



International frameworks promoting tourism for poverty alleviation and sustainable development

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Abstract

The article highlights that the international frameworks for tourism interventions are potent instruments that could be used to strengthen domestic tourism practices and business by using the salient provisions in these international instruments to deliver high quality tourism services in South Africa. To this end, the article invoked section 39(1)(b)(c) of the Constitution of the Republic of South Africa, 1996 which paved the way for South African courts to rely on and use these international instruments to interpret the domestic law. The article outlines salient international instruments, analyzes them and articulates how they can be used to benefit tourism sector and businesses.

Keywords: International Instruments, Tourism Code, Poverty Alleviation, Sustainability.

Introduction

The United Nations World Tourism Organisation (UNWTO), a specialised agency of the United Nations (UN) and an intergovernmental organisation serves as a global forum for tourism policy issues, frameworks interventions and businesses (Mowforth and Munt, 2015). The UNWTO plays a crucial role in promoting the development of responsible, sustainable and universally acceptable tourism for poverty alleviation with particular focus on developing countries (Edgell, 2016).

The South African constitutional framework is regarded as international law friendly because it embraces virtually all international norms, standards and ethos particularly with regard to conservation, trade, tourism, socio-economic rights and issues (Tladi, 2016). This assertion is reinforced by section 39(1)(b)(c) of the Constitution of the Republic of South Africa which empowers the court, tribunal or forum that when interpreting the Bill of Rights, it must consider international law. However, in terms of section 231 of the Constitution, international agreement binds "South Africa only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an international agreement of a technical, administrative nature or an agreement that does not require either ratification or accession."

Section 233 of the Constitution stipulates "that when interpreting any legislation, every court must prefer any reasonable interpretation that is consistent with international law over any alternative interpretation that is inconsistent with international law." In the case of the groundbreaking case of *S v Makwanyane and Another*(CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995), the court held that, international agreements and customary international law accordingly provide a framework within which [the Bill of Rights can be evaluated and understood. Therefore, "decisions of tribunals, such as the United Nations Committee on Human Rights, the Inter-



American Commission on Human Rights, the Inter-American Court of Human Rights, the European Commission on Human Rights, and the European Court of Human Rights, and, in appropriate cases, reports of specialised agencies such as the International Labour Organisation, may provide guidance as to the correct interpretation of particular provisions of the Bill of Rights.”

In view of the fact that South Africa has the constitutional responsibility to consider international legal order which include all the frameworks interventions on the issues relating to tourism globally, it is therefore imperative to consider these frameworks in order to draw inspiration from them and for the purposes of improving and strengthening tourism practices in South Africa. It is generally acceptable that tourism is a viable tool to foster economic growth and development particularly in developing African countries.

According to the United Nations World Tourism Organisation (UNWTO), tourism is a formidable tool for development, contributing 7% of all of Africa’s exports, the UNWTO indicates that tourism aids Africa’s participation in the global economy and promotes environmental and cultural preservation for host communities. Tourism is rapidly becoming a socio-economic development sector, therefore, the UNWTO suggests that African countries must have effective strategies to promote competitive tourism and provide for a marketplace for the desires of potential visitors (Chok et al., 2007).

The UNWTO indicates that Africa’s biodiversity enables it to provide a wide range of tourism activities such as cultural tourism, eco-tourism, adventure tourism and diaspora tourism (Scheyvens, 2007). So, if developed effectively, tourism in South Africa will become a contributor to poverty alleviation, infrastructure development, employment opportunities and attract investment opportunities (Rogerson, 2006). Therefore, such developments must be made a reality in South Africa by adhering to the lofty provisions of international legal frameworks that foster tourism for development, economic growth, poverty alleviation and job opportunities.

Methodology

The article utilized contemporary literature germane to international frameworks interventions on tourism whereby their salient provisions were meticulously analysed for the purposes of establishing how to improve on and strengthen domestic tourism practices and business. To this end, the article used section 39(1)(b)(c) of the Constitution to draw inspirations from all these international instruments on tourism and reflected on how they can make South African tourism sector viable and sustainable. Critically so, it showcased how these international instruments focused on sustainable tourism development for socio-economic growth and poverty alleviation where tourism businesses and enterprises are well entrenched for purposes of job opportunities in the country.

International Normative Instruments on Tourism

The United Nations and in particular, the International Community realized the importance of tourism, and as such, the world organization has introduced many international instruments to complement existing instruments that pertain to tourism and issues that are integral part of tourism. The preamble to the Global Codes of Ethics for Tourism (GCET) provides a whole range of the hopes and aspirations of tourism by “following up on the Manila Declarations of 1980 on World Tourism and of 1997 on the Social Impact of Tourism, as well as on the Tourism Bill of Rights and the Tourist Code adopted at Sofia in 1985 under the aegis of WTO.” These “instruments should be complemented by a set of interdependent principles for their interpretation and application on which the stakeholders in tourism development should model their conduct at the dawn of the twenty-first century.” The instruments affirm the “right to tourism and the freedom of tourist movements, state our wish to promote an equitable,



responsible and sustainable world tourism order, whose benefits will be shared by all sectors of society in the context of an open and liberalized international economy.”

Hence, all the principles in the following international instruments were adopted namely: “The Universal Declaration of Human Rights of 10 December 1948; International Covenant on Economic, Social and Cultural Rights of 16 December 1966; International Covenant on Civil and Political Rights of 16 December 1966; Warsaw Convention on Air Transport of 12 October 1929; Chicago Convention on International Civil Aviation of 7 December 1944, and the Tokyo, The Hague and Montreal Conventions in relation thereto; Convention on Customs Facilities for Tourism of 4 July 1954 and related Protocol; Convention concerning the Protection of the World Cultural and Natural Heritage of 23 November 1972; Manila Declaration on World Tourism of 10 October 1980; Resolution of the Sixth General Assembly of WTO (Sofia) adopting the Tourism Bill of Rights and Tourist Code of 26 September 1985; Convention on the Rights of the Child of 20 November 1989; Resolution of the Ninth General Assembly of WTO (Buenos Aires) concerning in particular travel facilitation and the safety and security of tourists of 4 October 1991; Rio Declaration on the Environment and Development of 13 June 1992; General Agreement on Trade in Services of 15 April 1994; Convention on Biodiversity of 6 January 1995; Resolution of the Eleventh General Assembly of WTO (Cairo) on the prevention of organized sex tourism of 22 October 1995; Stockholm Declaration of 28 August 1996 against the Commercial Sexual Exploitation of Children; Manila Declaration on the Social Impact of Tourism of 22 May 1997; Conventions and recommendations adopted by the International Labour Organization in the area of collective conventions, prohibition of forced labour and child labour, defense of the rights of indigenous peoples, and equal treatment and non-discrimination in the work place.”

Global Codes of Ethics for Tourism

International legal frameworks play a pivotal role to promote and regulate tourism as a global mechanism for poverty alleviation, creating employment, socio-economic development and so on (Zhao and Ritchie, 2011). The UNWTO is a specialized agency of the United Nations (UN) with the objectives of promoting responsible, sustainable and universally accessible tourism and further increase tourism contribution to socio-economic growth, job creation, environmental conservation, cultural enrichment, international understanding while minimising its potential social and environmental negative impacts (Sharpley and Telfer, 2015). Therefore, the UNWTO is a significant international instrument for tourism. The UNWTO's major breakthrough for tourism development includes the establishment of the Global Codes of Ethics for Tourism (GCET) adopted by resolution A/RES/406(XIII) at the thirteenth WTO General Assembly (Santiago, Chile, 27 September -1 October 1999).

The GCET is a set of 10 principles which are as follows: “Article 1: Tourism's contribution for mutual understanding and respect between peoples and societies; Article 2: Tourism as a vehicle for individual and collective fulfilment; Article 3: Tourism, a factor of sustainable development; Article 4: Tourism, a user of the cultural heritage of mankind and contributor to its enhancement; Article 5: Tourism, a beneficial activity for host countries and communities; Article 6: Obligations of stakeholders in tourism development; Article 7: Right to tourism; Article 8: Liberty of tourist movements; Article 9: Rights of the workers and entrepreneurs in the tourism industry and; Article 10: Implementation of the principles of the Global Code of Ethics for Tourism.”

The principles are meant to serve as a guide in the development of tourism and for major key role players such as governments, travel industry, communities, and tourists. The aims of the GCET is interconnected with the aim of the UNWTO that is to maximise the benefits of tourism and minimise its potential negative impact on the environment, cultural heritage and societies around the world. The GCET is voluntarily implemented in conjunction with the World Committee on Tourism Ethics (WCTE). The committee has the obligation to all stakeholders



to assist them in matters concerning the application and interpretation of the GCET. The 10 principles of the GHET target a variety of important strategic sectors including the economic, social, cultural and environmental components of travel and tourism. The principles were adopted in the year 1999 by the General Assembly of the World Tourism Organisation (WTO) and recognised two years later by the United Nations (UN).

United Nations Framework Convention on Tourism

In the year 2015, the World Committee on Tourism Ethics sought to change the course of history by proposing that the Global Codes of Ethics for Tourism be converted into an international convention. The purpose of the Conversion is to enforce its effectiveness and legal binding. A special Working Group working hand in hand with WCTE was established through Resolution 668 (XXI) to examine the procedures and implication of adopting such a Convention. After much deliberation by the working group, it was agreed that there should not be substantive changes to the ten core principles of the GCET because they were already accepted by the UNWTO in 1999 and the international tourism community.

The 15th of September 2017 marked the day of a global footprint in the sands of tourism development, as member states of the UNWTO approved the United Nations Framework Convention on Tourism at the 22nd UNWTO General Assembly. Thus, accomplishing the goal of the WCTE set out in 2015 involves transforming the Global Codes of Ethics for Tourism into an International Convention. The Convention seeks to develop tourism, with the aim of fostering economic development. Article 2 of the Convention further provides that the aim of the Convention is to promote responsible, sustainable and universal accessibility through the implementation of the ethical principles in tourism. Considerations made by the Convention is the potential of tourism to contribute directly or indirectly to the sustainable development goals of the 2030 Agenda, particularly focusing on achieving the creation of full and productive decent work for all.

States are obligated to ensure the promotion of sustainable, responsible and universally accessible tourism through their own policies that are consistent with the principles stipulated in the Convention; this obligation is provided for in Article 3(1) of the convention. The Article makes it clear that South Africa should ensure that no law, policy or regulation impedes the development of tourism. Article 3(3) states that “States Parties shall periodically submit a report to the World Committee on Tourism Ethics concerning any measures are taken or envisaged for the implementation of this Convention.” The wordings of Article 3(3) put in place a mechanism for accountability that States shall submit report to the committee. This is important because it is not adequate to promulgate laws and policies for promoting tourism without the proper implementation of such laws, therefore this article will assist in filling the gap identified as the limited implementation of laws promoting tourism which hinders the goal of making tourism an impetus for socio-economic transformation in South Africa.

Article 4 of the UNWTO Framework Convention on Tourism Ethics relates to tourism's contribution to mutual understanding and respect between people and society. This ethical value seeks to ensure that tourism is an industry wherein people tolerate and respect the diversity of religion, philosophical and moral beliefs of the people in the world. Traditions of host regions together with their laws, practices, and customs must be in harmony with tourism activities. On the other hand, host regions must respect their tourists and cater for their expectation.

Individual and collective fulfilment, in the form of practised and planned tourism activities such as relaxation, sports, and access to culture can be achieved through tourism as provided by Article 5 of the Convention. Furthermore, articles 5 of the Convention advocates for the protection of human rights whenever tourism activities are carried out, especially for the vulnerable groups inclusive of children, elderly, handicapped and so on. Any form of human



rights violation or human exploitation more especially sexual exploitation undermines the development of tourism because the domestic and international community turns to isolate countries involved in human rights violation. According to Vrancken & Chetty (2009), over the year's issues of globalisation, poverty and weak law enforcement have highly contributed to the development of international child sex tourism which is a form of gross human rights violation. In the year 2005, the publicised case of Peter Zimmerma, a 46-year-old Swiss tourist who was found with a 14-year-old boy from Alexandra in his Johannesburg according to Vrancken and Chetty as an example of human rights violation by tourist. Article 5 is an essential provision that must be robustly enforced to ensure that, while promoting tourism that bring about socio-economic development, tourism must not be a gateway of human rights violation such as the one pointed by Vrancken and Chetty (2009).

Article 6 of the UNWTO Framework Convention on Tourism Ethics is of paramount importance in this study, Article 6 talks about tourism as a factor in environmental sustainability. Tourism as a factor for environmental sustainability requires that all relevant stakeholders in the tourism industry ensure the protection of the natural environment to attain sustainable economic growth, meant to satisfy the needs of the present and future generation. Needs that must be satisfied for the current generation of South Africa include the need for employment and poverty alleviation. However, tourism activities must be conducted in a way that does not negate the natural heritage which comprises of ecosystems and biodiversity. This notion was supported in the case of Fuel Retailers Association of SA v Director-General, Environmental Management, Mpumalanga & others 2007 (6) SA 4 (CC) wherein the constitutional court held that development cannot subsist upon a deteriorating environment. The sustainable development of tourism requires stakeholders and professionals to impose limitations on the exercise of tourism activities in environmentally sensitive areas such as coastal areas, wetlands, tropical forests, polar or high mountainous areas, protected areas (Hudson and Miller, 2012). In the case of Wildlife Society of Southern Africa v Minister of Environmental Affairs and Tourism & Others 1996 (3) SA (TKS). The Transkei Supreme court of appeal ordered the removal of shacks in an environmentally sensitive coastal area wherein the erection of the shacks was permitted by the respondents. The above case law shows the implementation of Article 6 of the convention in South African jurisprudence.

Cultural products/artefacts, crafts, and folklore must be protected and promoted by tourism activities as required by article 7 of the Convention. The communities that produce these crafts will generate income by selling their products to tourists forming part of a mechanism for poverty alleviation and job creation. Article 8 stipulates that the local population should equitably share in the economic, social and cultural benefits emanating from tourism activities, moreover they should benefit from the creation of both direct and indirect jobs resulting from tourism activities. Hence, skills development for the local people is important so that local manpower can be considered in tourism activities such as job opportunities in the hotels and resorts. Consequently, the standard of living for the people who reside where tourism activities take place will be improved.

Article 10 of the Convention makes provision for the right to tourism. According to Article 10 of the Convention, the right to tourism, is a right that must be equally made accessible to all the people in the world. The rights to tourism is corollary to the right of rest and leisure, including reasonable limitation of working hours and periodic holidays with pay as stipulated by Article 24 of the Universal Declaration of Human Rights (UDHR) together with Article 7(d) the International Covenant on Economic, Social and Cultural Rights (ICESCR).

According to Article 12(3) of the Convention of UDHR "any natural or legal person, provided he, she or it has the necessary abilities and skills, should be entitled to develop a professional activity in the field of tourism under existing national laws; entrepreneurs and investors, especially in the area of small and medium-sized enterprises, should be entitled to free access to the tourism sector with a minimum of legal or administrative restriction." To achieve socio-economic transformation in South Africa, the government of the Republic must provide



platforms that will enable the people of South Africa to acquire the necessary abilities and skills in order for them to take meaningful participation in the tourism industry whilst at the same time advancing their livelihood and winning the fight against poverty and unemployment. Having skilled citizens will also be beneficial to the development of tourism because tourists' expectations will be satisfied as a result of the good services and conducive friendly environment experienced by tourist would eventually make the country a sustainable tourist destination for tourists.

Liberty of tourist movement is provided in terms of Article 11 of the Convention that states that "tourist must benefit from international and national legislation that guarantees freedom of movement through compliance with Article 13 of the UDHR." Article 13 of the UDHR guarantees everyone the freedom of movement. This right is of fundamental importance in tourism because the restriction of the freedom of movement is an obstacle to tourism development. Tourism activities such as travel require the freedom of movement unhindered. Article 13(2) provides that "everyone has the right to leave any country including his own and to return to his or her country." The then South African apartheid laws that made it difficult for South Africans and foreign internationals to leave or enter South Africa respectively, and thus hindered tourism development in the Republic. Article 13(2) gives people the liberty to leave their country. Tourism forms part of the many reasons why people choose to leave their own countries and venture into other countries therefore, laws, policies and regulations of a country cannot be used to hinder people from leaving their countries or be threatened with a refusal to re-enter their country because it will negatively impact on tourism and violate the UDHR.

Cultural varieties of host nations attract tourism to that particular region. According to the Universal Declaration of Human Rights, everyone has the right to the cultural life and arts of their community and must benefit from them. South Africa is nation that is rich in cultural diversity and arts, therefore the people of South Africa must be encouraged to preserve their different cultures. Some of the benefits resulting from culture activities include the direct and indirect creation of jobs.

Transforming our world: the 2030 Agenda for Sustainable Development

According to the UNWTO 2016 Annual Report, consensus was reached by world leaders that there is a need to develop a new agenda that would serve as a guiding tool and a roadmap towards the journey leading to 2030. Pursuant to the consensus, the agenda adopted in 2015 was officially known as "Transforming our world: the 2030 Agenda for Sustainable Development." Tourism is at the forefront as a contributing sector to the achievement of the Sustainable Development Goals (SDGs) of the 2030 Agenda. The 2030 Agenda is a plan of action for the people on the planet, to prosper. It purports to play a significant role in the global battle of poverty eradication. The Agenda recognises that effective implementation of the Agenda requires all States and stakeholders to work together to continue the construction of sustainable development through implementation of the SDGs.

The 17 SDGs and 169 targets of the Agenda cover a variety of socio-economic development issues, amongst which include gender equality, poverty, environment, water, education and so on. Tourism as an impetus to socio-economic transformation and forms part of three targets of the 2030 Agenda. These include target 8.9 under goal 8, 'Decent Work and Economic Growth' stipulating as follows "By 2030, devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products." Secondly, tourism is to contribute towards sustainable development in terms of target 12.5. Goal 12, 'Responsible Consumption and Production' the target provides as follows "Develop and implement tools to monitor sustainable development impacts for sustainable tourism that creates jobs and promotes local culture and products; and thirdly under goal 14, 'Life Below Water,' target 14.7 purports that "By 2030, increase the economic benefits to Small Island Developing States and



least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism.”

According to the UNTWO, the UN declared 2017 as the International Year of Sustainable Tourism Development. It recognises tourism’s role in achieving the Sustainable Development Goals of the 2030 Agenda. There is no doubt that the year 2017 has been a year of sustainable tourism development because it marks the beginning of a new era through the adoption of the historic document which is the UNTWO Framework Convention on Tourism Ethics. The Convention recognises that “Tourism has the potential to contribute directly or indirectly to the Sustainable Development Goals of the 2030 Agenda for Sustainable Development.”

Protocol on the Development of Tourism (1998)

Tourism could be a major contributor towards the socio-economic transformation of African countries such as inter-alia, South Africa, Zimbabwe, Lesotho, and Botswana by creating employment and eradicating poverty. To harness this, the Protocol on the Development of Tourism in the Southern African Development Community (1999) was adopted by Angola, Botswana, Congo, Malawi, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe as member states coming into force in 2002. The Protocol is in pursuance of Article 22 of the Southern African Development Countries Treaty, allowing states to conclude protocols in areas of cooperation. The objective of the Protocol is to use tourism as a vehicle to achieve social and economic development through the full realisation of its full potential for the region; this objective is interlinked with the objective of this study. To achieve this objective the Protocol provides a set of fundamental principles. Article 3(1) provides that, “A member state shall facilitate private sector involvement and investment by providing incentive infrastructure and the appropriate legal and regulatory framework.” Article 3(1) then obligates the government of a state not to pull in opposite direction with private sector involved in tourism. The government then must provide financial support, training or any kind of support to the private sectors in tourism. Moreover, the private sectors must not operate in a manner that is not guided by law in tourism. The government of South Africa in this regard promulgated the Tourism Act 3 of 2004, as a legal framework to regulate the private sectors in tourism such as hotels and tour guides.

Article 3(2) provides that member states must fully involve the private sector and other stakeholders in the formulation of tourism policies such as the White Paper on Development and Promotion of Tourism in South Africa governing the operations of the tourism industry. Article 3(2) recognises that if member states implement tourism policies without proper consultation with private sectors and stakeholders, such policies may have the effect of hindering the development of tourism, thus failing to contribute towards socio-economic development. The obligation to have meaningful dialogue between states, private sectors, and stakeholders is enforced by providing for co-operation between the parties in terms of Article 3(3), in so doing, it limits the power of the state to dictate policies relating to tourism without the proper meaningful involvement of all parties. Article 3(2) is interlinked with Article 3(4) which requires that citizens of member states must be involved in tourism activities development. The development of tourism must not be at the expense of environmental conservation.

The Protocol requires that tourism development must be environmentally and socially sustainable in terms of Article 3(5). Article 3(6) of the Protocol requires member states to preserve and promote the natural, cultural and historical resources of that region. This obligates states to ensure that the aforementioned resources are not destroyed in the process of development, because they are essential to tourism that brings about socio-economic transformation, therefore, their degradation must be avoided. This can be achieved through



enforcement of legislation that guarantees their protection such as the National Heritage Resources Act, 25 of 1999, which prohibits anyone from carrying out any alteration or destruction of any structure or part of a structure without obtaining the required permit from the relevant provincial heritage resources authority in terms of section 34(1).

Travel in tourism is of great importance, therefore, Article 5 of the Protocol makes provision for travel facilitation. Article 5(1)(d) reads as follows “Member states endeavour to make the entry and travel of visitors as smooth as possible and remove practices likely to place obstacles to the development of travel and tourism both regional and international by removing obstacles to the development of tourism and other impediments and to harmonise legislation relating thereto.” The provision is clear that South African law relating to travel, such as applications for a visa must not be an impediment to the development of tourism. For example, having a complicated stringent application process that makes entering South Africa a hassle stands as an impediment to the development of tourism. South Africa is further required by Article 5(1)(b) of the Protocol on the Development of Tourism, 1998 to abolish visa requirements for regional tourists who wish to enter the Republic of South Africa as visitors in the interest of furthering existing and future Southern African Development Countries Protocols. The Protocol also seeks to make travelling easy for international tourists by establishing the tourism univisa in terms of Article 5(1)(c) of the Protocol. Article 5(1)(c) of the Protocol provides that the univisa is a visa that should be implemented in order to simplify the travel of international tourists across member states to maximise market share and revenue of the region in world tourism through agreement and negotiations between member states. In simple terms the univisa would enable an international tourist to travel across the member states without having to apply separately for a visa in all member states. Socio-economic development can only be achieved in South Africa if the people are at the forefront of tourism development. In this regard, the Protocol stipulates that member states shall ensure that the local communities, as providers of goods and services to the tourism sector, are involved and benefit from the development of tourism.

The shortcomings inherent in the implementation of the Protocol

Lehloenya (2017) shares useful insight on the shortcomings of the Protocol to achieve tourism and socio-economic development in the region. According to Lehloenya (2017), the framework of the Protocol is not legally binding because a clear criterion is not set. To bridge this gap, the Protocol must be amended to include provisions that force member states (SADC countries) to adopt the Protocol as domestic law that legally binds the member states to implement the provisions of the Protocol. The framework lacks the mandate to enforce basic accountability norms such as reporting, consulting and notification obligations on the part of the member states. The consequence arising from the failure of not having the accountability norm is the challenge to monitor what individual member countries are doing to ensure implementation and compliance with the Protocol. The proposed abolishment of visa requirements for regional tourists that was meant to be implemented in 2002 has not materialised; only countries like the Seychelles, Madagascar and Mozambique have taken the initiative to offer free visa or visa on arrival for easy access to citizens of other African countries.

The univisa, on the other hand has not been implemented because most member states like South Africa prioritise safety and security while failing to expose themselves to the greater benefits of socio-economic transformation such as job creation, infrastructural development and poverty alleviation presented by tourism. Lehloenya (2017) further indicated that another major contributing factor negatively affecting the effective implementation of the Protocol by SADC countries is the lack of cooperation evident as the countries are in constant competition against each other with each individual country promoting its own individual interest. The way forward proposed by Lehloenya (2017) is to foster cooperation, resolve disputes surrounding



abolishing visa requirements for regional tourists and strive to implement the proposed univisa. The way forward for South Africa and other African countries is to offer visas on arrival, moreover, South Africa should thrive to enter into negotiations with member states to ensure the realisation and implementation of the univisa.

Convention on Biological Diversity, 1992 (CBD)

According to the UNWTO, biodiversity is essential in tourism. Major tourist attractions of biodiversity in the world consist of coast, forests, and mountains. Tourism in southern and eastern parts of Africa relies on wildlife safaris, such as the Kruger National Park as the source of income in the tourism sector. Such income then contributes to the socio-economic transformation of the communities in which biodiversity is located. In other parts of the world such as the Caribbean, Mediterranean, and Southeast Asia, the biodiversity of their coastal environment open recreational opportunities for tourism. The UNWTO is concerned about the loss of biodiversity because of land converted from its natural state to provide for human use, for example, settlement and industrial use.

To ensure the protection of biodiversity and to sustain its contribution towards socio-economic development; the Convention on Biological Diversity (CBD) was adopted. Article 1 of the CBD provides that the objective of the CBD is to promote the conservation of biological diversity, the sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilization of genetic resources. As a result, a decision was taken by the parties to the CBD, to prepare a manual for the purpose of improving knowledge and materials to better inform the integration of biodiversity into sustainable tourism. The manual was adopted at the Conference of the Parties (COP 11) and further developed in 2014 Conference of the Parties (COP 12). The manual is based on the CBD guidelines on biodiversity and tourism development. The aim of the manual on applying the CBD guidelines on biodiversity is to make “tourism and biodiversity more mutually supportive, engaging the private sector, the local communities, promoting infrastructure and land use planning based on the principles of conservation and sustainable use of biodiversity.”

The CBD manual guidelines require members of the CBD states to provide legislation and control measures that provide a framework and support for the integrated management of biodiversity and tourism. The National Environmental Management Biodiversity Act, 10 of 2004, and the National Environmental Management Protected Areas Act, 57 of 2003, form part of legislation that protects biodiversity for the development of tourism. The legislation and control measures must distinguish between areas where tourism activities may be carried out and areas where some or all tourism activities are excluded, for example in environmentally sensitive areas. The legislation must empower the local communities to make decisions about tourism development and other developments such as their socio-economic development. Control measures for management of tourism and biodiversity must include the consideration of economic instruments.

Economic instruments in tourism management and development are often used in protected areas to raise resources and control access of tourists to biodiversity. Protected areas raise funds from tourists through strategies such as charging and collecting entrance fees, user fees, concession and lease, donations, direct operation of commercial use and so on. The income generated through this economic control measures can, in turn, be used for the socio-economic transformation of the people wherein such biodiversity is located. The establishment of this mechanism in protected areas through the CBD guidelines is mandated by the Convention on Biological Diversity, Articles 8(b) and reads as follows; “Each contracting party shall, as far as possible and as appropriate, develop, where necessary, guidelines for the selection, establishment, and management of protected areas or areas where special measures need to be taken to conserve biological diversity.”



An Impact assessment is required by the CBD guidelines to ensure incorporation of biodiversity-related issues into an Environmental Impact Assessment. A Strategic Environment Assessment established by the CBD supports the formulation of environmental impact assessment stipulating that “each contracting party, as far as possible and appropriate, must introduce appropriate procedures requiring Environmental Impact Assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate allow for public participation in such procedures.” The Environmental Impact Assessment is important in the tourism sector because it helps to examine the impact of tourism development projects such as restaurants, bars, and hotels which attract a large number of tourists but give rise to disposal of waste problems that may arise from tourism activities which can damage biodiversity.

Convention on International Trade in Endangered Species of Wild Fauna and Flora Treaty, 1983 as Amended (CITES)

Environmental standards set by other important international instruments assist in the enforcement of the objectives of the CBD. For example, the Rio Declaration on Environment and Development, 1992, in terms of principle 4 provides that “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.” The principle ensures that biodiversity as a crucial source of tourism is protected to achieve socio-economic development. Protection of biodiversity is also guaranteed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The CITES recognizes that “wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for generations to come.” The CITES is conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view. The Convention prohibits the illicit trade of all species and specimens in Appendix I in terms of Article II by imposing strict regulations such as requiring import and export permits Article III.

Poor environmental protection is a major threat to biodiversity and sustainable environmental conservation globally. In South Africa, the poaching of the big five animals, the elephant, lion and rhinos affects tourism growth as the country relies on these animals for tourism marketing and attraction. The rhino species have recently been the most poached animal for their horns which are sold on the black market. One of the conventional methods used in protecting rhinos as they are threatened with extinction is to remove their horns in a process called “Dehorning.” To ensure the safety of the rhinos, the process is carried out by a professional conservation team. The approach of this mechanism is termed “No horn, No poaching.” The Convention on International Trade in Endangered Species of Wild Fauna and Flora at its 17th Conference of the Parties (CITES CoP17) that took place on the 24th of September to the 5th of October 2016, sought to protect the rhino species by rejecting attempts of legalising the trade of rhino horns based on the ground of reasonable belief that legal selling of rhino horns will not curb illegal rhino poaching but would encourage and expand the market further endangering the rhinos. Also, on the 2nd of October 2016, the CITES CoP17 passed a resolution to shut down ivory markets defeating Namibia and Zimbabwe’s proposal to open ivory markets. The resolution is a step in the right direction as a mechanism of protecting elephants from illegal poaching of their ivory(tusks) because without a market to sell Ivory there is no need or less desire to poach elephants for their ivory.

Healthy environmental standards are essential for tourism development and the socio-economic transformation of the people of South Africa (Holden, 2007). Therefore, it is essential to prevent environmental degradation from occurring by taking into consideration all



environmental impacts of any project, rather than seeking to remedy the environmental degradation after it has occurred (Page and Hall, 2014). This preventive method is achievable through enforcement and compliance of the provision of section 23(2)(b) of the National Environmental Management Act, 107 of 1998 stating that the “objective of integrated environmental management is to identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set out in section 2, and to ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them provided by section 23(2)(c) of NEMA.”

These provisions then require parties to put in place an Environmental Impact Assessment (EIA) that will stipulate how to prevent or minimize harm to the environment and even put in place remedial actions in case of any damage to the environment. For example, section 39 of the Mineral and Petroleum Resources Development Act, 28 of 2002 requires that any person who lodges an application for mining right, reconnaissance permission, prospecting right or mining permit must submit an environmental management plan (EMP), and must be in line with requirements of section 39(3) of the Mineral and Petroleum Resources Development Act, 28 of 2002. This section requires that the EMP “must, investigate, assess and evaluate the impact of his/her proposed prospecting or mining operations on the environment, establish baseline information concerning the affected environment to determine protection and remedial measures and so on.” The Environmental Impact Assessment Regulation of 2006 ensures that parties comply with the EIA by providing sanctions for offences. For instance, section 81 and section 81(2) provides that any person who is held to be liable to an offence in terms of section 81(1) is liable upon conviction to imprisonment not exceeding two years or a fine not exceeding the amount prescribed in terms of the Adjustment of Fines Act of 1991.

The South African judiciary enforced compliance with the EIA in the case of *S v Frylink and Another 14/1740/2010* handing judgement on the 6th of April 2011. In this case, the matter essentially revolved around the dispute of whether a wetland existed on the farm Randjiesfontein 405JR where construction of a development project was to take place. Accused no 1, Stefan Frylink and accused no 2, Mpofu Environmental Solution cc were found guilty beyond reasonable doubt in terms of section 81(1)(a) of the Environmental Impact Assessment Regulation of 2006, which states that “a person is guilty of an offence if that person provides incorrect or misleading information in any document submitted in terms of these Regulations to a competent authority.”

Mechanisms to ensure environmental protection for sustainable conservation of species is essential for tourism development targeting socio-economic transformation (Eagles et al., 2002). This is evidenced in the decision of the North Gauteng High Court in the case between Department of Environmental Affairs (DEA) and private rhino owners, Messrs. J Kruger and J Hume and two trade bodies, Wildlife Ranching South Africa (WRSA) and the Private Rhino Owners Association (PROA), in 2012 to declare the National Moratorium on the trade of rhino horn, derivatives or production, which was put in place on the 13th day of February 2009 in terms of section 57(2) of the National Environmental Management Biodiversity Act, 10 2004, by the then Minister of Environmental Affairs and Tourism, as being invalid and setting it aside immediately is quite disappointing because it is a setback in the fight against rhino poaching (Endangered Wildlife Trust (2016)). The decision was based on the grounds that the 2009 Moratorium was not published by the Minister in a national newspaper, as is required by the public participation provisions in sections 99 and 100 of NEMBA. The Department of Environmental Affairs (DEA) lodged an application for leave to appeal which was denied by both the High Court and the Supreme Court of Appeal. The Constitutional Court on the 5th of April 2017 also dismissed the DEA’s application for leave to appeal.



The Endangered Wildlife Trust is of the view that the DEA should have been afforded the opportunity to meet the requirements of public participation as permitted by precedent. According to Derek Watts, from the television show *Carte Blanche*, the main reason why the Moratorium was implemented is as a deterrence for those who seek to use the domestic trade of rhino horn, derivatives or production as a cover for smuggling. This therefore indicates that declaring the Moratorium as invalid opens up room for smugglers to use the legalised domestic trade as a cover for illegal trade of rhino horns, derivatives or production. In the same vein, the Save the Rhino Organisation advances a compelling argument indicating that setting aside the Moratorium delayed the prosecution of alleged rhino poaching kingpins such as Dawie Groenewald and Hugo Ras because the defendants might argue that rhino horns found in their possession were intended for local buyers rather than exporting them.

Conclusion

The international frameworks interventions on tourism and their application to the domestic tourism practices and businesses are aimed at a common goal of making tourism an engine that drives socio-economic transformation by creating employment and eliminating poverty. These normative instruments promote the right to tourism. The right to tourism comes with the benefit of bringing socio-economic development/transformation to local people given the right, by creating job opportunities through various types of tourism such as cultural tourism, adventure tourism, and business tourism. Adopting these frameworks as part of the domestic frameworks using section 39(1)(b)(c) of the Constitution has enabled interpretations which allowed for the proper understanding of the significance of tourism and the need to continue to ensure that what makes tourism thrive is protected and conserved. Similarly, the frameworks have fostered the protection of South Africa's biological diversity by creating national parks and botanical gardens which are now important tourism destinations and proudly national creations of immense worth to both domestic and foreign visitors.

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