnesia and intersectional marginalization work to prove the implicit violence of legislative rhetoric. Finally, I demonstrate how documents such as CEDAW and the Maputo Protocol take a gender-specific approach to promote environmental rights for intersectional populations and strategically place an obligation on State Parties to uphold the protection of these human rights. This argument is then proven to remain relevant in a more contemporary context by examining legislative decisions made by the South African government during the COVID-19 pandemic and their gendered consequences.

Examining water and sanitation laws magnifies several of the South African government's fundamental flaws and the existence of recurring racist legislation that rewards the needs of white South Africans and sustains Apartheid-era ideologies, thus obstructing the human rights of Black South Africans. Water allocation practices and their respective legal documents, similar to the Apartheid-enforced land evictions and redistributions, are intrinsically linked and undeniably violent. The violation of human rights to water in South Africa is certainly foregrounded on unjust land distribution practices enforced by colonizing groups of Europeans on indigenous groups, as losing indigenous homelands also meant losing access to wetlands, lakes, and rivers. Of course, these acts of violences were legally backed by colonial land and water law regimes, which hold origins in Roman-Dutch or British common law. The "legacy" of the Apartheid regime is still very much prominent in legal and environmental practices in South Africa, both of which have intense impact on the experiences and rights of humans. In this chapter, not only do I prove that the South African State is controlling access to water and authorizes this access in a manner that is racialized and gendered, but I also unpack and analyze the approaches taken to South African water policy that are non-effective and are, therefore, complicit in violations of human rights by means of slow violence and spatial amnesia.

The CESCR, the Committee on Economic, Social and Cultural Rights, is an international organization responsible for reviewing reports submitted by UN nations, South Africa being one of these nations, regarding their compliance with the International Covenant on Economic, Social, and Cultural Rights. Concerning their stance on water rights, General Comment 15 from the CESCR states, "While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all

circumstances" (4). The document continues to list the three primary human rights qualifications associated with water and water distribution: availability, quality, and accessibility, which are then split into physical, economic, and non-discriminatory accessibility. These aspects of water and human rights are the primary focal points of priorities within water rights-based legislation based on the World Health Organization's standards of safety and health. However, these facets are not nearly as well-recognized in the South African Constitution which, in Section 27 reads simply:

> '(1) Everyone has the right to have access to [...] sufficient food and water; and [...]
> (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights [...]'.

The key words in this excerpt that seem to hold potential for exploitation and certainly, by proxy, further analysis are "reasonable," "within its available resources," and "progressive realization." "Reasonable" action within this context, of course, is subjective and allows the governing party, in this case, the South African state, to determine their own meaning of the word "reasonable," which may be far from what oppressed populations of South Africans may consider "reasonable." A similar mentality may be applied to the use of the verbiage "within its available resources," thus begging the questions: "What constitutes a resource as 'unavailable?'" and "Who determines the status of availability with this resource?" and, perhaps most critically, "In the case of a shortage in resources, who is left to suffer?" "Progressive realization" here seems to suggest that it is not the responsibility of the

Constitution as a legal document, ergo, the national government, to officially give the affected population a right to water access but, rather, that it is the responsibility of the Constitution to merely set the legal foundation in order for local governments to "realize" this right. The word "realize" here works to develop a less demanding tone than seems appropriate for a national constitution and perhaps reallocates the blame and any potential issues of liability to the local government in the case of a violation of human rights. The Constitution makes these rhetorical moves to sound well-meaning and appealing not only to populations of South Africans, but also governing international organizations that they are involved with, such as the United Nations.

A comparative rhetorical analysis of the language used by the CESCR and by South Africa's Constitution reveals major discrepancies in the scope of rights that are considered "essential" by governing parties. While one could make the argument that the use of "open" language here is meant to conduct a more flexible legal system, in the context of a national constitution, rhetorical flexibility in language merely jeopardizes the experiences and limits the fundamental human rights of imagined communities or so-called "surplus people," for the benefit of the oppressor. Keeping the discretion in the hands of the governing party permits a legal loophole through which the state can justify the limiting of human rights, such as equitable access to freshwater. Concerning the limiting of certain constitutional rights, the 1996 South African Constitution states that constitutional rights may only be limited "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors [...]" Alix Gowlland-Gualtieri of the Swiss National Science Foundation identifies these "relevant factors" as the nature of the right as well as the purpose of the limitation (79). Of course, both

of these factors are completely dependent on the intent of the governing body rather than the individuals and/or communities who will be the most impacted by the limitation in question. Such a policy marks the rights of "surplus" people as "surplus" as well.

Filling roles such as child-bearers and household heads, women are disproportionately affected by water and sanitation laws as they are largely responsible for physically collecting any water that they and their families need for a wide variety of purposes in the home. These needs include, but are not limited to, gardening, cropping, livestock, brick-making, bathing, and cooking. The threat of losing the materials to accomplish these tasks completely (in this case, water) is not only a violation of South Africa's Constitution, but also exemplifies a scenario that accurately represents what "everyday violence" may look like for Black South African women.

The gendered effects of governmental policy relay the existence of a correlation between rates of poverty and female headship of households in developing countries. Research from Buvinić and Gupta asserts that, "out of 61 studies investigating the association between poverty and female-headed households in developing countries, 38 found female-headed households over-represented among poor households; 15 found that poverty was associated with some types of female-headed households or that, with certain types of poverty measures, a statistically significant relationship was found" (263-264). With these statistics in mind, when the rights of women to water are trivialized by the rhetoric presented in legal documents (or ignored altogether), households in these historically racialized areas tend to suffer dramatically and violently.

One of the primary arguments made in favor of the implementation of water rights that align more with the CESCR's standards for Black South African women is the claim to

"indivisibility." The state encroaches upon this concept of indivisibility through the allocation of water by "indivisible" laws. Hellum et al. surmise the appeal to the principle of indivisibility, which they define as "[…] a response to the gendered hierarchies and exclusions of human rights law itself. [Indivisibility] suggests an organizing principle that highlights interconnections, interdependencies, and holism in the increasingly fragmented paradigm of human rights (35). Their recognition of the interdependencies that come with jurisdiction over water law serves as a major reasoning for why water cannot merely be treated as an economic or even environmental resource; water is instead a prerequisite for, "the realization of the rights to food, health, and livelihood" (Hellum et al. 35). Because water is a foundational element that directly impacts the livelihoods of human beings, it is *imperative* that water be treated within the legal system and legal documents as a prerequisite for the "adequate" lifestyle that is initially detailed in the South African Constitution as well as The Convention on the Elimination of All Forms of Discrimination Against Women, known as CEDAW.

CEDAW was adopted by the United Nations General Assembly in 1979 and continues to be perceived as an "international bill of rights for women," thus playing a crucial part in negotiating the legality of repressive statutory law. The CEDAW Committee's statement in Article 14(2)(H) links 'water supply' to 'the right to adequate living conditions,' thereby encompassing requisites of both the livelihoods of both urban and peri-urban women living in independent settlements in South Africa in order to prevent poverty, malnutrition, and starvation. Women and girls are responsible for two thirds of the population who are in charge of retrieving water for their households and spend upwards of 40 billion hours every year in order to do this (UNICEF, 2012). But how is this matter encountered in terms of legal

texts and legislation? The word "accessibility" helps to determine the parameters of how water is controlled and allocated by the state. According to the CESCR (GC para. 12 (c)), "access to water services must be guaranteed in households, schools, hospitals, workplaces and public places." However, this definition of accessibility does not enforce action regarding how far away these water sources must be. This lack of recognition can only be improved by taking factors like age, gender, physical ability, and safety into account when determining accessibility standards for water sources, especially catering to the livelihoods of South Africans in independent settlements. Scholars have turned to the term "engenderment" to describe the process that national legal systems must progress through to reach *substantive gender equality* rather than merely extending rights to women. The primary legal documents that work towards this goal of "engenderment" are CEDAW as well as the African Charter on the Rights of Women, also recognised as The Maputo Protocol. Both documents take a gender-specific approach to address the social and economic rights of South African women.

Though able to stand alone as legally binding documents, The Maputo Protocol substantiates CEDAW's legal frameworks and both work to achieve similar outcomes. These documents, unlike other statutory laws, recognize discrimination on the basis of gender and its tendency to take the form of forced subordination or exclusion; both are outcomes that have become gradually accepted, or at least permitted culturally. The naturalization of prejudice against people with intersectional identities over time is, by definition, an act of slow violence.

Act No. 108 of the Water Service Act of 1997 pertains explicitly to South Africa's human rights-based claims to water and water distribution and continues to hold contemporary weight. The Act was written with the intention of advocating for rights of

access to "basic water supply" and "basic sanitation," and attempts to alter national standards of these two subjects of jurisdiction. I use the Water Service Act of 1997 as a means of critiquing water allocation practices by the state of South Africa on the basis that they are both gendered and racialized decisions. As such, these decisions are acting not in the best interest of the population of South Africa entirely, but are instead favoring privileged populations; therefore, these decisions are cogently perpetuating violent, racist and sexist practices that remain from the Apartheid regime. The Preamble of the Act relays a list of progressive verbs written in bolded font (e.g., "recognizing," "acknowledging," and "confirming") followed by instances of governmental maintenance in which the implied reader is supposed to believe the Act will hold government systems accountable for. The first three "responsibilities" listed in the Preamble of the Water Service Act read as follows:

> Recognizing the rights to access to basic water supply and basic sanitation necessary to ensure sufficient water and an environment not harmful to health or well-being;
> Acknowledging that there is a duty on all spheres of Government to ensure that water supply services and sanitation services are provided in a manner which is efficient, equitable and sustainable;
> Acknowledging that all spheres of Government must strive to provide water supply services and sanitation services sufficient for subsistence and sustainable economic Activity [...]

This document offers introductory provisions that clarify the meaning behind words such as "approve," "basic water supply," "consumer," and "emergency situation," as one

could make the argument that different readers have the opportunity to read these words with different contexts and meanings attached to them. This inclusion, I believe, is one of the most rhetorically effective inclusions and sets a standard for legal documents that advocates not only for transparency between governing and governed bodies, but also for the use of accessible language as a means of "leveling the playing field" to resolve misunderstandings from readers who come from or hold diverse experiences and identities which impact their internal bias and interpretation of meaning.

Perhaps the least-accountable language that functions as an ethos-driven display of "respect" from the authors of this document, however, is the statement used at the end of the Preamble in the Water Service Act: "Confirming the National Government's role as custodian of the nation's water resources." This language confirms nothing about the legal authority that needs to be taken by the South African government. The role of "custodian" in this context does not necessitate specific parameters of interaction with the creators and producers of this legal document and the State services that *should* be held accountable for adhering to its intricacies. Additionally, one of the major flaws of this document is that it does not recognize the inherent gendering of water allocation and racialized cultural norms developed in South Africa as a result of spatial amnesia from the Apartheid. This gendering impacts many households located in independent South African settlements run or "headed" by women; of this population, women produce between 60 and 80 percent of the food crops for these households, which directly sustains populations of Black South Africans, confirming the existence of slow violence and spatial amnesia through legal practice.

After the abolishment of Apartheid, South Africans have been making moves to subvert the traumatic legacies of the regime that remain and reinforce notions of nationhood

across the country. However, these attempts have been unsuccessful in representing the colonized accounts of colonization and Apartheid, especially those of Black women as they were denied equal access to establishing historical truth. This denial, and hence, violation, of human rights, even after the fall of a major system of oppression, highlights the denial of intersectional presences in narratives that suppose a sort of national liberation as remedial. With this in mind, if the experiences of South African Black women continue to go unrecognized appropriately through these stories of reviving flawed nations, their senses of belonging and citizenship in South Africa are ultimately dismantled for the benefit of the nation as a larger governing force (and no other parties). When governmental forces forbid the inclusion of marginalized voices in national discourse, they produce what Benedict Anderson calls an "imagined community" (150). As the term suggests, what constitutes an "imagined community" is neither accurate, unbiased, nor manufactured for the purpose of authentically relaying the experience or perspective of the community that the word describes, in other words, the "unimagined community." On the contrary, the "imagined" misrepresentation of marginalization only continues to uphold the structure of the modern nation-state in power that once oppressed the populations of "unimagined communities" or "surplus people" in question.

Nixon describes the legal "function" of the misconceptions of nationhood-driven narratives following the eviction of "surplus people" in South Africa during the Apartheid era, claiming, "[...] The production of ghosted communities who haunt the visible nation has been essential for maintaining the dominant narratives of liberal globalization." In this description, Nixon illustrates the consequences of overlapping politically and legally-motivated systems in South Africa, namely how the law has become submissive and bent in

order to meet the requirements of the governing party. From the Apartheid regime comes a trend in national legal order that is most accurately identified as "repressive law." Repressive or statutory law further immortalizes "imagined" and "unimagined" communities by ensuring that those in positions of political power have as much access as possible to the facilitation of legal institutions and bolster their chances of achieving political domination.

Chapter 3: The MPRDA, Black Economic Empowerment, and Labor Injustice in South African Mining Industries

In 1852, the first mine in South Africa was established in Springbokfontein (modern day Springbok) in the Northern Cape Province. Following this, fifteen years later in 1867, 15-year-old Erasmus Stephanus Jacobs found the first diamond in South Africa, named "The Eureka," in Hopetown. Each of these historical events spurred a fluctuation of mining companies across the nation that would change the historical narrative of South Africa permanently, thus earning this time period the nickname "The Mineral Revolution." The Mineral Revolution, much like the European dispossession of South African 'homelands' from groups of indigenous South Africans, highlighted an additional profitable use for South African land. Profit undeniably stands at the epicentre of this chapter, as I argue that laws concerning mining regulations such as Mineral and Petroleum Resources Development Act of 2002 are widely representative of an advancement of interests from a small group of the nation's most elite. Though, these interests are only able to be advanced through the removal of certain privileges, or perhaps even human rights, from populations of the nation's most disadvantaged.

In modern-day South Africa, the wellbeing of the nation's economy is deeply financially dependent on the national mining of various metals and minerals such as gold, diamonds, platinum, and coal. In the year 2018 alone, the nation's mining sector brought in R351 billion (over 21 billion USD) to the South African GDP. However, the wellbeing of the roughly 456,438 South Africans that work in these mines have not been protected by the

same legal maneuvers as the products they provide or the labor that they are obligated to contribute ("Mining in SA"). Moreover, the equipment, labor, and general services needed to maintain the efficiency of the mining industry have been given precedence over violations of human and/or environmental rights, despite being upheld by the South African Constitution (1996). The history of the mining industry in South Africa and the legislative documents that govern its practices effectively function as a case study that demonstrates the link between the legal permission of environmental justice and slow violence; furthermore, the mining industry and respective policies are so acutely entrenched in matters of South Africa's history of colonialism, land distribution and evictions, water allocation laws, and racialized violence that it is impractical to consider mining laws as strictly affecting the mining economy. On the contrary, the content presented in this chapter may be the most relevant to, or perhaps the most likely to affect, the issues of human and environmental injustices presented in the previous two chapters of this thesis.

Now, the main legal framework that holds jurisdiction over the South African mining industry is the Mineral and Petroleum Resources Development Act of 2002, commonly referred to as MPRDA. The legislation provided by MPRDA is primarily regulated by The Department of Mineral Resources. The initial objective of the MPRDA was to make space for historically disadvantaged persons and their equitable access to the country's natural resources (in this case, ones that pertain to mining and prospecting). Tangentially, the MHSA, otherwise known as the Mine Health and Safety Act of 1996, more closely covers the industry's adherence to health and safety regulations for the benefit of those that work in the mines. In 2004, the MPRDA was put into effect with the intention of evoking both more *equitable* and more *sustainable* processes of mineral extraction by extending the ability to

become mine owners and shareholders to Black South Africans. This adaptation of the Act was reinforced by the caveat that applications for mining rights would be examined on a "first come, first served" basis in order to discourage the monopolization of mines by larger entities as doing so could potentially result in the exploitation of mineral resources and, therefore, diminish of economic potential for South Africa. However, more recent research has determined that the MPRDA, and the increased mining that has resulted from its policy, has actually increased the size of the environmental footprint that has been left by the effects of the nation's mining industries. This conflict thus helps one to better understand the precariousness of balancing the effects of both human and environmental rights-based issues within a sphere of legal documentation.

Despite the alleged aspirations of the MPRDA, the institutions propelled by the document still actively perpetuate environmental and social consequences via the jurisdiction of the mining industry that are intrinsically bound to the framework of Apartheid legislation and are, therefore, strategically constructed to disadvantage Black South African people. Through the addition of the "use it or lose it" principle, the MPRDA as a legally-binding document works rhetorically to ensure, even if unintentionally so, a varied selection of social conflicts and instances of environmental degradation that ultimately endanger the livelihoods of marginalized groups of South African people. In this chapter, I unpack and analyze both the positive and negative impacts of the "use it or lose it" principle as they pertain to South Africa's mining industry and interact with the Black Economic Empowerment (BEE) movement, which functioned as a partner document to MPRDA. Finally, I examine the international interactions that South Africa has had with Canadian governments regarding the composition of their environmental law, and how this interaction may reflect a new type of

colonialist violence. In doing so, I make the claim that the inclusion of this policy within the space of a legally-binding document amplifies the effects of the Apartheid regime by means of land disturbance, unlawful distribution of labor funds, and engendered socioenvironmental consequences. Ultimately, I identify the "use it or lose it policy" within MPRDA as well as Canada's involvement with the MPRDA as congruent with Halfteck's concept of threatening legislation as a rhetorical instrument with which oppressive governing entities may use to exert control over populations of the oppressed through material; means; simultaneously, this identification works to recontextualize Nixon's theories of slow violence and spatial amnesia within a legal framework that is informed by human rights-based discourse theories.

Human rights within the South African mining industry were first brought to light with the renowned Rand Rebellion, also known as the "1922 strike," "Red Revolt," or even "South Africa's Communist Revolution" by miners from Witwatersrand, South Africa. Following the events of the Anglo-Boer or South African War which took place from 1899 to 1902, South Africa's economy suffered tremendously; this loss was due, in part, to the racial division of labor in South Africa's mining industry. Generally, white miners were typically put in managerial or supervisory positions and Black miners were, conversely, offered positions with lower pay and required less skill. This discrepancy was legally negotiated through the apparatus of the "colour bar," which commonly refers to, "a group of labor practices, informal trade union practices, government regulations, and legislation, all of which were developed over time to prevent blacks from competing for certain categories of jobs monopolized by whites" (O'Malley). The "colour bar" kept white South African workers in power, however, the document did not explicitly excuse discrimination against Black South Africans, an exclusion that preserved the colour bar despite its racialized effects.

After a significant drop in the global price of gold, South African mining companies sought to decrease their operational costs, including the payment of their employees via adaptations of the "colour bar" that was enforced through the Mines and Works Act of 1991 No. 12. This negligence to recognize racialized violence works in tandem with Section 4(n) of the original document which gives all powers to the Governor-General "to grant, cancel and suspend certificates of competency to mine managers, mine overseers, mine surveyors, mechanical engineers, engine-drivers and miners entitled to blast [...] [and] the power to decide which other occupation should be required to possess certificates of competency" (O'Malley). The decision to attribute a significant amount of legal authority to a single individual, as we will see later on in the chapter in more recent legislation, is indicative of a nation's objective to maintain colonialist power and silence the voices of those either belonging to independent settlement or existing outside of the realm of political power. Aided by members of the Communist Party of South Africa, the revolting miners sought to openly oppose class struggles as incited by the law, but were outmatched by the firepower of the Union Defence Force. Through de Klerk's findings, the Report of the Martial Law Inquiry Committee reported that the Rebellion and the subsequent armed revolt resulted in the deaths of 43 soldiers, 29 policemen, 11 revolutionaries, 28 suspected revolutionaries, and 42 civilians. Furthermore, following the events of the Rebellion, 853 people were charged with various crimes, from murder to treason or even minor infringements of regulations as instituted by the nation's system regarding martial law (de Klerk). The Governor-General's decision to reduce operational costs and wages spurred a major uprising that would begin as a mining strike but would develop into a rebellion against the state of South Africa as a whole, and would then spur labor-induced strikes occurring through the foreseeable future.

While the Rand Rebellion was composed of white mine workers and generally resulted in an upkeep of the colour bar, the 1946 African Mine Workers' Union Strike was more indicative of a national shift in rethinking the country's discussion of human rights and their legal representation. The 1946 Strike was geared towards remediating both unfair mining wages (10 shillings a day) as well as the unfit conditions under which miners were forced to work. Following the strike, 1,248 workers were wounded and 9 were killed by police forces. The police and army violence that the mine workers were met in 1946 foreshadows a long history of racialized police violence that continues today, as evidenced by the circumstances of the COVID-19 pandemic. SAHO relays that there have been major after-effects of the Mining Strike in 1946, stating, "the intense persecution of workers' organisations which began during the strike, when trade union and political offices and homes of officials were raided throughout the country, has not ceased” (1). Moreover, the 1946 Strike stands as a moment of conversion from previous attitudes favoring compromise between opposing forces to more dynamic activism among struggling parties. Considering that the narrative of mining strikes in the country has resulted in over one thousand deaths and mining strikes are still continuing, it is imperative for the South African government to become more cognisant of the legal implications of their labor laws if they want to adequately represent the values that they present in their initial Constitution, more specifically, their desire to establish "a society based on democratic values, social justice and fundamental human rights."

South Africa's initial legal encounters with the mining industry took the form of the 1991 Minerals Act which worked to restrict mining access as well as national mineral rights to white South African powers only. Fortunately, 'new-order' rights were instituted

immediately, stripping former white owners of their mineral and mining rights and were then required to abide by conditions as instituted by Black Economic Empowerment imperatives. After the election of the African National Congress (ANC) into office in 1994, so began the Black Economic Empowerment programme as a means of somehow lessening the effects of the Apartheid system. The ANC relayed in a statement that BEE was crucial in terms of dismantling the barrier of Eurocentrism that held power over South Africa's economy. Legally, this socio-political shift took the form of the 1994 Reconstruction and Development Programme. The second page of the BEE Commission Report (2001) describes the program as a crucial part of South Africa's socio-economic process and their national transformation program, primarily enacted through the Reconstruction and Development Programme by the ANC. However, the MPRDA also presents a number of legislative issues that conflict with South African businesses and the State itself. This conflict forms the basis and perhaps the reasoning for my analysis of legal systems in this chapter. Here, I argue that leading political bodies in the South African government have manipulated institutions to increase rent shares from the mining industry for the sake of benefiting politically-bound businesses. Both the vague language used in the MPRDA as well as the sole responsibility of the Minister to assist in cases that involve violations of human rights work for these businesses, but severely damage historically disadvantaged populations of South Africans as well as the natural environment.

The "use it or lose it" principle first appeared in South African environmental legislation through the Green Paper on Minerals and Mining Policy for South Africa (1997), but was further pushed forth in the White Paper (1998). The verbiage "use it or lose it" in this clause references the necessity on the part of mine owners to increase their mining activity

for the purposes of stimulating economic growth and reducing the hoarding of mineral resources by larger companies. If they fail to do this (i.e., "using it"), mine owners risk surrendering the rights to the mine in question altogether (i.e. "losing it"). Thus, the "use it or lose it" policy is reflected in the Green and White Papers with the phrase, "the right to prospect and mine for all minerals must be vested in the State." Describing the positive impact of the policy in terms of increasing participation opportunities within the mining sector for previously disadvantaged populations, the MPRDA's inclusion of the "use it or lose it" clause alludes to an imbalance of human and environmental justice. Minerals Council SA and Mining Minister Gwede Mantashe made the following remark at the council's annual general meeting in 2018: "We intend to discuss [...] the use it or lose it principle, found in our law [...] Our mineral wealth must be exploited [...] to generate economic growth and impact on the development of society" (Malope). Mantashe's comments regarding the "use it or lose it" policy are indicative of the focus of governing bodies on maintaining economic well being, rather than human well being under the guise of society-wide development.

Before the principle of "use it or lose it" was carried from the Green Paper into the White Paper, groups of trade unions and government agencies such as the Chamber of Mines articulated their own concerns with the transfer of "use it or lose it," articulating that the policy promoted "nationalisation without adequate compensation as guaranteed by the constitution" (McKay, 1998). The theme of an imbalance between valuing equity or economic growth is commonly reflected in governmental or legislative decision-making and only further illustrates the issue of how the livelihoods of Black South Africans are often relegated to the governmental periphery while corporate investment and financial sustainability remain at the forefront of legal discourse. In this case, the engagement with the

needs of the mining industry usurps land hierarchies, environmental consequences, social impacts, and conflicts with water distribution in South Africa. Hermanus et al. summarize the unfortunate durability of the "use it or lose it" inclusion, stating that the policy and its effects:

> [...] cannot be understated: [the policy] has created the conditions for an acceleration of mining to the detriment of environmental and social considerations by compelling companies to start mining without having yet received environmental permits in order not to lose their titles. For example, in 2010, 125 mines were operating illegally without water use licenses, by 2014 this had decreased to 103. [...] even in the proposed Amendment to the MPRDA, the "use it or lose it" provisions will remain intact. (15)

The Mineral and Petroleum Resources Distribution Act is, in some ways, rhetorically equipped to represent marginalized voices more effectively. For instance, one of the more effective pieces of the document (Act 28, p. 24) regards "Assistance to historically disadvantaged persons." The impact of including this section within the confines of a legal document is rhetorical in itself, and sets a standard that may be beneficial if adopted across other forms of human and/or environmental legislation. This section of the MPRDA reviews the abilities of the Minister to assist historically disadvantaged persons, contingent on the following factors that may be taken into consideration:

> (a) the need to promote equitable access to the nation's mineral resources; (b) the financial position of the applicant; (c) the need to transform the ownership structure of the minerals and mining industry; and (d) the extent to which the proposed prospecting or mining project meets the objects referred to in section 2(*c*), (*d*), (*e*), (*f*), and (*i*).

After considering these factors, the Act then relays that the Minister possesses the ability to request any "relevant organ of State" for assistance with the applicant and their prospecting or mining project. That being said, despite the impact of the inclusion of a section such as this one in a legal document, it seems as though the legislation itself is still geared in some way to only give the Minister this type of power, and does leave room for questioning of the Minister's decision, but rather only provides areas through which the Minister can deny assistance to historically disadvantaged persons. This ministerial discretion has been heavily criticized on the grounds that doing so may "open the door to rent-seeking by political and (politically connected) business elites" (Harvey 87). Moreover, ministerial or individual discretion of a major legal system is not unfamiliar to the state of South Africa, as seen in the events of the original mining strike, the Rand Rebellion, were most likely provoked by institutions put into place by the Governor-General.

Harvey's examination of this major legal gap in the MPRDA makes a convincing point that works to evidence Nixon's claim of slow violence through environmental law. William Finnegan's observation seems readily accessible in this situation, asserting that, "Even economic growth, which is regarded nearly universally as an overall social good, is not necessarily so. There is growth so unequal that it heightens social conflict and increases

repression. There is growth so environmentally destructive that it detracts, in sum, from a community's quality of life." This statement draws upon the imbalance of prioritization for the sake of financial "success" which we see in both instances of the MPRDA's "use it or lose it" policy which essentially insinuates the capability of the governing party to remove an individual's only means of financial stability in the case that they are not providing enough revenue for the country through their business.

In this way, I agree with Halfteck's methodologies in determining that violence can be incited not only through the praxis that results from the implementation of the law itself, but also as a means of social, mental, and emotional violence upon populations of "surplus people," and manipulation for the sake of controlling social conduct and public policy. I believe that even the language of the law's colloquial name, "use it or lose it," insinuate the threat of violence. Namely, this is reflected in the latter, "or lose it" portion of the title, as it insinuates a sort of consequence if the former action is not taken by adequate means. As the verbiage "threat" would suggest, informal threats through means of legal policy are effective in that they do not achieve social change or conduct by means of exercising law, but rather by means of hypothetically exercising law. With this in mind, the spread of using legal threats has the potential to be quite insidious as there is no governing system in place to dismantle the effects of legal threats, making the term "invisible law" appropriate. The manifestation of legislative threats, as Halfteck reckons, comes with a "body of norms" or "invisible law" over time; these gradual "norms" are "crafted in the course of a dynamic and strategic interplay that is shaped by the threatened use of legislative power" (636). As such, considering the facet of legal threats that necessitates a gradual buildup of implicit knowledge that registers somewhat naturally, for lack of a better word, the claim that

invisible law and legislative violence fits appropriately within the realm of what may be considered "slow violence."

Over time, these norms develop as a result of threatening legislation, the perception of the public is shifting in order to accommodate the parameters of the law, instituting less resistance to the gaining of benefits by the major governing parties that have enacted the legal threat in the first place. In the case of "use it or lose it," the normative behavior assumed is the desire, or at least feeling of necessity, to produce. This motivation is hidden under the guise of needing to adhere to the law ("use it or lose it"), though this institution of normative behavior through threatening legislation is actually working primarily for the benefit of the economy of the nation-state. Even considering the involvement of BEE alongside "use it or lose it" and the remainder of the MPRDA, both of these documents assert normative behavior whose true intentions are hidden under the ideology that legislation that is working for one of the benefits of a group (at least 26% of the mining industry owned by Black South Africans or other historically disadvantaged groups) should not be contested with. Ngwerume and Massimo remark on the lack of dynamic perspective in perceptions of the BEE, relaying:

> "Black economic empowerment programmes [...] have often seen the indigenous people who were previously and who remain largely excluded from the economic mainstream going into a state of euphoria based on the genuine belief that such programmes are an effective panacea for their existential socio-economic challenges" (4).

Key contrasting words in this statement include "excluded," but, at the same time, "euphoria" and "genuine belief." The "use it or lose it" law promotes a fundamental challenge for the progression of environmental justice. Not only is the mining industry upheld by a long history of financial success that makes it difficult to argue against, but the revolts against it have been widely unsuccessful in terms of abolishing the characteristic of the system as a whole that makes it increasingly more violent over time.

Slow violence cannot be seen through the same lens as we would a "standard" definition of violence, which may come off as more immediately brutal or pain-inciting. Rather, Rob Nixon presents slow violence as an insidious, systematic force of violence that takes place over an extended period of time and often does so without being entirely too noticeable by the public eye. Or, if the incidents of slow violence are noticed, individuals that reap the benefits resulting from the violence often attempt to prevent the violence from being undermined. Soyapi and Kotzé explain this correlation between the timeline of slow violence and the populations that it affects well, reciting, "Marginalized, racially oppressed, and poor people are most affected by slow violence because they are often voiceless and lack the power to challenge acts of hegemonic slow violence" (401). This is the case that is presented by the history of mining industries and employees in South Africa. With the Minerals and Petroleum Resources Development Act in 2004, South Africa has seen a major increase in operating mines, alluding to an assumed increase in mining activity, ergo an increase in the amount of environmental degradation that comes from the mining process naturally.

Coda: COVID-19 in South Africa

As mentioned in the introduction, the COVID-19 pandemic has forced all nations to more closely examine their various documentations of human rights; now, globally, South Africa now has the fifth highest infection rate of COVID-19. Water and sanitation law are directly connected to the issues of disease prevention and control that immediately come to mind. However, instances of gender-based violence against women and girls in the Global South have also significantly increased during the COVID-19 pandemic which Brianna Guidorzi calls, 'The Shadow Pandemic.' The consequences following governmental decisions made during the Shadow Pandemic are indicative still of a legal system that is not legally structured to protect individuals who possess intersectional identities, women specifically, during times of crisis because these policies were formed under past colonial and Apartheid regimes without regard for intersectional identities. The COVID-19 pandemic, in the words of The United Nations Entity for Gender Equality and the Empowerment of Women, also known as UN Women, underscores "society's reliance on women both on the front line and at home, while simultaneously exposing structural inequalities across every sphere, from health to the economy, security to social protection." The Shadow Pandemic, specifically in South Africa, is largely afflicted by the Disaster Management Act (2002) which was enacted when a State of National Disaster was declared 10 days after South Africa's first case of COVID-19 on March 5th, 2020. South Africa's national lockdown went into effect on March 27th, 2020 and gradually relaxed through June 1st (Level 3). The Act restricted freedom of movement, assembly, and trade through the closing of "essential" companies and schools, prohibition of alcohol and tobacco sales, and institution of an evening curfew between the hours of 8pm and

5am. Though, the primary function of the Act allows for the President to choose a Cabinet Minister to administer special national regulations. The chosen Cabinet Member, the Minister of Cooperative Governance and Traditional Affairs, offers updates concerning these legislative adaptations on a nearly weekly basis.

Though intended to protect South Africans, the enactment of the Disaster Management Act simultaneously enabled for the endangerment of them. Nazeer Cassim and Erin Dianne Richards, two of South Africa's most renowned lawyers, wrote a nine-page long letter to the President claiming that the Disaster Management Act could constitute the "unlawful exercise of executive power" (Seleka). Continuing, they remark that, "The NCC (South Africa's National Command Council) appears to us to constitute a centralisation of power that is impermissible under the Disaster Management Act" (Seleka). This centralization of power, despite being enacted ostensibly as a means of controlling the spread of disease, also functions as a mechanism of intersectional violence as mentioned by Nixon. The Disaster Management Act 57 of 2002 intends to provide for "an integrated and coordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery," however, is clearly ineffective as evidenced by the rapid increase of gender-based violence and decrease of women's health during the COVID-19 pandemic as well as the comparable Ebola (2014-16) and Zika (2016) epidemics throughout various Western African countries. The gendered consequences of national disasters, especially those that are intrinsically bound to medical care and disease control, depend heavily on water and sanitation laws. CARE, a major international humanitarian agency, identifies through their analysis of the gendered effects of global disasters, that the

COVID-19 outbreak could affect women and girls much more aggressively than other populations of South Africans, and through a number of different spheres including education, food security and nutrition, health, livelihoods, and protection. That is to stay that my research is still very much applicable within a more contemporary setting and that there is assuredly more work to do with regards to the thoughtful rhetorical structuring of legal documents pertaining to environmental law. The identification necessitates a re-examination of environmental policy, perhaps an integration of amendments that adhere to the specific needs of historically disadvantaged groups of people, and a reconsideration of amendments that have been conceived for the benefit of privileged South Africans.

Moreover, the COVID-19 pandemic as it exists within South Africa today is emblematic still of the echoes of Apartheid-era legislation, particularly with regards to environmental law. Disadvantaged populations of "surplus" people, heightened acts of violence against women and children, and the unjust allocation of natural resources such as water and land rights still work to perpetuate the same dual effects of spatial amnesia: physical settlement and imaginative displacement. As a result of the continued physical separation of South Africans (which resulted from early European colonization), the experiences of indigenous communities are imaginatively displaced or even erased effectively. The objective of many of the aforementioned human-rights documents, but particularly that of the South African Constitution, to “recognize” the experiences and traumas of South African citizens is thus hindered because the public consciousness does not recognize the experience of “surplus people.” Looking at the goal of human rights work through the lens of violence, both environmental legislation and human rights law alike possess the ability to function as self-sustaining systems that continue to benefit from

patterned spatial amnesia as has been occurring since the Apartheid regime. Both systems can pose obstacles for one another in terms of the general allocation of attention that is paid to either by a governing force, but both environmental law and human rights law can also stand in as vulnerable facades through which indigenous groups of people may be exploited or ignored.

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Vita

Eva Wren Lambert was born in Highpoint, and raised in Asheville, North Carolina to parents April Marie Sessoms and Gregory Michael Lambert. Her childhood and adolescence in the mountains of North Carolina led her, eventually, to discover the English program at Appalachian State University, which she first attended during the Fall of 2017. Here, Eva developed a more in-depth understanding of accessibility, personal bias, and rhetorical strategies in technical literature through her professional writing courses. However, she also gained a proficiency for and interest in Shakespearean literature while studying abroad in London, England and traveling through Italy, France, Switzerland, Ireland, Scotland, and Denmark during the summer of 2018. In the following spring, Eva graduated with a B.A. in Professional Writing as well as a minor degree in Communication.

Eva continued her studies of language and rhetoric through Appalachian's "4+1 program," which allowed her to follow an accelerated course of study and earn her M.A. in Rhetoric and Composition. During COVID-19 pandemic, she was employed by Appalachian State as a Graduate Teaching Faculty member and taught two sections of RC-1000: Expository Writing to incoming first-year students at ASU. Her pedagogy prioritizes student growth through self reflection, understanding of writing as a process, and reimagining the classroom with anti-racist and anti-ableist approaches to teaching English. After graduating in December of 2020, Eva will work as an adjunct professor at ASU, teaching one section of RC_2001 and enjoy her last semester in Boone before moving to Philadelphia, PA. Eva hopes to continue her education and earn a Ph.D. in Rhetoric and Composition at the University of Pennsylvania, Penn State University, or Temple University.