

**A LEGAL PERSPECTIVE OF TOURISM AS AN IMPETUS FOR SOCIO-
ECONOMIC TRANSFORMATION IN SOUTH AFRICA**

By

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This mini-dissertation is submitted in partial fulfilment with the requirements

For the degree of

MASTER OF LAWS

In the subject of

DEVELOPMENT AND MANAGEMENT LAW

At the

UNIVERSITY OF LIMPOPO

TURFLOOP

SUPERVISOR: PROF KO ODEKU

DECLARATION

I Mogale Patrick Tseliso hereby declare that this mini-dissertation hereby submitted to the University of Limpopo for the degree of Masters of Development and Management Law (LLMDEV) has not previously been submitted by me for a degree at this or any other university; that it is my own work in design and in execution, and that all material contained therein has been duly acknowledged.

MOGALE P.T

Signature

date

ACKNOWLEDGEMENT

I am thankful to God for giving me wisdom, fortitude, and patience throughout my studies.

I am humbled and enthusiastic to acknowledge the support, guidance and supervision by my supervisor, Prof KO Odeku. His commitment in supervising me made this work what it appears to be currently.

I thank my mother Gladys Mogale for the financial assistance she rendered to me throughout my studies and being my pillar of strength.

I appreciate also my previous schools Tiboneleni Primary School, Sibambisene Combined School and Sitintile High School for instilling in me the importance of education.

I lastly thank the Universities church structure Imvuselelo YaseZion, I am grateful for your support and may the Almighty God bless you.

DEDICATION

This mini-dissertation is dedicated to my mother Gladys Mapulane Mogale.

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- **Canadian instruments: Policy, Departments and Legislations**

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ABBREVIATIONS

AMD	: Acid Mine Drainage
B-BBEE	: Broad Based Black Economic Empowerment
CBD	: Convention on Biological Diversity
DEA	: Department of Environmental Affairs
EIA	: Environmental Impact Assessment
EMP	: Environmental Management Plan
FDI	: Foreign Direct Investment
GDP	: Gross Domestic Product
HDSA's	: Historically Disadvantaged South Africans
ICESCR	: International Covenant on Economic Social and Cultural Rights
ICT	: Information and Communication Technology
LTA	: Limpopo Tourism Agency
NDP	: National Development Plan
NGP	: New Growth Path
NTSS	: National Tourism Sector Strategy
RDP	: Reconstruction Development Programme
SDG's	: Sustainable Development Goals
SMTE'S	: Small and Medium Tourism Enterprises
UDHR	: Universal Declaration of Human Rights
UN	: United Nations
UNWTO	: United Nations World Tourism Organisation

WCTE : World Committee on Tourism Ethics
WRSA : Wildlife Ranching South Africa
WTO : World Tourism Organisation
WTTC : World Travel and Tourism Council

ABSTRACT

This mini-dissertation articulates the socio-economic challenges faced by South Africans, such as poverty, unemployment and lack of infrastructural development. The mini- dissertation establishes that tourism is an engine that drives socio-economic transformation thus elimination poverty, creating employment and bringing about infrastructural development. It highlights tourism law, policies and international instruments that ensure that factors such as environmental protection, travelling, skills development, and so on ensure that tourism is promoted and thrives to transform the lives of historically disadvantaged South Africans. It identifies tourism impediments that stand as obstacles hindering tourism to provide socio-economic transformation and makes a moderate attempt to offer sustainable solutions. It recommends that the Department of Tourism through co-operative governance with other organs of state should strengthen implementation of legislation, institutions and policies vested within its power to ensure that tourism is developed to create employment and alleviate poverty. As a comparative analysis the approaches of Australia and Canada were utilised and useful lessons were drawn from them.

KEY WORDS: Poverty alleviation, Employment, Conservation, Infrastructural development, Socio-economic transformation.

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CHAPTER 1: INTRODUCTION AND HISTORICAL BACKGROUND TO THE STUDY

1. Introduction

The 19th century period signified the establishment of South Africa's tourism reputation. South Africa's Railways was formed in 1906 constituted a publicity department to promote tourism, which resulted in the establishment of the Kruger National Park in 1926 which became well renowned.¹ From 1906 to 1938 South Africa's Railways remained as the main source of promoting tourism through its publicity and travel department.² In 1938 the Tourism Department Corporation tasked to promote South Africa's tourism failed because of the World-War II. This led to the formation of the South African Tourism Corporation (SATOUR) to carry on the torch of promoting South Africa's tourism.³

Significant developments ensued thereafter, with the Department of Tourism founded in 1963 followed by the Hotel board in 1965 set with the mandate of improving the standards of accommodation by constructing new hotels and refurbishment of the existing hotels.⁴ The coalition of the SATOUR, the hotel board and Tourism branch of the Department of Travel, Commerce and Industry in 1983 resulted in the formation of the new South African Tourism board.⁵ The new South African Tourism Board did not bring transformation in tourism as apartheid negated the growth of tourism.⁶

In 1994 South Africa became a constitutionalised democratic country. The promulgation of the Constitution of the Republic of South Africa, 1996 brought about transformation and recognition of all the rights of the citizens who live in South Africa. Section 7(1)⁷ states that "The Bill of Rights is a cornerstone of democracy in

¹ Jonker, J.A. (2004), *The strategic identification and integration of critical success factors to achieve international competitiveness for South Africa as a tourism destination*, D.Com thesis, University of Pretoria, also available at <http://hdl.handle.net/2263/25993> (retrieved 06 March 2018).

² *Idem*, Chp 2, p.g 31.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Section 7(1) The Constitution of the Republic of South Africa, 1996.

South Africa it enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom”.

The government has taken a variety of measures in order to realise the socio-economic development of the previously disadvantaged South Africans, however, the country remains with challenges of poverty, inadequate housing, and high unemployment rate. In order to find a sustainable solution to these problems, the government has “identified tourism as a key job driver. To this end, the tourist arrival numbers for the period January to November 2016 increased to nine million, an increase of just over one million arrivals from 2015. This represents a thirteen per cent growth in tourist arrivals”.⁸ Having recognised the potential of tourism in creating jobs and alleviation of poverty, this mini-dissertation seeks to analyse how the existing law on tourism in South Africa can be improved and strengthened in order for tourism to be robust and flourish by providing more job opportunities and reduce unemployment, poverty and at the same time improve the standard of living of those who engage in the trade such as previously disadvantaged groups and marginalized local communities.

2. Research Problem

2.1 Source of the research problem

The Apartheid system of governance introduced in 1948 hampered the growth of tourism in South Africa because of international boycotts and sanctions.⁹ The segregation policies enshrined in various apartheid laws negatively impacted the development of tourist markets among the previously disadvantaged.¹⁰ Although South Africa was recognised by a number of international organisations such as the World Tourism Organisation (WTO) as being a desirable tourist destination because of its environmental and climatic advantage,¹¹ tourism growth was slow because the Apartheid regime prioritised the protection of South African airports making the cost

⁸ South Africa’s State of the Nation Address by president Jacob Zuma (9 February 2017).

⁹ Lubbe, BA, (2003), *Tourism management in South Africa*, Pearson Education, Cape Town.

¹⁰ *Ibid.*

¹¹ Allen, G. and Brennan, F. (2004) *Tourism in the New South Africa*, Chp 1, p.g 18.

of travelling into South Africa costly.¹² This was a strategic move by the Apartheid government to prevent the world from witnessing the injustices and racial segregation perpetuated against the black majority, unfortunately, this strategic move hampered the growth of tourism in the Republic. Allen and Brennan indicate that by monopolizing the tourism industry in the hands of the white minority hindered the growth of tourism because at the time the white minority was suffering economically because of the international sanctions imposed by various trading partners.¹³ Kohler points out that the slow growth of tourism is largely attributed to the fact that economic resources of the Republic set aside for recreation and tourism went towards the creation of tourism facilities that the majority of black people were excluded from having meaningful participation in the tourism industry.¹⁴

Steyn and Spencer indicated that the introduction of Apartheid policy influenced the tourism industry negatively by segregating tourists, amenities and facilities, for example, the use of separate hotels, beaches and restaurants resulting in the black majority being excluded from the industry.¹⁵

Adinolfi and Ivanovic are of the view that when the National Party government came into power in South Africa in 1948, it promulgated a series of discriminatory legislation which includes but not limited to the Group Areas Act of 1950, which in section 2(1)(a) to (c) segregated people between three racial groups, being Whites, Native Africans and Coloureds. The Pass laws, Act 67 of 1952 in Section 15 provided that any person classified as a native and fails to produce, alters or destroys his/her Reference Book (which is an Identification Document), shall be guilty of an offence upon conviction be subject to a fine or imprisonment. These laws had the effect of restricting movement of the black majority of South Africans.¹⁶ Therefore restrictive laws were obstacles to tourism because tourism requires the movement of people unhindered.

¹²Allen, G. and Brennan, F. (2004) *Tourism in the New South Africa*, Chp 1, p.g 18.

¹³ *Idem* p.g 19.

¹⁴ Kohler, K. (1992) *Growth industry: Domestic tourism in South Africa*, Indicator SA Vol 9 No 3 Winter 1992.

¹⁵ Steyn, J.N. and Spencer, JP. (2011) *South African Tourism, Historic evaluation of macro tourism policies*. African Journal for Physical Health Education, Recreation and Dance, Volume 17, Issue 2, Jun 2011, p. 178 – 200.

¹⁶ Adinolfi, M.C. and Ivanovic, M. (2015) *Recounting social tourism development in South Africa*. African Journal for Physical Health Education, Recreation and Dance, Supplement 2, Oct 2015, p. 1 – 12.

According to the Department of Environmental Affairs and Tourism (DEAT), prior to 1994 South Africa's failure to enter the world market of tourism is based on the isolationism of Apartheid policy, and prevented tourism of its potential to create employment, promote environmental protection, economic growth was neglected on the other hand tourism marketing was ignored.¹⁷

2.2 Statement of the research problem

Tourism is identified as a mechanism to promote the realisation of socio-economic rights, pursuant to this, laws and policies have been strategically put in place by the government to promote tourism in South Africa, for the purpose of creating employment, infrastructural development and poverty alleviation. However, these have not been achieved on the ground that unemployment rate is at 26.7% decreasing with only 1% compared to the 27.7% in 2017,¹⁸ which makes it a challenge to meet the 14% proposed by the National Development Plan (NDP) by the year 2020.¹⁹ The majority of South Africans still live in poverty.²⁰ Infrastructure development is sluggish as the majority of South Africans live in shacks and so on. This shows that most of the socio-economic rights are yet to be implemented and delivered to the people. Since tourism has been identified as a key driver of delivering of socio-economic rights, there is a need to accelerate the implementation of the legislation and policies that promote tourism by all relevant stakeholders.

¹⁷ Department of Environmental Affairs and Tourism, *10 years review* visit, https://www.environment.gov.za/sites/default/files/docs/10yyearsreview_tourism.pdf (retrieved 09 March 2018).

¹⁸ South Africa Unemployment Rate 2000-2018, Trading Economics, also available at <https://tradingeconomics.com/south-africa/unemployment-rate> (retrieved 05 March 2018).

¹⁹ Daily Maverick, (01 June 2017), *SA unemployment rate rises to 14 year high*.

²⁰ News24, Lameez Omarjee (22 August 2017), *More than 50% of SAs population is living in poverty*.

4. Aim and Objectives

4.1 Aim

- The aim of this study is to critically analyse laws that promote South Africa's Tourism industry for the realisation of socio-economic transformation.

4.2 Objectives

- The main objective of this study is to examine and articulate whether the current legislation, policies, regulations on tourism are being properly implemented in order to use tourism for poverty alleviation and sustainable development.
- Another objective of this study is to examine the jurisprudence of other nations on tourism and learn lessons from them in order to improve South Africa's tourism industry.

5. Research Methodology

The methodology will be the qualitative approach. The research was library based and relied on the library materials such as textbooks, reports, legislation, regulations, charters, policies, amendments to the legislation, journals or academic journals, government gazette, constitution, international or national and local journals. The study draws lessons from Australia and Canada. Australia and Canada form part of developed countries leading in the world tourism market, therefore initiatives, policies, legislation and other relevant materials taken by both countries to contribute towards the socio-economic transformation of their people through tourism were considered and utilised.

6. Significance of the study

The study is of paramount importance because it seeks to examine and analyse various interventions that have been put in place to drive tourism as a tool to contribute to the countries socio-economic development, create job opportunities thus reducing poverty. The study will benefit the government, non-governmental institutions, law and non-law students and interested parties in the tourism industry to use tourism potential for socio-economic development.

7. Literature Review

In order to comprehend the meaning of socio-economic development one needs to understand the definition of development. Scheepers quoted by Mafunganyika, defines development “as a people-centered process of change depending for its ultimate success on the capacity of people to manage the process through a variety of critical steps and phases within the limits of an institutional and value framework that will guarantee meaningful and lasting improvement of quality of life for all in a peaceful, stable and well-governed environment”.²¹ The government has to foster development in South Africa especially with regard to the historically disadvantaged races, ensuring that they have access to quality education, healthcare, food, water, employment, safe environment.

According to the United Nations World Tourism Organisation (UNWTO) tourism is a formidable tool for development contributing 7% of all of Africa’s exports,²² The UNWTO provides that tourism aids to Africa’s participation in the global economy and promotes environmental and cultural preservation for host communities.²³ Tourism is rapidly becoming a socio-economic development sector, therefore, the UNWTO suggests that African countries must have effective strategies to promote

²¹ News24, Lameez Omarjee (22 August 2017), *More than 50% of SAs population is living in poverty.*

²² United Nations World Tourism Organisation, *Affiliate Members Regional Reports, Vol 4 – Tourism in Africa: A Tool for Development.*

²³ *Ibid.*

competitive tourism and provide for a marketplace for the desires of potential visitors²⁴.

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 and if developed effectively tourism will become a contributor to poverty alleviation, infrastructure development, employment opportunities and attract investment opportunities,²⁵ such developments must be made a reality in South Africa by adhering to the recommendations of the UNWTO through effective implementation of legislation and economic policies on tourism.

The Reconstruction Development Plan (RDP) "is an integrated, coherent socio-economic policy framework. It seeks to mobilise all our people and our country's resources toward the final eradication of apartheid and the building of a democratic, non-racial and non-sexist future".²⁶

The RDP as an economic policy was utilised as a stepping stone towards socio-economic development. The RDP arose as a need to rectify the racially discriminatory policies of apartheid which perpetuated segregation in health, welfare, transport and employment that created inequality and an ailing economy.²⁷ The RDP sets itself up to be a beacon of hope to achieve socio-economic development based on the key four programmes²⁸ which include;

- Meeting basic needs;
- Developing our human resources;
- Building the economy;
- Democratising the state and society, and
- Implementing the RDP.

The development of the tourism industry in South Africa was spearheaded by the White Paper on development and promotion of tourism in South Africa.²⁹ According to the White Paper, tourism in South Africa is a missed opportunity because it has

²⁴ United Nations World Tourism Organisation, *Affiliate Members Regional Reports, Vol 4 – Tourism in Africa: A Tool for Development*.

²⁵ *Ibid.*

²⁶ Reconstruction Development Plan.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

the potential to encourage entrepreneurship, generate foreign exchange, create employment and drive other sectors of the community but the implementation of this is low and as such has not been fully realised.³⁰

The White Paper recognises that the tourism industry is one sector that has the potential to achieve the objectives of the RDP.³¹ Reasons that make tourism a sector with the capability of bringing development include the following; tourism is the world's largest generator of jobs, it provides immediate employment, while employing a multiplicity of skills, the tourism industry creates entrepreneurial opportunities, brings development to rural areas and generates foreign exchange generator *par excellence* and so on.³²

According to Zarenda, The New Growth Path (NGP) released in the year 2010 identified job creation as its main objective, to achieve this objective tourism has been identified to be one of the six areas to achieve job creation.³³ The current tool for socio-economic development in South Africa is the National Development Plan (NDP) adopted by the government in 2012/2013.³⁴ The NDP aims to alleviate poverty and reduce inequality.³⁵ According to Tharage, the NDP provides marginalized rural areas with the opportunity to have meaning participation in the economy identifying tourism as an engine to achieve this goal.³⁶ The NDP will achieve this goal by increasing employment from 13 million jobs in 2010 to 24 million in jobs 2030 and broaden ownership of assets to the historically disadvantaged, furthermore tourism will target to establish guest houses, bed and breakfast establishment, hotels and lodges, backpackers, tour operators and conference venues as Small and Medium-sized Enterprises to support job creation and redress skewed ownership.³⁷

³⁰ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

³¹ *Ibid.*

³² *Ibid.*

³³ Zarenda, H. (2013), *South Africa's National Development plan and its implications for regional development*. Tralac Working Paper No. D13WP01/ 2013. June 2013.

³⁴ *Ibid.*

³⁵ National Development Plan 2030, Our Future-make it work.

³⁶ Department of Tourism; Strategic Plan 2015/16 – 2019/2020 (2016/17 Review).

³⁷ *Ibid* footnote 35 above.

According to Kotze, the wording of section 24 of the Constitution of the Republic of South Africa, 1996 clearly advocates for environmental conservation, however, a developing country such as South Africa needs to address developmental issues such as poverty, unemployment and infrastructural development.³⁸ Therefore tourism has been identified in various government policies as a tool for the development, therefore it is of paramount importance to ensure that environmental conservation is effected through the implementation of legislation, for the purpose of allowing tourism to flourish and addressing socio-economic challenges such as poverty, unemployment, and infrastructural development pointed out by Kotze.

As per the mandate of section 24 which requires that there must be reasonable legislation to ensure conservation, the resultant legislation provisions include Chapter 1, section 2(4) of the National Environmental Management Act, 1998 (NEMA) stipulates that any disturbance of the ecosystem or biodiversity must be avoided, where they cannot be avoided must be minimised and remedied the section also provides that any form of pollution must be avoided.³⁹ NEMA is complemented by National Environmental Management Biodiversity Act, 2004 (NEMBA) which aims to achieve the conservation and sustainability of South Africa's biodiversity and ensure that various stakeholders benefit from bio-prospecting of biodiversity resources.⁴⁰ These Acts talk to the issues of conservation of biodiversity because they are potent sources of tourism attractions and South Africa have them in abundance.

Failure to comply with these pieces of legislation could result in catastrophic impact on the environment and tourism. This is quite evident when one evaluates the impacts of Acid Mine Drainage (AMD) and its devastating impacts and effects on the environment. According to McCarthy, AMD "is a process where mineral pyrite ('fool's gold' or iron disulphide) comes into contact with oxygenated water⁴¹. The mineral pyrite then pollutes the water and changes the colour of the water usually too orange making the water unconsumable and destroys aquatic life.⁴² Leonard and Langton

³⁸ Kotze, L.J. (2003) *The Constitutional court's contribution to sustainable development in South Africa*, Potchefstroom Electronic Law Journal (PER), Vol 6 No 2.

³⁹ Section 2(4)(a) of The National Environmental Management Act.

⁴⁰ Section 2(a) of The National Environmental Management Biodiversity Act.

⁴¹ McCarthy, T.S. *The impact of acid mine drainage in South Africa*. S Afr J Sci. 107(5/6), Art. #712, 7 pages. doi:10.4102/sajs.v107i5/6.712.

⁴² *Ibid.*

state that AMD specifically in West Rand located in Gauteng has affected the tourism as the contaminated underground water rises beyond the safe limit and comes into contact with the surface destroying the rich fauna and flora and the irreplaceable heritage sites such as the cradle of humankind which contribute highly to the province's tourism and economy.⁴³ According to Ochieng et al, the economic impact that AMD has on the economy is that a region affected by AMD experiences a decline in recreational fish species such as trout, a general decline in outdoor recreation and a decline in tourism,⁴⁴ thus AMD impacts tourism and defeats the purpose of utilising the potential of tourism as a tool for meaningful realisation of socio-economic rights and development.

The government aims to address challenges of unemployment and the escalating poverty rates for the 57 million South Africa by focusing on encouraging investment.⁴⁵ Foreign Direct Investment (FDI) is one type of investment that can assist the growth of South Africa's economy and address the challenges identified by the government.⁴⁶ Naude´ and Krugell quoted by Snyman and Saayman defined FDI as “when an investor based in one country acquires an asset in another country with the intent to manage the asset”.⁴⁷ According to Snyman and Saayman in order for South Africa’s tourism industry to remain in the global market and maintain growth in tourist numbers, FDI is of paramount importance.⁴⁸ Snyman and Saayman have indicated that potential opportunities for FDI in the South African Tourism industry are found in business such as hotels, resorts, and guesthouses; furthermore, investors are keen to invest in South Africa because of the profit which they make in

⁴³ Leonard, L. and Langton, A. (2016) *Challenges facing tourist attractions due to acid mine drainage in the West Rand, Gauteng*. African Journal of Hospitality, Tourism and Leisure Volume 5 (1) - (2016) ISSN: 2223-814X.

⁴⁴ Ochieng, G.M, et al. (2010) *Impacts of mining on water resources in South Africa: A review*. Scientific Research and Essays Vol. 5(22), pp. 3351-3357, 18 November, 2010.

⁴⁵ South Africa’s State of the Nation Address, President Cyril Ramaphosa, (16 February 2018) also available at <https://www.timeslive.co.za/politics/2018-02-16-in-full--read-cyril-ramaphosas-first-state-of-the-nation-address/> (retrieved 12 March 2018).

⁴⁶ Adjei, A. A. (2007). *Foreign direct investment and its important to the economy of South Africa*, also available at <http://uir.unisa.ac.za/bitstream/handle/10500/1332/dissertation.pdf> (retrieved 13 March 2017).

⁴⁷ Snyman, J.A. and Saayman, M. (2009), "Key factors influencing foreign direct investment in the tourism industry in South Africa", *Tourism Review*, Vol. 64 Iss 3 pp. 49 – 58.

⁴⁸ *Ibid*.

investment returns, the growth of tourist arrivals increases values and return on investment.⁴⁹

According to Muhanna, South Africa's poverty originates from the legacy of Apartheid.⁵⁰ Muhanna points out that creation of quality employment in South Africa is significant in fighting poverty alleviation and inequality.⁵¹ The World Summit on Sustainable Development held in South Africa in 2002 developed the concept of "Sustainable Tourism as an effective tool to Eliminate Poverty" (ST-EP) and which aims to channel the benefits of tourism towards the poor.⁵² Tourism will achieve this because as an economic sector it is able to redistribute wealth from richer developed countries or regions to less developed poorer areas,⁵³ furthermore the fact that tourism is consumed at a point of production provides individuals and micro-enterprises in urban and marginalized rural areas to sell products such as handcrafts and souvenirs and provides services such as guiding, music and dance.⁵⁴ The tourism industry has no trade barriers such as quotes and tariffs in this regard the poor can receive the maximum benefits of tourism thus achieving the aim of ST-EP.⁵⁵ Tourism should not be understood as an isolated sector of the economy, Muhanna states that the benefits of tourism is that it has a multiplier effect which means that it links with other sectors of the economy and helps to improve such sectors, for example, that crops produced from farms may be supplied to hotels to provide food for tourists.⁵⁶

Recent case law has demonstrated the court's willingness to choose enforcement of environmental conservation in order to protect the environment and promote tourism over commercial gain and degradation of the environment. In *Mpumalanga Tourism and Parks Agency v Barberton Mines (Pty) Ltd*,⁵⁷ the facts of the case are as follows:

⁴⁹ Snyman, J.A. and Saayman, M. (2009), "Key factors influencing foreign direct investment in the tourism industry in South Africa", *Tourism Review*, Vol. 64 Iss 3 pp. 49 – 58.

⁵⁰ Muhanna, (2007) *The Contribution of Sustainable Tourism Development in Poverty Alleviation of Local Communities in South Africa*, *Journal of Human Resources in Hospitality & Tourism*, 6:1, 37-67, DOI: 10.1300/J171v06n01_03.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Mpumalanga Tourism and Parks Agency v Barberton Mines (Pty) Ltd* (216/2016) [2017] ZASCA 9 (14 March 2017).

The Barberton Mountain Land (also described as the Barberton Greenstone Belt or Makhonjwa Mountains) is one of the most ecologically important areas in the Province of Mpumalanga. The area has been placed on the National List of Terrestrial Ecosystems that are Threatened and in Need of Protection. At the request of the Minister of Environmental Affairs and Tourism and with the approval of UNESCO the area was placed on South Africa's Tentative List of World Heritage Sites in 2008. All of that notwithstanding, on 6 October 2006 the first respondent, Barberton Mines (Pty) Ltd (Barberton Mines), was granted a prospecting right in terms of s 17(1) of the Mineral and Petroleum Resources Development Act 28 of 2002 (the MPRDA) to conduct prospecting operations for gold and silver on certain properties situated in the District of Barberton (the prospecting area).

On 11 November 2006 the Department of Minerals and Energy approved Barberton Mines' Environmental Management Plan in terms of Section 17(5) of the MPRDA and in consequence, the prospecting right for a period of five years came into effect on that date.

On 10 August 2011 Barberton Mines lodged an application for the renewal of its prospecting right in terms of s 18 of the MPRDA. The application is yet to be granted or refused and, by virtue of s 18(5) of the MPRDA, Barberton Mines' original prospecting right remains in force.

When Barberton Mines sought to commence with the prospecting work it encountered resistance from the first appellant, the Mpumalanga Tourism and Parks Association (the MTPA) and several members of the second appellant, the Mountain lands Owners Association (MOA), who asserted that the prospecting area constitutes part of a nature reserve or protected area.

On 21 October 2008 the two appellants and three others – the Trustees for the Time Being of the Lomshiyo Trust (the Lomshiyo Trust), Way Prop Two (Pty) Ltd (Way Prop) and Simply See (Pty) Ltd (Simply See) lodged an internal appeal with the Minister of Mineral Resources against the grant of the prospecting right to Barberton Mines. The appeal was dismissed by the Director-General: Mineral Resources on 16 April 2012.

On 12 July 2013, and after several meetings and failed attempts at negotiation with the MTPA and MOA, Barberton Mines lodged an application with the North Gauteng

High Court, Pretoria. It is declared that the applicant is entitled to conduct the prospecting activities referred to in Section 5(3) of the Mineral and Petroleum Resources Development Act 28 of 2002 in accordance with prospecting right MP/30/5/1/2/1040PR in relation to the following properties: Lot 119 Section A Kaap Block, Bickenhall 346JU and Dycedale 368JU, District of Barberton, Mpumalanga Province.

The first MTPA, second MOA and fifth [Simply See] respondents are interdicted from denying the applicant access to the prospecting area for the purpose of conducting prospecting activities in accordance with the aforesaid prospecting right or interfering with such prospecting activities.

The High Court found in favour of Barberton Mines that the prospecting area did not constitute part of a 'nature reserve' or 'protected environment'. In arriving at that conclusion, the court considered and rejected in turn three 'acts' of provincial government (in 1985, 1996 and 2014) relied upon in support of the contention that the prospecting area formed part of a nature reserve or protected area as defined in s 1 of the National Environmental Management: Protected Areas Act 57 of 2003 the NEMPAA. Accordingly, the court found that the prospecting area was not subject to the prohibition against prospecting under s 48(1) of the NEMPAA.

On Appeal the Supreme Court of Appeal held that on a proper interpretation of the National Environmental Management: Protected Areas Act read together with s24 of the Constitution, the Barberton Nature Reserve is, in fact, a protected area upon which mining operations are prohibited by law. Consequently, the appeal succeeded and the order of the High Court authorising Barberton Mines to commence prospecting operations in that area was set aside.

The preservation of South Africa's historical heritage sites is of paramount importance in promoting tourism and development of the communities in which they are located, because people of that community can be employed in various positions such as, tour guides and cleaning staff this will, in turn, contribute towards poverty alleviation therefore the court deemed it fit in the case of *Provincial Heritage Resources Authority, Eastern Cape v Gordon*⁵⁸ to enforce section 34(1)⁵⁹ of the

⁵⁸ *Provincial Heritage Resources Authority for Eastern Cape v Gordon* 2005 (2) SA 283 (E).

⁵⁹ Section 34(1) of The Heritage Resources Act, 25 of 1999.

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 thus the Eastern Cape High Court prohibited the demolition of Cocks Castle building under section 34(1),⁶⁰ the court further held that the building was worth historic preservation despite the fact that the building was not formally placed under protection as required by section 34(2) of the Act.

⁶⁰ Section 34(2) of The Heritage Resources Act, 25 of 1999.

CHAPTER 2: LEGAL FRAMEWORK PROMOTING TOURISM FOR POVERTY ALLEVIATION AND SUSTAINABLE DEVELOPMENT

2.1 Introduction

This Chapter discusses a variety of legal frameworks on International, National and Provincial levels. The chapter further articulates on how the different legal frameworks in their respective levels work together with the common purpose of promoting tourism in order to combat poverty and provide sustainable development. Moreover, the chapter exposes the shortcomings of these legal frameworks and how best they can be implemented in order to achieve their intended goals.

2.2 International Normative Instruments on Tourism

2.2.1 Global Codes of Ethics for Tourism

International legal frameworks play a pivotal role to promote and regulate tourism to use tourism as a global mechanism for poverty alleviation, creating employment, socio-economic development and so on. 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.⁶¹ Therefore the UNWTO is a significant international instrument for tourism. The UNTWO major breakthrough for tourism development includes the establishment of the Global Codes of Ethics for Tourism (GCET) adopted on the 21st of December 2001.⁶²

The GCET is a set of 10 principles which are as follows:

Article 1: Tourism's contribution to 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

⁶¹ UNWTO, Annual Report (2010) *A Year of Recovery*.

⁶² *Background of the Global Code of Ethics for tourism*, visit <http://ethics.unwto.org/en/content/background-global-code-ethics-tourism> (retrieved 07 April 2017).

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 major key role players such as governments, travel industry, communities, and tourists.⁶³ The aims of the GCET are interconnected with the aims 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.⁶⁴ The GCET are voluntarily implemented through a voluntary implementation mechanism together with the World Committee on Tourism Ethics (WCTE).⁶⁵ The committee has the obligation to all stakeholders to assist them in matters concerning the application and interpretation of the GCET.⁶⁶ The 10 principles of the Global Codes of Ethics for Tourism target a variety of important strategic sectors including the economic, social, cultural and environmental components of travel and tourism.⁶⁷ The principles were adopted in the year 1999 by the General Assembly of the World Tourism Organisation (WTO) recognised two years later by the United Nations (UN).⁶⁸

2.2.2 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

⁶³ *Background of the Global Code of Ethics for tourism*, visit <http://ethics.unwto.org/en/content/background-global-code-ethics-tourism> (retrieved 07 April 2017).

⁶⁴ A/ RES/ 56/ 212.

⁶⁵ *Ibid* footnote 63 above.

⁶⁶ *Ibid*.

⁶⁷ *Ibid*.

⁶⁸ *Ibid*.

converted into an international convention.⁶⁹ The purpose of conversion is to enforce its effectiveness and legally binding.⁷⁰ 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.⁷¹ 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.⁷²

The 15th day of September 2017 marks the day to marking 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.⁷³ Thus accomplishing the goal of the WCTE set out in 2015 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.⁷⁴ Article 2 of the Convention further provides that the aim of the Convention is to promote responsible sustainable and universally accessible through the implementation of the ethical principles in tourism.⁷⁵ 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.⁷⁶ This is the main objective of this mini-dissertation to use tourism as an engine for employment and poverty alleviation in South Africa.

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.⁷⁷ The Article makes it clear that South Africa should ensure that no law, policy or regulation impede the development of tourism. Article 3(3) states that

⁶⁹ *Ibid.*

⁷⁰ UNWTO, *Introduction*, also available at <http://ethicsconventions.unwto.org/> (retrieved 07 April 2017).

⁷¹ *Ibid.*

⁷² UNWTO, *Introduction*, also available at <http://ethicsconventions.unwto.org/> (retrieved 07 April 2017).

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Article 2 of the UNWTO Framework Convention on Tourism Ethics.

⁷⁶ A/RES/707(XXII).

⁷⁷ Article 3 of the UNWTO Framework Convention on Tourism Ethics.

“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”.⁷⁸ The wording of Article 3(3) puts in place a mechanism for accountability that states shall submit report to the committee, this is important because it is not enough to promulgate laws and policies for promoting tourism without the will of proper implementation of such laws, therefore this Article will assist in solving the problem identified in this study that there is limited implementation of laws promoting tourism, therefore few implementation of this law 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.⁷⁹ This ethical value seeks to make sure the tourism is an industry wherein people tolerate and respect the diversity of religion, philosophical and moral beliefs of the people in the world.⁸⁰ 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.⁸¹ Providing education and training to local people will empower the community to provide a hospitable welcome for tourists.⁸²

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.⁸³ Furthermore Articles 5 of the Convention advocates for the protection of human rights whenever tourism activities are carried out more especially the vulnerable groups inclusive of children, elderly, handicapped and so on.⁸⁴ 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.⁸⁵ According to Vrancken and Chetty, over the year's issues of

⁷⁸ Article 3(3) of the UNWTO Framework Convention on Tourism Ethics.

⁷⁹ Article 4 of the UNWTO Framework Convention on Tourism Ethics.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Article 5 of the UNWTO Framework Convention on Tourism Ethics.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

globalisation, poverty and weak law enforcement has highly contributed to the development of international child sex tourism which a form of gross human rights violation.⁸⁶ 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.⁸⁷ 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.

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.⁸⁸ 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.⁸⁹ Needs that must be satisfied for the current generation of South Africa include the need for employment and poverty alleviation. Tourism activities must be conducted in a way that does not negate the natural heritage which comprises of ecosystems and biodiversity.⁹⁰ This notion was supported in the case of *Fuel Retailers Association of SA v Director-General, Environmental Management, Mpumalanga & others*⁹¹ 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. In the case of *Wildlife Society of Southern Africa v Minister of Environmental Affairs and Tourism & Others*,⁹² The Transkei Supreme court of appeal ordered the removal of shacks in an environmentally sensitive coastal area

⁸⁶ Vrancken, P. and Chetty, K. (2009), *International Child Sex Tourism: A South African Perspective*. Journal of African Law, 53, 1 (2009), 111–141.

⁸⁷ *Ibid.*

⁸⁸ Article 6 of the UNWTO Framework Convention on Tourism Ethics.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Fuel Retailers Association of SA v Director-General, Environmental Management, Mpumalanga Province & Others* 2007 (6) SA 4 (CC).

⁹² *Wildlife Society of Southern Africa v Minister of Environmental Affairs and Tourism & Others* 1996 (3) SA (TKS).

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, crafts, and folklore must be protected and promoted by tourism activities as required by article 7 of the convention.⁹³ The communities that produce this products and crafts will, in turn, generate income by selling such products thus forms part of a mechanism for poverty alleviation and job creation, moreover linked to Article 7 is Article 8 of the Convention. 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.⁹⁴ This means that the standard of living for the people who reside where tourism activities take place will be improved by taking meaningful participation in the economy. Skills development for the local people is important so that local manpower should be considered in tourism activities such as accommodation and resorts.⁹⁵

Article 10 of the Convention makes provision for the right to tourism.⁹⁶ According to Article 10 of the Convention provides that the right to tourism is a right that must be equally made accessible to all the people in the world.⁹⁷ The rights to tourism is a 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)⁹⁸ together with Article 7(d) the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁹⁹

According to Article 12(3) of the Convention of UDHR provides that “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

⁹³ Article 7 of the UNWTO Framework Convention on Tourism Ethics.

⁹⁴ Article 8 of the UNWTO Framework Convention on Tourism Ethics.

⁹⁵ *Ibid.*

⁹⁶ Article 10 of the UNWTO Framework Convention on Tourism Ethics.

⁹⁷ *Ibid.*

⁹⁸ Article 24 of the Universal Declaration of Human Rights.

⁹⁹ Article 7(d) of the International Covenant on Economic, Social and Cultural Rights.

with a minimum of legal or administrative restriction”.¹⁰⁰ 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 that will allow 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 citizen will also be beneficial to the development of tourism because tourists expectations will be satisfied, marking the country as a hospitable place for tourists.

Liberty of Tourist Movement provided for in terms of Article 11 of the Convention provides that “tourist must benefit from international and national legislation that guarantees freedom of movement through compliance with Article 13 of the UDHR”.¹⁰¹ Article 13 of the UDHR guarantees everyone the freedom of movement this right of fundamental importance in tourism because the restriction of the freedom of movement is an obstacle to tourism development.¹⁰² Tourism activities such as travel require the freedom of movement unhindered. Article 13(2) provides that “everyone has the right to leave his country including his own and to return to his or her country”.¹⁰³ Then South African Apartheid laws that made it difficult for South Africans and foreign internationals from entering or leaving South Africa 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 nation and venture in to other nations 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 violates the UDHR.

Cultural variety of host nations attracts 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 the two.¹⁰⁴ South Africa is nation rich in cultural diversity and Arts, therefore the people of South Africa must be encouraged to preserve their different cultures which attract tourism, by so doing

¹⁰⁰ Article 12(3) of the Universal Declaration of Human Rights.

¹⁰¹ Article 11 of the UNWTO Framework Convention on Tourism Ethics.

¹⁰² Article 13 Universal Declaration of Human Rights.

¹⁰³ Article 13(2) Universal Declaration of Human Rights.

¹⁰⁴ Article 27 Universal Declaration of Human Rights.

they benefit from tourism some of the benefits include the direct and indirect creation of jobs resulting from culture activities.¹⁰⁵

2.2.3 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 serve as a roadmap towards the journey leading to 2030.¹⁰⁶ Pursuant to the consensus, the agenda was officially known as “Transforming our world: the 2030 Agenda for Sustainable Development” was adopted in 2015.¹⁰⁷ Tourism is at the forefront as a contributing sector to the achievement of the Sustainable Development Goals (SDGs) of the 2030 Agenda.¹⁰⁸ The 2030 Agenda is a plan of action for the people, planet, and prosperity; it purports to play a significant role in the global battle of poverty eradication.¹⁰⁹ The Agenda recognises that effective implementation of the Agenda requires all States and Stakeholders to work hand in glove and strive to continue the construction of sustainable development through implementation of the SDGs.¹¹⁰

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.¹¹¹ Tourism as an impetus to socio-economic transformation forms part of three targets of the 2030 Agenda.¹¹² 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”.¹¹³ 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;”¹¹⁴ and thirdly under goal 14,

¹⁰⁵ Article 8 of UNWTO Framework Convention on Tourism Ethics.

¹⁰⁶ UNWTO, Annual Report (2016) 2017 International year of Sustainable Tourism for Development.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ Transforming our world: the 2030 Agenda for Sustainable Development.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid* footnote 106 above.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

'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".¹¹⁵

According to the UNTWO, the UN declared 2017 as the International Year of Sustainable Tourism Development, recognises tourism's role in achieving the Sustainable Development Goals of the 2030 Agenda.¹¹⁶ 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*".¹¹⁷

2.2.4 Protocol on the Development of Tourism, (1998)

Tourism could be a major contributor towards the socio-economic transformation of African countries such as 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 2002.¹¹⁸ The protocol is in pursuance of Article 22 of the Southern African Development Countries Treaty, allowing states to conclude protocols in areas of cooperation.¹¹⁹ 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.¹²⁰ 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

¹¹⁵ UNWTO, Annual Report (2016) 2017 International year of Sustainable Tourism for Development.

¹¹⁶ *Ibid.*

¹¹⁷ A/RES/707(XXII).

¹¹⁸ Protocol on the Development of Tourism, (1998).

¹¹⁹ Preamble of the Protocol on the Development of Tourism.

¹²⁰ Articles 2(1) of the Protocol on the Development of Tourism (1998).

legal and regulatory framework".¹²¹ 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, 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) then 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.¹²² Article 3(2) recognises that if member states implement tourism policies without proper consultation with the private sector 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, the private sector, and stakeholders is enforced by providing for areas co-operation between the parties in terms of Article 3(3)¹²³, 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.¹²⁴ The development of tourism must not be at the expense of environmental conservation, the Protocol requires that member tourism development must be environmentally and socially sustainable in terms of Article 3(5).¹²⁵ Article 3(6) of the Protocol requires member states to preserve and promote the natural, cultural and historical resources of that region.¹²⁶ This obligates states to ensure that the aforementioned resources are not destroyed in the process of development, because they are essential to tourism development that brings about socio-economic transformation, therefore, their degradation must be avoided, and 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

¹²¹ Article 3 of the Protocol on the Development of Tourism (1998).

¹²² Article 3(2) of the Protocol on the Development of Tourism (1998).

¹²³ *Ibid.*

¹²⁴ Article 3(4) of the Protocol on the Development of Tourism (1998).

¹²⁵ Article 3(5) of the Protocol on the Development of Tourism (1998).

¹²⁶ Article 3(6) of the Protocol on the Development of Tourism (1998).

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”.¹²⁷ 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 in South Africa a hustle 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.¹²⁸ 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.¹²⁹ 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 in order to maximise market share and revenue of the region in world tourism through agreement and negotiations between member states.¹³⁰ 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 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.¹³¹

¹²⁷ Article 5(1) (d) of the Protocol on the Development of Tourism (1998).

¹²⁸ Article 5(1) (b) of the Protocol on the Development of Tourism (1998).

¹²⁹ Article 5(1) (c) of the Protocol on the Development of Tourism (1998).

¹³⁰ *Ibid.*

¹³¹ Article 12(d) of the Protocol on the Development of Tourism (1998).

2.2.4.1 The shortcomings inherent in the implementation of the Protocol

Lehloenya shares useful insight on the shortcomings of the Protocol to achieve tourism development and socio-economic development of the people of the region. According to Lehloenya the framework of the Protocol is not legally binding because a clear criterion is not set.¹³² To bridge this gap the Protocol must be amended to include provisions that forces member states 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.¹³³ The Consequences arising from the failure of not having the accountability norms, it becomes a challenge to monitor what individual member countries are doing to ensure implementation and compliance with the protocol.¹³⁴ The proposed abolishment of visa requirements for regional tourist meant to be implemented in 2002 have not materialised; only countries like the Seychelles, Madagascar and Mozambique have taken the initiative to offer free visa or visa on arrival to offer access to other citizens of other African countries.¹³⁵ 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.¹³⁶ Lehloenya further indicated that another major contributing factor negatively affecting the effective implementation of the Protocol is the lack of cooperation by SADC countries is evident in the marketing strategy; the countries are in constant competition against each other with each individual country promoting its own individual interest.¹³⁷

The way forward proposed by Lehloenya is to foster cooperation, resolve disputes surrounding abolishing visa requirements for regional tourists and strive to

¹³² Lehloenya, P.M, (2017), *Development and regulation of tourism for mutual benefit in the Southern African Development Community (SADC)*, Law, Democracy & Development/ VOL 21 (2017) also available at <http://dx.doi.org/10.4314/ldd.v21i1.5> (retrieved 12 April 2018).

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

implement the proposed univisa.¹³⁸ The way forward for South Africa and Africa 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.

2.2.5 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.¹³⁹ Tourism in Southern and Eastern parts of Africa relies on wildlife safaris, such as the Kruger National Park for 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.¹⁴⁰ Other parts of the world such as the Caribbean, Mediterranean, and Southeast Asia the biodiversity of their coastal environment open recreational opportunities for tourism.¹⁴¹ 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.¹⁴²

To ensure the protection of biodiversity and sustain its contribution towards socio-economic attributed to tourism is sustained and preserved; 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.¹⁴³ 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.¹⁴⁴ The manual was adopted at the Conference of the Parties (COP 11) and further developed in 2014 Conference of the Parties (COP 12), the

¹³⁸ Lehloenyana, P.M, (2017), *Development and regulation of tourism for mutual benefit in the Southern African Development Community (SADC)*, Law, Democracy & Development/ VOL 21 (2017) also available at <http://dx.doi.org/10.4314/ldd.v21i1.5> (retrieved 12 April 2018).

¹³⁹ UNWTO, (2010), *Tourism and Biodiversity Achieving Common Goals Towards Sustainability*.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

¹⁴³ Article 1 of the Convention on Biological Diversity.

¹⁴⁴ *Tourism Supporting Biodiversity: A Manual on applying the CBD Guidelines on Biodiversity and Tourism Development*.

manual is based on the CBD guidelines on biodiversity and tourism development.¹⁴⁵ 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 and local communities and indigenous peoples, and promoting infrastructure and land use planning based on the principles of conservation and sustainable use of biodiversity.”¹⁴⁶

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.¹⁴⁷ 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 the activities of tourism are excluded, for example in environmentally sensitive areas.¹⁴⁸ The legislation must empower the local communities to make decisions about tourism development and other developments such as their socio-economic development.¹⁴⁹ Control measures for management of tourism and biodiversity must include the consideration of economic instruments.¹⁵⁰ The economic instruments in tourism management and development are utilised to raise resources and control access of tourists to biodiversity.¹⁵¹ This mechanism is often used in protected areas. Protected areas raise funds from tourists through strategies such as charging, entrance fees, user fees, concession and lease, donations, direct operation of commercial use and so on.¹⁵² 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.¹⁵³ The establishment of this mechanism in protected areas through the CBD guidelines is

¹⁴⁵ Tourism Supporting Biodiversity: *A Manual on applying the CBD Guidelines on Biodiversity and Tourism Development*.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Managing Tourism & Biodiversity, User's Manual on the CBD Guidelines on Biodiversity and Tourism Development*.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

mandated by the Convention on Biological Diversity, Article 8(b) 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.¹⁵⁴

An Impact assessment is required by the CBD guidelines to ensure incorporation of biodiversity-related issues into an Environmental Impact Assessment.¹⁵⁵ A Strategic Environment Assessment established by the CBD supports the formulation of environmental impact assessment stipulating that “each contracting party, as far as possible as appropriate, 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”.¹⁵⁶ 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 and give rise to disposal of waste problems that may arise from tourism activities which can damage biodiversity.¹⁵⁷

2.2.6 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.¹⁵⁸ The principle ensures that biodiversity as a crucial source of tourism is protected in to achieve socio-economic development. Protection of biodiversity is

¹⁵⁴ Article 8(b) of the Convention on Biological Diversity.

¹⁵⁵ Managing Tourism & Biodiversity, *User's Manual on the CBD Guidelines on Biodiversity and Tourism Development*.

¹⁵⁶ Article 14(1)(a) of the Convention on Biological Diversity.

¹⁵⁷ *Ibid* footnote 155 above.

¹⁵⁸ Principle 4 of the Rio Declaration on Environment.

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 this and the generations to come and conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view.¹⁵⁹ The Convention prohibits the illicit trade of all species and specimen in Appendix I in terms of Article II¹⁶⁰ by imposing strict regulations such as requiring import and export permits Article III.¹⁶¹

2.3 South African Legislative and Policy Framework on Tourism

2.3.1 White Paper on Development and Promotion of Tourism in South Africa, May 1996

The government identified tourism as an engine for socio-economic transformation promoting poverty alleviation, reducing unemployment and facilitates infrastructural development. Legislation and policies have been formulated in this regard. The White Paper on tourism development is one historic legal framework policy adopted in 1996 for tourism development. According to the White Paper, in order to achieve socio-economic transformation, there's a need to implement a different type of tourism.¹⁶² The new type of tourism must have mechanisms capable of; creating entrepreneurial opportunities for the previously neglected group, being environmentally friendly and boosting other sectors of the economy.¹⁶³ The White Paper seeks to develop the tourism sector and enable the sector to improve the quality of life for South Africans and make tourism a leading sector within the national economic strategy, assisting the government in its efforts of reconstruction and development.¹⁶⁴ In pursuit of achieving these objectives, the White Paper provides that policies must be directed to strategic sectors.¹⁶⁵ This mini-dissertation

¹⁵⁹ Preamble of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

¹⁶⁰ Article II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora Treaty.

¹⁶¹ Article III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora Treaty.

¹⁶² White Paper on Development and Promotion of Tourism in South Africa, May 1996.

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

discusses some of the strategic areas pointed out by the White paper in order to achieve tourism development and socio-economic transformation of the people of South Africa.

Part V of the White Paper provides that safety and security require the government to take step to provide tourists with information that will enhance their safety and security.¹⁶⁶ In collaboration with the relevant organisation such as the South African Police Service (SAPS) initiate both long term and short term action and strategies to combat crimes and violence and tourists.¹⁶⁷ The strategies that the government can use is to establish a security tourism sector employing people in the highly populated tourist destination to provide safety and security, this will, in turn, reduce unemployment while ensuring tourism development. The high unemployment rate and number of South Africans living below the poverty line indicates that the implementation is this has been relatively low.

The potential of tourism to create jobs can be realised by providing adequate education and training capable of transferring appropriate skills and experience essential for employment. According to the White Paper, both the private and public sector institutions must be involved in the provision of education and training.¹⁶⁸ Training to acquire skills tourism enabling the historically disadvantaged to effectively compete for employment and establish their own tourism related business must be made readily available and accessible to the historically disadvantaged and neglected groups in society in the form of affordability, location, costs, duration, and language of instruction.¹⁶⁹ The previously disadvantaged earning less than a minimum wage could not afford to pay for such training and training, significant developments have been made by the government announcing free education for the poor. The institutions providing tourism education and training can open satellite institutions in the most remote rural areas of the country achieve the recommendations of the White Paper. According to Pederson in providing tourism and training to the previously neglected, tourism must be integrated as a subject in

¹⁶⁶ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

the school curriculum and education system this will help reduce the need to import skilled workers but promote the employment of South Africa's own skilled workers.¹⁷⁰

According to the White Paper, the development of tourism requires financial injections for socio-economic transformation. The White Paper proposes three financing options for the tourism sector:¹⁷¹ Option 1 provides that funds must be provided to dedicated tourism windows and existing institutions that could champion lending as well as provide specific tourism technical support to potential entrepreneurs, existing institutions include: the Industrial Development Corporation, the Development Bank of Southern Africa, Khula, the Independent Development Trust, the Small Business Development Corporation, the Kagiso Trust, the provincial Development Corporations, commercial banks, community-based organisations and others.¹⁷² Alternatively, the government may opt for Option 2. Option 2 requires the government to consider the feasibility of establishing a dedicated tourism institution for financing tourism projects and facilitating the involvement of the previously neglected.¹⁷³ The last option proposed being Option 3 provides that the government can combine both Option 1 and 2.¹⁷⁴ Khathi provides insight on the advantages of financing tourism. According to Khathi, the tourism industry requires the lowest ratios of investment to create jobs thus huge investments are not prerequisites to start a business in the tourism sector.¹⁷⁵ Employment opportunities can be achieved in tourism products such as stage drama, selling crafts and fruits and so on.¹⁷⁶ In this way, jobs can be created per unit of capital investment and many tourism activities are within the reach of small-scale business.¹⁷⁷ The White Paper further provides that the South African government must utilise tourism as a magnet for attracting foreign investment.¹⁷⁸ Foreign investment will help improve South African tourism industry, create employment and play a crucial role in facilitating economic growth.¹⁷⁹

¹⁷⁰ Pedersen, C. *The South African Tourism Policy with Regard to Sustainable Tourism* also available at http://projekter.aau.dk/projekter/files/224337742/merged_document.pdf (retrieved 14 April 2018).

¹⁷¹ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ Khathi, M.G. (2001), *investigating the Potential for Job Creation in the Tourism Industry with particular reference to Disadvantaged Communities*, United States: Economic Policy Research Institute.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

¹⁷⁹ *Ibid.*

According to the White Paper, the government must give priority to foreign investors who seek to invest in rural communities and less developed geographic areas.¹⁸⁰

Sustainable tourism development cannot subsist in a degraded environment; in this regard, the White Paper recognises the importance of environmental management in the tourism sector.¹⁸¹ Environmental legislation such as the National Environmental Management Act, 107 of 1998 must be enforced ensure mandatory compliance with environmental management practices in ecologically sensitive areas such as coastal areas and wetlands, ensure that communities benefit from the economic activities generated in an around conservation areas.¹⁸² According to Pederson National Parks such as the Kruger National Parks can be used as agencies to protect and conserve nature and animals while at the same time promoting environmentally responsible and sustainable nature-based tourism.¹⁸³ The National Parks promoting tourism, simultaneously contribute towards the socio-economic development of the communities in which they are located, local people can acquire employment in different for example animal feeders, cleaners, tour guides, animal veterinarians, sell crafts, perform traditional dances and so on.

Infrastructural development is one of the key areas identified to be contributing towards tourism development and socio-economic transformation of all South Africans.¹⁸⁴ The White Paper stipulates that the government must consider improving accessibility and infrastructure of rural areas to allow these areas to unleash their tourism potential.¹⁸⁵ The government can make access to rural areas accessible by constructing quality roads or improve already existing poor maintained roads with endless potholes. The infrastructural development must not be one that seeks to modernize rural housing because the traditional infrastructure such as the colourful *kwandebebele* traditional huts which is the traditional housing and painting for the *Ndebele* tribe in Mpumalanga forms part of tourist attraction areas and income for the community.

¹⁸⁰ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ Pedersen, C. *The South African Tourism Policy with Regard to Sustainable Tourism* also available at http://projekter.aau.dk/projekter/files/224337742/merged_document.pdf (retrieved 14 April 2018).

¹⁸⁴ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

¹⁸⁵ *Ibid.*

Part of South Africa's unemployment rate is mostly comprised of youth unemployment. The White Paper recognizes that tourism can be used as an aid for youth development.¹⁸⁶ Special agencies aimed at addressing backlogs in training, job creation and recreation must be put in place by the government to address youth unemployment.¹⁸⁷ The White Paper proposes that programs in the tourism industry such as summer jobs programmes aimed at exposing the youth at an early age to restaurant's, tour guides, trackers, hospitality ambassadors at airports and tourist attractions, this can be achieved by integrating summer jobs programmes into formal education in various High Schools and Institutions of higher learning and training because of their capability to provide career guidance in the tourism industry.¹⁸⁸ In order to expose the youth to careers in tourism, the Department of Tourism acting through its Minister must take initiative to form part of career exhibitions held annually for all South Africans Schools students and higher institutions of learning for example this can be done during the open week of the University of Limpopo wherein the University hosts a variety of high scholar from around the province informing them about the available career choices offered by the institution.

2.3.2 Tourism Act, 3 of 2014

The White paper is a policy that laid the foundation for the development of the Tourism Act 3 of 2014. The tourism Act 3 of 2014 is the new legislative framework for tourism, repealing the Tourism Act 72 from 1993. Objectives of the Act are set out in section 2 of the Act. Section 2(1)(e) provides that the objective of the act is to enhance cooperation and coordination between all spheres of government in developing and managing tourism.¹⁸⁹ The cooperation of spheres of government is important for tourism development; the lack of cooperation negates tourism development. In South Africa, this predicament has been exposed wherein the Department of Home Affairs failed to consult the Department of Tourism when it developed the Immigration Regulations Act, 13 of 2011 that negatively affected the tourism industry.¹⁹⁰ Lack of cooperation and coordination frequently occurs with the Department of Mineral Resources, when issuing mining rights, permits. Often in time,

¹⁸⁶ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ Section 2(1)(e) of the Tourism Act, 3 of 2014.

¹⁹⁰ Section 2(2) (a) of the Tourism Act, 3 of 2014.

such rights are given without proper consultation with the Department of Tourism or the Department of Environmental Affairs and without the required environmental impact plan in environmentally sensitive areas, cultural sites, historical sites, wetlands and so on, which is essential to tourism development.

Responsible tourism proposed by the White Paper is provisioned for in section 2(2) of the Tourism Act, 3 of 2014. The Tourism Act stipulates that responsible tourism is tourism that (a) seeks to avoid negative economic, environmental and social impacts. This provision of the Act is supported by section 2 of the National Environmental Management Act, 1998 provides that development must be social, environmentally and economically sustainable.¹⁹¹ Responsible tourism must generate economic benefits for local people, enhance the well-being of host communities and improve working conditions and access to the tourism sector.¹⁹² Safe to conclude that tourism as an economic sector promotes values of environmental protection, Muhanna indicates that tourism is a positive incentive for the preservation of the natural area.¹⁹³ According to Muhanna tourism projects are beneficial to environmental conservation because some projects prohibit local communities from illegal use and over use of natural resources, furthermore tourism is less damaging to nature in comparison with other economic sectors such agriculture and forestry.¹⁹⁴ Socio-economic transformation can be achieved if the local people residing in host communities benefit from tourism, through job and investment opportunities that prioritize local people.

Chapter 2 of the Tourism Act 3 of 2014 makes provision for the National Tourism Sector Strategy.¹⁹⁵ Section 4(1) gives the minister power to establish the NTSS. The established NTSS is required to have plans, guidelines, indicators, targets and foster cooperation with the provincial and local spheres of government relating to the promotion, development, and transformation of tourism.¹⁹⁶

¹⁹¹ Section 2 of the National Environmental Management Act, 107 of 1998.

¹⁹² Section 2(2)(b) of the Tourism Act, 3 of 2014.

¹⁹³ Muhanna, E. (2006) *Sustainable Tourism Development and Environment Management for Developing Countries*, Problems and Perspectives in Management 4 (2): 14-30.

¹⁹⁴ *Ibid.*

¹⁹⁵ Chapter 2 of the Tourism Act , 3 of 2014.

¹⁹⁶ Section 4(1) of the Tourism Act, 3 of 2014.

2.3.2.1 National Tourism Sector Strategy (NTSS)

South Africa published the NTSS in 2011 as a ten year strategy.¹⁹⁷ The NTSS has undergone reviews over the years.¹⁹⁸ The final draft of the NTSS published 5 May 2017 sets out measures and targets that seek to ensure that tourism is an impetus to the socio-economic transformation of South Africa.¹⁹⁹ The NTSS seeks to increase the number of direct jobs supported by the sector from the 2015 baseline of 702 824 jobs to 1 million jobs by 2026.²⁰⁰ The report of the World Travel and Tourism Council (WTTC) indicates that tourism has contributed to employment including jobs indirectly supported by tourism was 1, 5 million jobs in 2016 accounting for 9.8% of the total employment.²⁰¹ This is expected to increase to 1. 6 million a 6.7% increase in 2017 accounting for 10.2% of total employment.²⁰² The statistics provided by the WTTC explicitly shows that tourism in as an impetus for socio-economic transformation in the Republic. The WTTC report projects that tourism seeks to provide 2, 5 million jobs in 2027 a 4.2% increase over the years and achieve 13.2% of total employment in South Africa.²⁰³

To achieve socio-economic transformation, the NTSS sets out a set of five pillars.²⁰⁴ Pillar five is of the essence in this study. Pillar five addresses Broad-Based Benefits.²⁰⁵ According to the NTSS, pillar five provides that in order to achieve socio-economic transformation, poor communities must be involved in the development and growth of the tourism industry.²⁰⁶ According to the NTSS transformation is essential to realize social stability, reduce inequality and poverty while at the same time promote inclusive growth.²⁰⁷ The enhancement of social inclusion in the transformation process of the tourism industry will ultimately help address the challenges of unemployment, poverty, and inequality.²⁰⁸

¹⁹⁷ National Tourism Sector Strategy, 2016-2026.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ UNWTO, Travel & Tourism Economic Impact 2017 South Africa.

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid* footnote 197 above.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

The Constitution of the Republic of South Africa, 1996 guarantees everyone the right to have access to information in section 32(1).²⁰⁹ The Constitution then requires that national legislation is enacted in order to give effect to this right,²¹⁰ thus the Promotion of Access to Information Act, 2000 came into force in 2001. Section 14(1)(b) of the reads as follows; “Within six months after the commencement of this section or the coming into existence of a public body, the information officer of the public body concerned must compile in at least three official languages a manual containing sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories of records held on each subject”.²¹¹ Records and information provided by the Department of Tourism as a public body is categorised in terms of the following broad categories: policies, strategies, delegations, government notices, legislation, press statements and speeches, departmental personnel, departmental financial records, branch-specific information as described in paragraph 4 inclusive of business plans and so on.²¹² The Tourism Act of 2004 upholds this Constitutional right by establishing a National Information and Monitoring System responsible for collecting, recording, managing, analysing, disseminating information and data on tourism and monitor developments and trends.²¹³ This system will help to identify areas that need development and improve on those areas in order to achieve socio-economic transformation. According to Van den Berg Information on tourism business given to the public contributes to the establishment of new tourism business by providing guidance to the public.²¹⁴ The opening of new tourism business will stimulate economic growth, reduce poverty, and create employment and infrastructure development for new tourism business.

The South African Tourism Board is retained in terms of Section 9 of the Act.²¹⁵ The board is responsible for marketing South Africa as a desirable domestic and international tourism destination and market South African products and facilities

²⁰⁹ Section 32(1) The Constitution of the Republic of South Africa, 1996.

²¹⁰ Section 32(2) The Constitution of the Republic of South Africa, 1996.

²¹¹ Section 14(1)(d) of the Promotion of Access to Information Act, 2 of 2000.

²¹² Manual for the Department of Tourism, *In terms of section 14 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)*.

²¹³ Section 5 of the Tourism Act, 3 of 2014.

²¹⁴ Van den Berg, L.M. (2016), *Tourist guiding legislation: South Africa, Australia and Canada in a comparative perspective*, University of Pretoria.

²¹⁵ Section 9 of the Tourism Act, 3 of 2014.

internationally and domestically.²¹⁶ The board helps to save resources by marketing South African as a whole; Pederson indicates that the fact that the provinces were responsible for marketing tourism of their provinces domestically and internationally, such competition contributed to the waste of valuable resources.²¹⁷ This is particular true because instead of providing a national budget for marketing tourism South Africa's tourism each province would use its own finances to market tourism of the particular resources are wasted, in the sense that provinces such Limpopo who may not be well exposed in both domestic and international tourists, thus would spend exorbitant amount of money to try not to be over shadowed by well exposed provinces in tourism such as Gauteng and the Western Cape. The South African Tourism Board ensures that a national budget ensures that South Africa's tourism is marketed as a whole, thus all provinces receive a fair share of tourist that in turn provide to socio-economic transformation to marginalised provinces of the country such Limpopo and Mpumalanga.

Global competitiveness and outstanding standards are essential in attracting tourists and investment achieving the objective of making South African tourism an impetus for socio-economic transformation. The Act authorizes the Minister of Tourism in terms of section 28 of the Tourism Act 3 of 2014 to implement a National Grading System for the purpose of maintaining or enhancing the standards and quality of tourism accommodation services, facilities, and products.²¹⁸ The grading system is a system still the same as the one founded by the Tourism Act 72 of 1993²¹⁹ wherein accommodation establishments categorised in different classes according to their quality, variety, availability, and services rendered as stipulated by section 18(2) of the Tourism Act, 72 of 1993.²²⁰ Accommodation of high standard receive more stars in terms of section 18(5) of the Tourism Act, 72 of 1993²²¹ for example five star hotels which attract more tourists and employ thousands of South Africans to work in the accommodation establishments. A Grading Council established in terms of section 29 of the Tourism Act, 3 of 2014 is responsible for managing and

²¹⁶ Section 10 of the Tourism Act, 3 of 2014.

²¹⁷ Pedersen, C. *The South African Tourism Policy with Regard to Sustainable Tourism* also available at http://projekter.aau.dk/projekter/files/224337742/merged_document.pdf (retrieved 14 April 2018).

²¹⁸ Section 28 of the Tourism Act, 3 of 2014.

²¹⁹ Van den Berg, L.M. (2016), *Tourist guiding legislation: South Africa, Australia and Canada in a comparative perspective*, University of Pretoria.

²²⁰ Section 18(2) of the Tourism Act, 72 of 1993.

²²¹ Section 18(5) of the Tourism Act, 72 of 1993.

implementing the National Grading System.²²² The Grading Council is an important contribution by the Tourism Act of 2014 that will ensure that there is compliance with high quality standards in the tourism accommodation and assist tourism development because it is crucial for socio-economic transformation for historically disadvantaged South Africans.

Regulation of tourist guides by the National Registrar of Tourist Guides in tourism forms part of the many significant developments in South Africa's tourism.²²³ Section 48(2) mandates that a database of all registered tourist guides by registrar must be maintained.²²⁴ The database will help tourist to have access to recognized tourist guides. The level of crimes against tourist by those pretending to be tourist guides will be reduced because one of the challenges faced by South Africa tourist guide industry is in the influx of illegal tourism guides.²²⁵ The regulation of the tourism guide sector is important to socio-economic development because it is one of the tourism areas wherein black participation has increased,²²⁶ therefore regulation of the sector will encourage more participation by providing them tourism opportunities arising from tourism guide, for example, encourage black to start and register tourism guide lucrative business proving employment for the unemployed.

2.3.3 National Environmental Management Protected Areas Act, 57 of 2003 (NEMPAA)

The National Environmental Management Protected Areas Act (NEMPAA) forms part of the significant national legal frameworks facilitating the development of the tourism industry in South Africa. The NEMPAA seeks to "provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes; for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; for intergovernmental co-operation and public consultation in matters concerning

²²² Section 29 of the Tourism Act, 3 of 2014.

²²³ Section 48 of the Tourism Act, 3 of 2014.

²²⁴ Section 48(2) of the Tourism Act, 3 of 2014.

²²⁵ Van den Berg, L.M. (2016), *Tourist guiding legislation: South Africa, Australia and Canada in a comparative perspective*, University of Pretoria.

²²⁶ Khathi, M.G. (2001), *investigating the Potential for Job Creation in the Tourism Industry with particular reference to Disadvantaged Communities*, United States: Economic Policy Research Institute.

protected areas; and for matters in connection therewith”.²²⁷ Protection by the Act is extended to areas inclusive of special nature reserves, nature reserves, protected environments and heritage sites.²²⁸ To ensure effective protection of these areas the Minister is mandated to maintain a registrar to be known as the Registrar of Protected Areas.²²⁹ The registrar must have a list of all protected areas.²³⁰ The publication of the list by the registrar is an important tool for protected areas because it helps any person, company or entity wishing to conduct any activities on the environment to avoid conducting such activities in an environmentally protected area. The list of protected areas will help the South African Judiciary to save time by not having to deal with cases involving disputes of which areas qualify as protected areas. For example if it is not clear that an area falls under the protection of the Act the government and parties will waste funds and the courts time arguing whether a certain area is protected by the Act this is evident in the discussed case of *Mpumalanga Tourism and Parks Agency v Barberton Mines (Pty) Ltd*.

Section 17(i) reads; “the purpose of the declaration of areas as protected areas is to create or augment destinations for nature-based tourism”.²³¹ This particular section of the Act ensures that the environment is utilized as a tool to promote tourism development; often commercial use of the environment for mining purposes or other industrial use takes priority. According to Meyer and Meyer tourism is an effective tool for economic growth providing opportunities for employment, poverty alleviation, local development, foreign investment and so on.²³² The NEMPAA seeks to protect the opportunities provided by tourism, by empowering the Minister to declare an area as a nature reserve.²³³ Section 23(3)(e) further provides that the declaration can only be issued in order to provide for tourism opportunities.²³⁴ The management authority of nature reserves and world heritage sites can carry out or allow (i) commercial activities or (ii) any activity to raise revenue.²³⁵ Commercial activities or activities of raising revenue that can be implemented include transportation, accommodation,

²²⁷ Preamble of the National Environmental Management Protected Areas Act, 57 of 2003.

²²⁸ Section 9 of the National Environmental Management Protected Areas Act, 57 of 2003.

²²⁹ Section 10(1) of the National Environmental Management Protected Areas Act, 57 of 2003.

²³⁰ Section 10(2)(a) of the National Environmental Management Protected Areas Act, 57 of 2003.

²³¹ Section 17(i) of the National Environmental Management Protected Areas Act, 57 of 2003.

²³² Meyer, D.F. & Meyer, N.(2015). The role and impact of tourism on local economic development: A comparative study. *African Journal for Physical, Health Education, Recreation and Dance*, 21(1:1), 197-214.

²³³ Section 2(2) National Environmental Management Protected Areas Act, 57 of 2003.

²³⁴ Section 23(3)(e) National Environmental Management Protected Areas Act, 57 of 2003.

²³⁵ Section 50(1)(a) National Environmental Management Protected Areas Act, 57 of 2003.

catering, crafts which are generally dependent on tourism, will help achieve the opportunities set out by Meyer and Meyer as they are essential for socio-economic transformation.

Nicolaides defines medical tourism as “when tourists travel to another country for medical treatment as well as for sightseeing”.²³⁶ According to Nicolaides South, African tourism structures such as hotels and resorts possess potential to drive medical tourism.²³⁷ Nicolaides further provides that thriving medical tourism requires that environmental integrity, social justice, and economic development prevail.²³⁸ Section 50(1)(b) of the NEMPAA reads; “The management authority of a nature reserve and world heritage site may, despite any regulation or by-law referred to in section 49, but subject to the management plan of the reserve or site-enter into a written agreement with a local community inside or adjacent to the reserve or site to allow members of the community to use in a sustainable manner biological resources in the reserve or site”.²³⁹ This section of the Act is important because it promotes access and use biological resources by local communities for traditional medicinal tourism purposes, for example, traditional medicine prevalent in South Africa promotes medical tourism that contributes to the socio-economic transformation of the people of South Africa, because African inspired treatments such as the *Umhlonyané* a healing massage available at a number of lucrative spas such as *Fordoun* spa.²⁴⁰ The section empowers people like Dr Elliot Ndlovu a traditional healer to have access to 120 species of herbs and plants and supplies top spas such as *fordoun*, *Mangwanani* and *Falaza* spas in turn for profit.²⁴¹ World heritage sites such as *Isimanagaliso* and *Hluhluwe-Imfolozi* Game Reserves also offers traditional African treatments.²⁴² African herbs and plants such as fynbos, buchu, the marula plant, rooibos and many others are used in various African-

²³⁶ Nicolaides, A. (2011), *Medical Tourism as an important niche market for Tourism Development in South Africa*. African Journal of Hospitality, Tourism and Leisure Vol. 1 (3) - (2011).

²³⁷ *Ibid.*

²³⁸ *Ibid.*

²³⁹ “African-inspired treatments are all the rage at various spas throughout the country. Instead of looking to other continents for inspiration our local spas have done some soul-searching and have come up with a range of unique treats and treatments inspired by the sacred knowledge found in our own backyard” also available at <http://country.southafrica.net/country/us/en/articles/entry/african-inspired-treatments-enus> (retrieved 18 April 2018).

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² *Ibid.*

inspired treatments,²⁴³ the Act provides for the sustainable use of these herbs and plants while at the same time making them accessible to local communities to utilize them in the tourism industry for their socio-economic development.

2.3.4 National Heritage Resources Act, 25 of 1999

The principle of protecting World Heritage Sites as contributing sources of tourism development in South Africa is mutually enforced by the NEMPAA and the National Heritage Resources Act of 1999. The National Heritage Resources Act provides a set of general principles for resources management.²⁴⁴ Heritage resources contribute significantly to research, education and tourism and they must be developed and presented for this purpose in a way that ensures dignity and respect for cultural values.²⁴⁵ The respect for cultural values opens a doorway for cultural tourism that is paramount to foster socio-economic development. Developing the diverse communities of South Africa together with the intriguing history gives South Africa the advantage of establishing sustainable cultural tourism.²⁴⁶ According to Saarinen and Rogerson, with the spotlight on nature-based and wildlife tourism, cultural tourism never saw the light of day.²⁴⁷ However, recent developments indicate that cultural tourism is becoming more recognised and contributes to tourism development and policy making.²⁴⁸ The White Paper on development and promotion of tourism provides that cultural tourism makes South Africa's tourism to be more competitive, with a focus not only placed on nature-based and wildlife-oriented tourism, for example, focused only on promoting the big 5 animals consisting of (Lions, Elephants, Rhinos, Leopards and Buffalos).²⁴⁹ There are arguments that cultural tourism could and should be utilised in socio-economic transformation, empower communities and the historically disadvantaged groups.²⁵⁰ With visitors

²⁴³ "African-inspired treatments are all the rage at various spas throughout the country. Instead of looking to other continents for inspiration our local spas have done some soul-searching and have come up with a range of unique treats and treatments inspired by the sacred knowledge found in our own backyard" also available at <http://country.southafrica.net/country/us/en/articles/entry/african-inspired-treatments-enus> (retrieved 18 April 2018).

²⁴⁴ Section 5 of the National Heritage Resources Act, 25 of 1999.

²⁴⁵ Section 5(5) of the National Heritage Resources Act, 25 of 1999.

²⁴⁶ Khathi, M.G. (2001), *investigating the Potential for Job Creation in the Tourism Industry with particular reference to Disadvantaged Communities*, United States: Economic Policy Research Institute.

²⁴⁷ Saarinen, J. & Rogerson, C.M. (2015), *Setting Cultural Tourism in Southern Africa*, Nordic Journal of African Studies, Vol. 24, Nos. 3&4, pp. 207–220.

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

interest inclined to visit rural areas and the fact that cultural tourism involves local people, providing an inclusive business model, cultural tourism is regarded as a feasible incentive for inclusive socio-economic development and poverty alleviation.²⁵¹

World Heritage Sites must promote socio-economic transformation.²⁵² Rogerson and Van der Merwe in this regard examine socio-economic transformation attributed to the Cradle of Humankind which is one of South Africa's well-known heritage sites.²⁵³ According to Rogerson and Van der Merwe, the heritage site has the potential to grow the economy of the region in which it is situated since it is one of the poor marginalized parts of the country.²⁵⁴ The geo-spacial tourism development project in the cradle of humankind was launched for two reasons to create jobs and grow the economy.²⁵⁵ Rogerson and Van der Merwe indicate that the local impact of the project indicate that new family businesses emerged in and around the Cradle contributing to the socio-economic of the people of the community, furthermore in addition to leisure travel, this area became established as a business tourism destination for corporate events, conferences and meetings.²⁵⁶

2.3.5 National Environmental Management Biodiversity Act, 10 of 2004 (NEMBA)

According to the National Environmental Management Biodiversity Act, 10 of 2014 "Biodiversity means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems"²⁵⁷. Protection and conservation of biodiversity is crucial for tourism development and socio-economic transformation that promotes poverty alleviation, the creation of employment and infrastructural development.²⁵⁸ The National Environmental Management Biodiversity Act, 10 of 2004 is South Africa's measure

²⁵¹ Saarinen, J. & Rogerson, C.M. (2015), *Setting Cultural Tourism in Southern Africa*, Nordic Journal of African Studies, Vol. 24, Nos. 3&4, pp. 207–220.

²⁵² Rogerson, C.M. and Van der Merwe, C.D. (2016), *Heritage tourism in the global South: development impacts of the Cradle of Humankind World Heritage Site, South Africa*. Local Economy 2016, Vol. 31(1–2) 234–248.

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid.*

²⁵⁷ Section 1 of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁵⁸ UNWTO, (2010), *Tourism and Biodiversity Achieving Common Goals Towards Sustainability*.

to fulfil the mandate of Article 8 of the Convention on Biological Diversity²⁵⁹ because section 5 of the National Environmental Management Biodiversity Act, 10 of 2004 states that this Act gives effect to ratified international agreements affecting biodiversity to which South Africa is a party, and which bind the Republic.²⁶⁰ The NEMBA affords protection to biodiversity by empowering the Minister to provide a list of the ecosystem,²⁶¹ threatened species²⁶² and a list of invasive species²⁶³ in need of protection. The Act prohibits any person to carry out any restricted activities in regard to the listed threatened species and invasive species without the required permit.²⁶⁴ The list published in 2007 by the then Minister of the Department of Environmental Affairs and Tourism Marthinus Van Schalkwyk in the government notice contains species like Lions, African Elephants, Leopards, Trout fish which form part as tourism attractions. The South African National Biodiversity Institute²⁶⁵ established in terms of section 100(1) of the Act has the duty to monitor and report to the Minister on the conservation status of all the listed threatened or protected species and listed ecosystem as provided for in terms of section 11(1)(a) of NEMBA.²⁶⁶ The reports by the institute are crucial for the government so as to enable the government to have insight with regard to species threatened with extinction because their extinction negatively impacts tourism development and how best can biodiversity be sustainably conserved and protected. Monitoring by the institute will reveal stakeholders who are failing to comply with environmental laws and indicate which measures can the government take to ensure compliance because the lack thereof defeats tourism potential to grow and improve the lives of ordinary poor South Africans. The institute is not only responsible for reporting it has a variety of duties stipulated in section 11 such as prohibiting the public from gaining access to the botanical garden, provide environmental education, rehabilitate ecosystem and so on.

²⁵⁹ Article 8 of the Convention of Biological Diversity.

²⁶⁰ Section 5 of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁶¹ Section 52 of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁶² Section 56 of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁶³ Section 70 of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁶⁴ Section 57 and Section 71 of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁶⁵ Section 10(1) of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁶⁶ Section 11(1) (a) (i), (ii) and (iii) of the National Environmental Management Biodiversity Act, 10 of 2004.

Benefits arising from bio-prospecting must be equitably shared this is a mandate required by section 80(1)(c).²⁶⁷ The declaration of a botanical garden in terms of section 33²⁶⁸ constitute bio-prospecting for commercial benefit. The botanical gardens can then be used as a tourist attraction areas, wherein tourism activities such as relaxation, exploring, hiring for conferences or weddings and so on can contribute towards the socio-economic transformation of the communities where it is located. To protect the benefits of bio-prospecting the Act provides that those who commit offences stipulated in terms of section 101 of the Act²⁶⁹ such as fraudulently altering a permit or giving false information to a permit, if found guilty of having committed the offence shall be liable to a fine or five years imprisonment or both as stipulated by section 102(1) of the Act.²⁷⁰ Section 102(2)(b) provides that a person found to have committed an offence against the listed species the fine will be equivalent to three times the commercial value of the species.²⁷¹ The imposition of such fine is meant to deter criminal from perpetrating crimes against those specimens, however, there is no amount of money that can replace extinct biodiversity thus protection and conservation of the species must take priority over punishment of perpetrators.

2.3.6 Tourism Broad-Based Black Economic Empowerment Sector Code 2015 (Tourism B-BBEE)

The Tourism Broad-Based Black Economic Empowerment Sector Code (Tourism B-BBEE) formally gazetted in November 2015 is a key legal framework for tourism development and socio-economic transformation.²⁷² The code seeks to address the racial injustices of the past that excluded the majority of black people from the opportunities and benefits arising from the tourism sector, thus rendering the black majority of South Africans deprived of the use of tourism benefits and opportunities to enhance their socio-economic transformation.²⁷³

²⁶⁷ Section 80(1) (c) of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁶⁸ Section 33 of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁶⁹ Section 101 of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁷⁰ Section 102(1) of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁷¹ Section 102(2)(b) of the National Environmental Management Biodiversity Act, 10 of 2004.

²⁷² Department of Tourism, *Easy Guide for the Amended Tourism B-BBEE Sector Code*.

²⁷³ *Ibid.*

The Tourism B-BBEE applies to tourism enterprises of accommodation,²⁷⁴ hospitality and related services²⁷⁵ and travel and related services.²⁷⁶ The code sets out elements of transformation that need to be implemented by these enterprises to ensure that they contribute towards meaningful participation and development of black people in the tourism sector.

The key elements of development in the code are also recognised by the National Tourism Sector Strategy. The strategic pillars that the Tourism B-BBEE focuses on as means of achieving socio-economic transformation for the previously disadvantaged include Ownership, Management Control Element, Enterprise and Supplier Development Element and Socio-Economic Development. The aforementioned elements of development are discussed hereinafter.

Ownership;²⁷⁷ in this regard, black people must be afforded ownership in economic interest that guarantees black people the right to receive dividends, capital gains and economic benefit of shareholders must be enforced.²⁷⁸ It is not enough to create employment for black people in the tourism industry. To ensure that employment of black people is socially and economically sustainable, employee ownership programmes must afford black people the opportunity to acquire ownership interest which can be of shares in tourism entity such as hotels, lodges, restaurants and so on.²⁷⁹ Ownership of tourism businesses gained by black South Africans will ensure that socio-economic transformation is not only for the current generation but also guaranteed for future generations. Idasa quoted by khathi points out that black people will not experience socio-economic development because as they are excluded from acquiring private ownership of lucrative lodges and safari and hunting concession.²⁸⁰ Without the ownership of assets in the tourism industry benefits sought to be used for socio-economic development will be marginal and short-term.²⁸¹

²⁷⁴ Department of Tourism, *Easy Guide for the Amended Tourism B-BBEE Sector Code*.

²⁷⁵ *Ibid.*

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

²⁸⁰ Khathi, M.G. (2001), *investigating the Potential for Job Creation in the Tourism Industry with particular reference to Disadvantaged Communities*, United States: Economic Policy Research Institute.

²⁸¹ *Ibid.*

(b) Management Control Element;²⁸² the Tourism B-BBEE requires that black people must be afforded empowerment in managerial positions in the tourism sector complying with the set targets and they are as follows;

- 50% for Board participation;
- 60% for Other Executive Management;
- 60% for Senior Management;
- 75% for Middle Management;
- 80% for Junior Management; and
- 2% for Employees with Disabilities.²⁸³

This can be achieved by appointing auditors that ensure this targets by the Tourism B-BBEE are complied with, further companies and businesses that fail to implement this should be heavily fined by the government and be sanctioned from obtaining tourism businesses tenders such as catering and accommodation tenders. By empowering black people to occupy managerial control helps aid socio-economic empowerment in that with the acquired experience of business management in the tourism industry will empower black people to be at the forefront as leading entrepreneurs in the tourism business space. (C) Skills Development;²⁸⁴ The Amended Tourism B-BBEE recognises that to fully exhaust the benefits of tourism to contribute to socio-economic transformation, skills development in tourism must be made a priority.²⁸⁵ According to the Tourism B-BBEE Amended Codes, programmes of internships, learner ships and apprenticeships are programmes that can be used as tools for the skills transfer.²⁸⁶

(d) Enterprise and Supplier Development Element;²⁸⁷ this element of transformation mandates that at least 25% of the cost of sales must be from local producers or local suppliers of South Africa.²⁸⁸ This will ensure that the quality of local products and services is improved, for example local farms that supply goods to tourism agencies

²⁸² Department of Tourism, *Easy Guide for the Amended Tourism B-BBEE Sector Code*.

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

such as hotels, lodges, game reserves, restaurants must ensure that the quality of the goods is exceptional in order to gain more than 25% of cost of sale, thus growing the economy. The high levels of unemployment signal that there has been little socio-economic transformation in the post-apartheid era, therefore to remedy this predicament the amended sector codes mandate that 85% in cost of employment must be paid to South Africans and 50% of jobs created in the industry must be for black.²⁸⁹ However the challenge remains that majority of black people are not skilled in the tourism sector, therefore the implementation of the outlined skills development programmes must be highly prioritised to avoid outsourcing skills. Enforcement and compliance to the Skills Development Act will assist realise the objects of skills development in the amended tourism sector code, because the Skills Development Act purports to develop the skills of the South African workforce to ensure that skills acquired improve the furtherance quality of life of workers,²⁹⁰ furthermore the Act seeks to empower people to become employers through promoting self-employment.²⁹¹ Employees must be provided with opportunities to acquire new skills²⁹² by so doing the prospects of employment for those previously disadvantaged must be improved.²⁹³ The Act aims to achieve this by establishing the Sector Education and Training Authority (SETA).²⁹⁴ Learner ship programmes must focus on empowering the youth to gain learning and working experience in the tourism business sector by providing the youth with practical work of managing hotels, nature reserves or any other tourism-related business.²⁹⁵

(d) Socio-Economic Development,²⁹⁶ the desired socio-economic development by the code is development which ensures that 75% of benefits generated from tourism be distributed amongst the previously disadvantaged majority of blacks.²⁹⁷ According to the amended tourism B-BBEE, socio-economic is achieved when sustainable access to economy is made a readily available to those who were systematically

²⁸⁹ Department of Tourism, *Easy Guide for the Amended Tourism B-BBEE Sector Code*.

²⁹⁰ Section 2(1)(a)(i) of the Skills Development Act, 97 of 1998.

²⁹¹ Section 2(1) (a) (iii) of the Skills Development Act, 97 of 1998.

²⁹² Section 2(1) (c) (ii) of the Skills Development Act, 97 of 1998.

²⁹³ Section 2(1) (e) of the Skills Development Amendment Act 37 of 2008.

²⁹⁴ Section 9 of the Skills of the Skills Development Amendment Act 37 of 2008.

²⁹⁵ Section 6 of the Skills Development Act Skills Development Amendment Act 37 of 2008.

²⁹⁶ *Ibid* footnote 289 above.

²⁹⁷ *Ibid*.

excluded from having meaning access to economic resources.²⁹⁸ Development programmes that target the youth, women, people disabilities, people residing in rural areas, healthcare, community training for unemployed people, sporting development and so on are areas in dire need of transformation and benefit from socio-economic development.²⁹⁹

2.4 Provincial instruments on tourism

2.4.1 Limpopo Tourism Act, 2 of 2009

According to Ramuhashi there exist high levels of disparities in socio-economic development in the different provinces, while provinces such as Gauteng continue to thrive socially and economically, the Limpopo province struggles to grow and develop rapidly.³⁰⁰ Ramuhashi indicates that the Limpopo province contributes 75% in terms of formal employment which is the least portion compared to other provinces. The province at 25% is the highest in terms of informal employment.³⁰¹ According to the Department of Tourism in order to address unemployment, the government must create job opportunities requiring low-skill levels, thus accommodating the 25% employed in the informal sector and seeks to increase the percentage of those employed in the formal employment sector.³⁰² In this regard, the UNWTO provides that tourism offers opportunity get a job for unemployed prone groups such as youth, unskilled or low-skilled workers and women.³⁰³ Tourism is a labour intensive industry employing a wide range of skills, which is particularly useful in tackling poverty.³⁰⁴ Tourism is recognised as a sustainable industry capable of enhancing Limpopo provinces socio-economic development by generating revenue and contributes to the Gross Domestic Product (GDP).³⁰⁵

²⁹⁸ Department of Tourism, *Easy Guide for the Amended Tourism B-BBEE Sector Code*.

²⁹⁹ *Ibid.*

³⁰⁰ Ramuhashi, L. (2007). Development and disparities among provinces in South Africa: A comparative analysis. Department of Economics, University of Johannesburg.

³⁰¹ *Ibid.*

³⁰² Tourism Human Resources Development (THRD) Strategy and Skills Audit: Background Paper 2: *A Literature Review Report: Skills Supply and Demand in the Tourism Industry and sub-sectors in South Africa*, Human Sciences Research Council Economic Performance & Development Programme December 2016.

³⁰³ UNWTO, (2010). *Questionnaire on Tourism and Employment: Overview of Results*, also available at <http://t20.unwto.org/sites/all/files/docpdf/unwtoemployment.pdf> (retrieved 19 April 2018).

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid* footnote 300 above.

The provincial government of the Limpopo promulgated the Limpopo Tourism Act, 2 of 2009 repealing the Limpopo Tourism and Parks Board Act 8 of 2001.³⁰⁶ This is an important piece of legislation established on the foundation to provide for sustainable development and management of tourism, promote tourism in the province, stimulate tourism development and investment in the province and establish a tourism agency to assist in achieving the objects of the Act, stated by section 2 of the Act.³⁰⁷ Section 3(2)(a) of the Limpopo Tourism Act, 2 of 2009 states that “tourism development in the province requires the provincial government to monitor and support the implementation of the tourism strategies in the provincial and local spheres of government.”³⁰⁸ The purpose of this provision is to ensure that the people of the province benefit from tourism strategies meant to facilitate socio-economic transformation actually benefit those intended to benefit from tourism strategies, furthermore, the provision is a mechanism of compliance in that it requires the provincial government to ensure implementation of any provincial tourism strategies that seek to promote the development of the provinces tourism such as the Limpopo Tourism Agency. In terms of section 3(2)(c) of the Limpopo Tourism Act, 2 of 2009 tourism development require the provincial government to implement measures to ensure tourism skills development and capacity building programme.³⁰⁹ The purpose of recognising skills development is to ensure that the people of the province are equipped with all the necessary skills to penetrate the tourism industry and effectively compete in the formal sector of employment, which requires a person to have certain skills. To ensure that the objectives of the Act are carried out, Section 5(1) of the Limpopo Tourism Act, of 2009 establishes The Limpopo Tourism Agency (LTA).³¹⁰ Section 6(a) provides that functions of the Agency include to Develop and implement tourism marketing strategy with the framework of the provincial tourism strategies.³¹¹ The provision is for the purpose of ensuring that tourists are drawn into the province by marketing the provinces wide range of tourism products such as wildlife tourism, cultural tourism and so on. Section 6(d) provides that the Agency

³⁰⁶ Preamble of the Limpopo Tourism Act, 2 of 2009, See also Section 30 of Limpopo Tourism Act, 2 of 2009.

³⁰⁷ Section 2 of the Limpopo Tourism Act, 2 of 2009.

³⁰⁸ Section 3(2) (a) of the Limpopo Tourism Act, 2 of 2009.

³⁰⁹ Section 3(2) (c) of the Limpopo Tourism Act, 2 of 2009.

³¹⁰ Section 5(1) of the Limpopo Tourism Act, 2 of 2009.

³¹¹ Section 6(a) of the Limpopo Tourism Act, 2 of 2009.

must enhance and enable investment opportunities on provincial nature reserves.³¹² These provisions are essential in that when nature reserves draw investment, the investment can be used for environmental protection in the nature reserves and provide infrastructural development that stimulates job creation. Section 6(g) requires that the Agency must provide hospitality services in provincial nature reserves.³¹³ The inclusion of hospitality will help more job opportunities within the nature reserve for the local community because the hospitality provides a wide range of jobs including Chefs, housekeepers, waiters, and so on. Section 7(1) of the Limpopo Tourism Act, 2 of 2009 requires the MEC for tourism to constitute the Limpopo Tourism Board.³¹⁴ The Limpopo Tourism Board set to perform the duties of the agency as required by section 7(2) of the Limpopo Tourism Act, 2 of 2009.³¹⁵ Section 8(1) of the Act requires that the board must consist of³¹⁶

- (a) A representative of the-
 - (i) Department, nominated by the Head of Department; and
 - (ii) South African Local Government Association, nominated by the Chief Executive Officer;
- (b) Two members with experience and skills in tourism marketing, development and research;
- (c) One member with experience and skills in the wildlife industry;
- (d) One member with experience and skills in managing protected areas and biodiversity conservation;
- (e) Two members with experience and skills in business management;
- (f) Two members with experience and skills in community development; and
- (g) Two members from the Limpopo House of Traditional Leaders

³¹² Section 6(d) of the Limpopo Tourism Act, 2 of 2009.

³¹³ Section 6(g) of the Limpopo Tourism Act, 2 of 2009.

³¹⁴ Section 7(1) of the Limpopo Tourism Act, 2 of 2009.

³¹⁵ Section 7(2) of the Limpopo Tourism Act, 2 of 2009.

³¹⁶ Section 8(1) of the Limpopo Tourism Act, 2 of 2009.

The inclusion of different skilled personnel in the board is important because all the expertise combined together ensure that tourism of the province is environmentally sustainable promotes economic growth and ensures that tourism contributes to the socio-economic development of the people of Limpopo.

2.5 Conclusion

The chapter discussed the legislative framework of International, National and Provincial normative instruments dealing with environmental protection. The different legal normative legal frameworks are interconnected by the common goal of making tourism and an engine that drives socio-economic transformation by creating employment and eliminating poverty. International normative instruments ensure that there is the right to tourism. Every right must be beneficial to the holder of such right. Therefore the right to tourism comes with the benefit of bringing socio-economic to local people given the right, by creating job opportunities through various types of tourism such as cultural tourism, adventure tourism, and business tourism. National legislative framework ensures that historically disadvantaged excluded from the tourism industry are incorporated into the industry to reap benefit such as employment arising from the tourism industry, further more national legislation ensure the protection of South Africa's biological diversity by creating national parks and botanical gardens without losing foresight that such biological resources provide a tourism market for locals who use biodiversity for traditional medicines and animal skins for traditional clothing sold to tourist for profit thus creating employment.

CHAPTER 3: IMPEDIMENTS AND SOLUTIONS TO SUSTAINABLE TOURISM IN SOUTH AFRICA

3.1 Introduction

The South African tourism industry has developed significantly over the years contributing to the countries socio-economic transformation by providing jobs to millions of South Africans, reducing poverty and providing infrastructural development, however despite these achievements, full potential of the South African tourism sector to create more jobs, reduce poverty and improve infrastructure is hindered by a variety of impediments, This chapter discusses these impediments and makes a moderate attempt to offer sustainable solutions.

3.2 Immigration Regulations and Tourism

The South African tourism industry is faced with threat of losing the number of tourist arrivals as a result of the Immigration Regulation which came into effect on the 26 of May 2014. The Minister of tourism Hanekom expressed great concerns over certain provisions of the immigration regulation, stated that “Industry role players have highlighted two specific provisions, namely the new requirement for an unabridged birth certificate for minors, as well as the provision for in-person collection of biometric data in tourism source markets. Industry stakeholders argue that these measures may impact on the competitiveness of our destination in an era where countries are attempting to ease visa requirements to promote tourism.”³¹⁷

Section 6(12) provides that where both parents of a minor travel with a minor they should provide an unabridged birth certificate.³¹⁸ In cases where one of the parents travels with the minor such parent is required to produce proof of consent in the form of an affidavit from the other parent or death certificate of the deceased parent of the

³¹⁷ Hanekom, D. (2014) SA: Statement by Derek Hanekom, Minister of Tourism, on impact of new immigration regulations on tourism, also available at <http://www.polity.org.za/article/sa-statement-by-derek-hanekom-minister-of-tourism-on-impact-of-new-immigration-regulations-on-tourism-25062014-2014-06-25> (retrieved 13 March 2018).

³¹⁸ Section 6(12) Immigration Regulation of 2014.

child.³¹⁹ Furthermore, a person travelling with a minor who is not his/ her biological child needs to produce a copy of the unabridged birth certificate together permission to travel with the child from the parents of the child or guardian of the child.³²⁰ On the issues of biometrics referred to by the Hanekom, Section 6(3) provides that if any person wishes to depart or be admitted into the Republic he/she must subject himself to the immigration officer prior to their departure from the Republic or admission into the Republic. The provisions pose a problem on tourism because people who do not reside near South African embassies, visa centres, and consulates have to incur extra expenses in order to obtain the relevant documentation required for travelling and submission of their biometric.³²¹

3.2.1 Regulation of Tourism Immigration

According to the Department of Tourism, tourism development relies on travelling to South Africa made easier and affordable.³²² The Department of tourism recognises that while other countries make travelling to their countries easier by issuing visas on arrival and providing online visa application, travelling to South Africa is strenuous as travellers have to apply in person for a visa at a high cost and considerable inconvenience.³²³ In order to ensure that tourism development is not hindered by strenuous Immigration Regulations the Department of Home Affairs announced its commitment to manage immigration in a way that promotes national development. The Department of Home Affairs recognises that South Africa receives over 10 million international visitors, who through economic activities sustain millions of jobs.

To ensure that tourism contributes to the socio-economic transformation amendments have been made by the Department of Home Affairs to the 2014 Immigration Regulations.³²⁴ The amendment of the 2014 Immigration Regulations is

³¹⁹ Section 6(12) Immigration Regulation of 2014.

³²⁰ *Ibid.*

³²¹ Visa and immigration policies, Visit <http://ineng.co.za/south-african-immigration-policies/> (retrieved 02 February 2018)

³²² Department of Tourism, (2018) Tourism budget vote speech by Minister Henekom, D. in the National Council of Provinces 12 June 2018.

³²³ *Ibid.*

³²⁴ Department of Home Affairs, Statement by the Minister of Home Affairs, Mr. Malusi Gigaba MP, at the Media Briefing on Visa-related Reforms in Pretoria on 25 September 2018, also available at <http://www.dha.gov.za/index.php/statements-speeches/1186-statement-by-the-minister-of-home-affairs-mr->

in line with the 2015 recommendations made by the Inter- Ministerial Committee (IMC) on Immigration Regulations.³²⁵ The IMC was tasked to address concerns raised by stakeholders in the tourism sector regarding the implementation of the 2014 Immigration Regulation.³²⁶ The Department of Home Affairs made the following changes. Foreign nationals travelling with a minor are still required to have in their possession documentation that proves parental consent, however South African Immigration officials will insist on documentation by exception in cases of high risk situations rather than requiring such documentation from all travellers, furthermore instead of denying entry to travellers who do not possess the required documents opportunity will be given to such travellers to prove parental consent.³²⁷ South African immigration officials will receive training to ensure the smooth implementation of the revised regulations.³²⁸

South African is committed to making travelling easier for the purpose of developing tourism as an economic sector that creates employment and alleviates poverty, as such amendment of the 2014 Immigration Regulations also include visa waiver, wherein the top 10 overseas tourism markets excluding China and India, citizens of the United Kingdom, United States of America, Germany, France, Australia, Brazil, Canada and Netherlands who hold an ordinary passport do not have to apply for a visa to enter into South Africa.³²⁹ A visa waiver has also been for the citizens of the Russian Federation and Angola to travel to South Africa without the need to apply for a visa.³³⁰ According to the Department of Home Affairs negotiations are being finalised to conclude visa waiver for ordinary passport holders in following countries: Algeria, Egypt, Tunisia, Ghana, Cuba, Qatar, Morocco, Iran and so on.³³¹ The initiatives taken by the Department of Home Affairs to make travelling to South Africa

[malusi-gigaba-mp-at-the-media-briefing-on-visa-related-reforms-in-pretoria-on-25-september-2018](#) (retrieved 1 October 2018).

³²⁵ Department of Home Affairs, Statement by the Minister of Home Affairs, Mr. Malusi Gigaba MP, at the Media Briefing on Visa-related Reforms in Pretoria on 25 September 2018, also available at <http://www.dha.gov.za/index.php/statements-speeches/1186-statement-by-the-minister-of-home-affairs-mr-malusi-gigaba-mp-at-the-media-briefing-on-visa-related-reforms-in-pretoria-on-25-september-2018> (retrieved 1 October 2018).

³²⁶ *Ibid.*

³²⁷ *Ibid.*

³²⁸ *Ibid.*

³²⁹ *Ibid.*

³³⁰ *Ibid.*

³³¹ *Ibid.*

easy will help encourage more visitors to come to South Africa and boost the tourism sector to create more jobs, eliminate poverty and provide infrastructural development.

3.3 Safety and Security in Tourism

State safety and security are major role players in the tourism industry, the alarming increased crime rate in the Republic undermine the growth of the industry. According to Nkosi, crimes perpetrated against tourists does not only affects the victims but also affects the number of people visiting particular destination as both domestic and international tourists share their unpleasant experiences through word of mouth of crimes against their bodily integrity and crimes against their property, such news receive wide coverage by the media.³³² This view is shared by Mudzanani where he quoted Mabudafhasi, who said: "with a crime under close scrutiny in the media, and news spreading at an alarming speed, tourists who fall victim to crime within a matter of hours damage our reputation".³³³ The inclusion of South Africa in the list of the World's most dangerous destination destroys the image of South Africa which growth of the tourism industry is mostly dependant on.³³⁴ This undermines the growth of the industry because visitors would shy away from areas considered to be dangerous in preference of safer destinations.³³⁵ Criminal activities perpetrated against tourists can be categorised in terms of physical crimes (which can be in the form of bodily harm), economic crimes (such as unjustified increase of prices or fraud) and psychological crimes (in the form of harassment),³³⁶ there exists no likelihood that tourists who experienced these heinous crimes could ever revisit or recommend the destination to others.³³⁷ Tourism is one sector that has been identified to have the potential of bringing about socio-economic development in most of the communities in South Africa, by creating employment in a number of strategic sectors of the

³³² Nkosi, G.S (2010)*The Impact of Crime on Tourism in the City of uMhlatuze, KwaZulu-Natal*. South Asian Journal of Tourism and Heritage (2010), Vol. 3, No. 2.

³³³ Mudzanani, T.E (2017) *Examining newspaper articles on tourism and crime in South Africa*. African Journal of Hospitality, Tourism and Leisure, Volume 6 (2) - (2017).

³³⁴ Ferreira, S.L.A, and Harmse.A.C, (2000). *Crime and tourism in South Africa: International tourists' perception and risk.*" South African Geographical Journal, 82(2): 80-85.

³³⁵ *Ibid.*

³³⁶ Perry, E.C., and Potgeiter, C., (2013). *Crime and Tourism in South Africa*. Journal of Human Ecology 43(1), 101-111.

³³⁷ *Ibid.*

economy such as hospitality, entertainment, arts and culture etc.³³⁸ To continue to leverage this, the government needs to ensure enforcement and compliance to policies and legislation that ensure the safety of those participating in the tourism industry.

South Africa's tourism industry is able to provide socio-economic transformation because of the variety of tourism products.³³⁹ Mudzanani observes that business tourism which forms part of the various tourism products has over the years has shown immense growth.³⁴⁰ According to Shaw, it is of paramount importance not only to look at criminal activities against tourists but also to look at criminal activities committed against the business itself.³⁴¹ Business helps to generate foreign investment. Crimes targeting businesses discourage foreign investment and tourism crime-related activities increase poverty due to loss of jobs and investment.³⁴²

Xenophobia and Xenophobic attacks undermine the growth of the tourism industry.³⁴³ The attacks directed towards foreign nationals destroy the economic structure that tourism has built and hinder further socio-economic development accrued to community residents through tourism enterprises.³⁴⁴ The government must take steps to educate people about the resultant effects of xenophobic attacks on tourism and punish those who perpetrate such hate crimes; this will help protect the country's image internally and internationally.

3.3.1 Prevention of Crime against Tourism

The solution to crime in tourism affecting sustainable tourism growth is to have a tourism complaints officer as required by section 45(1) of the Tourism Act, 3 of 2014 which states that "The Minister may designate a suitably qualified officer of the Department as a Tourism Complaints officer and publish his or her name in the

³³⁸ Allen, G. and Brennan, F. (2004) *Tourism in the New South Africa*, Chp 1, p.g 18.

³³⁹ Mudzanani, T.E (2017) *Examining newspaper articles on tourism and crime in South Africa*. African Journal of Hospitality, Tourism and Leisure, Volume 6 (2) - (2017).

³⁴⁰ *Ibid.*

³⁴¹ Shaw, G. K., (2010). *A risk management model for the tourism industry in South Africa* (Doctoral dissertation, North-West University).

³⁴² International Business Wiki, (2011) *Crime Affecting Business in South Africa*, also available at <http://www.bancrime.com/articles/crime-affecting-business-in-south-africa> (retrieved 16 May 2018).

³⁴³ Adeleke, B.O, et al, (2008), *Impacts of xenophobia attacks on tourism*. An International Journal, Vol. 16, Issue 2, Jan 2008, p. 136 – 147.

³⁴⁴ *Ibid.*

gazette”.³⁴⁵ Section 47(c) of the Tourism Act, 3 of 2014 obligates the complaints officer that upon receiving a complaint to refer the complaint to the South African Police Services if the complaint alleges that a person has committed an offence.³⁴⁶ South African law already classifies common law crimes such as theft and murder and statutory crimes such as rape in terms of section 3³⁴⁷ and sexual assault in terms of section 5³⁴⁸ of the Criminal Law Sexual Offences and Related Matters Amendment Act, 3 of 2007. These are some crimes perpetrated against tourist. The Tourism Complaints officer must actually compel the National Prosecuting Authority which is responsible for prosecuting crimes in terms of section 179(2) of the Constitution of the Republic of South Africa, 1996,³⁴⁹ to prosecute those who commit these crimes against tourists in this way tourism will feel that justice is served and that their complaint about crimes are taken seriously. Other measures that can ensure safety is ensuring police visibility in tourism attraction areas and South Africa’s points of entry such as airports because these are places where criminals target tourists.

3.4 White Paper on Development and Promotion of Tourism in South Africa, May 1996 (Key constraints)

3.4.1 Tourism has been inadequately resourced and funded

The government has not taken priority to devote adequate resources to develop the tourism industry, only marginal resources have been devoted to helping develop the tourism sector.³⁵⁰ Incorporation of the tourism as an economic sector requires that formulation of South Africa’s monetary policy must ensure that the tourism adequately funded.³⁵¹ Failure to allocate resources towards tourism development means that tourism will remain a missed opportunity for socio-economic transformation.³⁵²

³⁴⁵ Section 45(1) of the Tourism Act, 3 of 2014.

³⁴⁶ Section 47(c) of the Tourism Act, 3 of 2014.

³⁴⁷ Chapter 14, Criminal Law and Procedure also available at <https://section27.org.za/wp-content/uploads/2010/04/14Manual.pdf> (retrieved 12 June 2018).

³⁴⁸ Section 3 of the Criminal Law Sexual Offences and Related Matters Amendment Act, 3 of 2007.

³⁴⁹ Section 5 of the Criminal Law Sexual Offences and Related Matters Amendment Act, 3 of 2007.

³⁵⁰ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

³⁵¹ *Ibid.*

³⁵² *Ibid.*

3.4.1.1 The solution to funding in Tourism

To realise the potential of tourism as a tool for socio-economic transformation the Department of National Treasury has indicated that marketing of South Africa is dependent on the countries tourism; as such the Department of National Treasury has devoted itself to transfer 52, 7% (R 3, 8 Billion) of the budget for the Medium-Term Expenditure Framework (MTEF) running for the years 2018/19 to 2020/21.³⁵³ Realising that poverty alleviation and infrastructural development can be achieved through tourism, the cabinet has approved additional funding of R 35 Million in the year 2019/20 and R 36, 9 Million in the year 2020/21 through the Economic Competitiveness and Support Package in the tourism incentive programme sub-programme.³⁵⁴ The purpose of the additional funding is meant for increasing economic growth and job creation targeting market access, tourism grading, and transformation initiatives.³⁵⁵ Funding for tourism can also be accelerated by attracting Foreign Direct Investment through mobilising international business to invest in South Africa's tourism businesses such as hotels, resorts, guesthouses and so on.³⁵⁶

3.4.2 Myopic private sector

The narrow view of the tourism private sector limits the sustainable development of tourism because South Africa's tourism private establishments such as hotels prioritise only on product and services offered within their vicinity.³⁵⁷ Tourism products offered by the private sector are affected by the external factors for example overcharges by taxi drivers, destroyed environments, dilapidated school, roads and so on, hotels and other establishments turn a blind eye on these factors.³⁵⁸ According to the White Paper hotels and other establishments that take these factors into account turn to be successful, this has been proven in cases such as those of the Half Moon hotel in Jamaica adopted half a mile of the highway that

³⁵³ Department of National Treasury (2018) Budget Estimates of National Expenditure Vote 33 Tourism.

³⁵⁴ *Ibid.*

³⁵⁵ *Ibid.*

³⁵⁶ Snyman, J.A. and Saayman, M. (2009), "Key factors influencing foreign direct investment in the tourism industry in South Africa", *Tourism Review*, Vol. 64 Iss 3 pp. 49 – 58.

³⁵⁷ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

³⁵⁸ *Ibid.*

leads to the hotel and committed to maintaining the highway.³⁵⁹ The hotel is also at the forefront of the conservation of the environment around the hotel.³⁶⁰ Minor contributions from the private sector are required for community development.³⁶¹ Such minor contributions include the private sector taking the initiative to be a driving force providing training in marketing, business skills and educating new entrants in tourism with regards to services requirements.³⁶²

3.4.2.1 The solution for myopic tourism private sectors view of how to conduct tourism

The Mineral and Petroleum Resources Development Regulation of 2004 makes provision for a Social and Labour Plan for mining companies or any person who wishes to acquire a mining right in terms of Regulation 42(1)(a).³⁶³ Regulation 41 provides the objectives of the Social and Labour Plan being the pioneering promotion of employment and advance the social and economic welfare of all South Africa, contribute to the transformation of the mining industry, lastly the Social and Labour Plan seeks to ensure that the holders of mining rights contribute towards the socio-economic development of areas in which they are operating.³⁶⁴ Regulation 46 demands that the Social and Labour Plan must contain career progressions plans, skills development initiatives, human resource development, internships, bursaries and so on.³⁶⁵ To ensure that the private sector in tourism contributes to the socio-economic transformation of the people of South Africa the notion of a Social and Labour must be required from institutions such as hotels, national parks, amusement parks, museums and so on, in which they detail out on how they intend on providing socio-economic transformation to the people living in the area in which they operate. The Social Labour Plan in tourism must also include skills development, career progression plans, human resource development, and so on. This will in turn ensure that tourism private sector establishments such lodges, game reserves, recreational

³⁵⁹ *Ibid.*

³⁶⁰ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

³⁶¹ Briedenhamn, J. and Wickens, E. (2004) *Rural Tourism — Meeting the Challenges of the New South Africa*. Int. J. Tourism Res. 6, 189–203 (2004) DOI: 10.1002/jtr.484.

³⁶² *Ibid.*

³⁶³ Regulation 42(1) (a) of the Mineral and Petroleum Resources Development Regulation, Published under Government Notice R527 in Government Gazette 26275 dated 23 April 2004.

³⁶⁴ *Ibid.*

³⁶⁵ *Ibid.*

fishing not only maximise on profits while abandoning to development the lives of the local people by providing with employment and developing community structures such sports fields, schools, community halls and so on.

3.4.3 Limited integration of local communities and previously neglected groups into tourism

The exclusion of Historically Disadvantaged Black South Africans from the tourism industry through the above mentioned Apartheid laws was a major contributing factor hindering the socio-economic transformation of Historically Disadvantaged Black South Africans.³⁶⁶ Moreover exclusion of the Historically Disadvantaged Black South Africans from the benefits of tourism is also fairly due to lack of tourism information, lack of tourism finance for Black tourism businesses, failure by the existing establishment to build partnerships with local communities, limited incentives meant to encourage private enterprises that create jobs and promote the development of local capacity.³⁶⁷

3.4.3.1 The solution for limited integration of local communities and previously neglected groups into tourism

To remedy this situation the government must ensure that implementation of the following incentives provided by the White Paper on Development and Promotion of Tourism of South Africa promoting meaningful inclusion and participation of Historically Disadvantaged Black South Africans in the tourism industry neglected are effectively implemented through tools such as the Tourism B-BBEE which seeks provide socio-economic emancipation of Black people though employment thus employment can be created in the following tourism sectors:³⁶⁸

Operators of tourism infrastructure;

- Small guest houses or bed and breakfast establishments
- Taverns, shebeens, bars and restaurants
- Transport - taxi services, tours, trips, airport and other transfers

³⁶⁶ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

³⁶⁷ *Ibid.*

³⁶⁸ *Ibid.*

- Attractions - township experiences, apartheid and struggle history
- Museums - traditional culture and history
- Entertainment - music, dance, theatre, story-telling, etc.
- Other - florists, art galleries, hair salons, beauty parlours, craft shops

Services to the industry;

- Tour operator services
- Travel agencies
- Tour guides
- Marketing services
- Booking services
- Training services

Suppliers to the industry;

- Laundry services -ironing only, full laundry, sewing and repairs
- Porter services
- Production and selling of crafts
- Interior decor - rugs, wall hangings, furniture, textiles, art
- Construction - collection of materials, thatching, building trades
- Maintenance services - vehicles, plant and equipment
- Environmental services - gardening, bush clearing, composting
- Specialty agriculture - herbs, organically grown produce
- Specialty tourism products - traditional hunting, traditional medicines and herbs

The integration of the above services prioritising the involvement of local communities and the previously disadvantaged groups will ensure that government policies in the tourism sector will ensure that local communities and previously

disadvantaged groups are not only involved in the tourism sector in order for them to just supply labour services but will open opportunities for entrepreneurial activities essential for sustainable tourism contributing to socio-economic transformation.³⁶⁹

3.4.4 Inadequate tourism education, training and awareness

Deprivation of education, training and awareness opportunities for the previously neglected groups in the tourism industry halts the socio-economic development of these groups because the disadvantaged unable them to compete for meaningful jobs with other privileged groups.³⁷⁰ Training and education in tourism and hospitality services are only offered by a limited number of public and private institutions at tertiary level.³⁷¹ The millions of South Africans who are unable to have access to the limited institutions are left with no skills or knowledge to penetrate the space of tourism and improve their livelihood.³⁷² Apparent disparities in tourism training facilities in the provinces show uneven distribution where provinces such as Gauteng and Northwest and Western Cape are leading while provinces such as Mpumalanga and Limpopo have very little to show in terms of tourism education facilities this is apparent in higher institutions of learning such as universities and technikons.³⁷³ The lack of tourism education facilities in these provinces are obstacles to the development of tourism in these provinces and the socio-economic transformation of the people in the provinces.³⁷⁴ The skills training that the previously disadvantaged are exposed to are at the lowest skills level such as barmen, cleaners and porters, making them exposed to exploitation in tourism employment.³⁷⁵

3.4.4.1 The solution for education, training and awareness in tourism

The University of Limpopo should be utilised as a beacon of hope in providing much-needed tourism education and training. The institution must seek to introduce tourism qualifications offered in universities such as the University of Johannesburg; such courses included Hospitality Management, Tourism Development and

³⁶⁹ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

³⁷⁰ *Ibid.*

³⁷¹ *Ibid.*

³⁷² *Ibid.*

³⁷³ *Ibid.*

³⁷⁴ *Ibid.*

³⁷⁵ *Ibid.*

Management, Food and Beverage operation and so on.³⁷⁶ The courses will provide knowledge and allow the people to penetrate the tourism industry with the required knowledge and skills and contribute towards their socio-economic development. With the government of the Republic announcing and providing free education accessibility to tourism education, training and awareness are made possible.³⁷⁷ There is great improvement in the Mpumalanga province. The University of Mpumalanga offers tourism education through a Diploma in Hospitality Management,³⁷⁸ Hospitality Management is an essential part of tourism because hospitality includes accommodation services provided by Small and Medium Tourism Enterprises such as Lodges, Guest houses and Breakfast in Bed essential in providing employment, poverty alleviation and infrastructural development. The qualification focuses on education, work-integration leaning and skills development required for all levels of employment in the tourism hospitality industry.³⁷⁹

3.4.5 Inadequate protection of the environment

It is not only crimes perpetrated against tourists that affect tourism growth in South Africa, illegal trade of wildlife threatens tourism development, biodiversity and offends against the principle of intergeneration equity which provides that the current generation should pass the earth and its resources to the next upcoming generation in no lesser condition as it was.³⁸⁰ The principle is supported by both international and domestic legal instruments. The 1972 United Nations Conference on Human Environments, on the one hand, declared that there is a need to protect the environment for both the present and future generations,³⁸¹ on the other hand, the Constitution of the Republic of South Africa, 1996 provides that the environment

³⁷⁶ University of Johannesburg, School of Tourism and Hospitality STH Courses and Programmes, also available at <https://www.uj.ac.za/faculties/management/School-of-Tourism-and-Hospitality-STH/Pages/Courses-and-Programmes.aspx> (retrieved 13 June 2018).

³⁷⁷ Areff, A. and Spies, D. (2017) News 24, *BREAKING: Zuma announces free higher education for poor and working class students*, also available at <https://www.news24.com/SouthAfrica/News/zuma-announces-free-higher-education-for-poor-and-working-class-students-20171216> (retrieved 13 June 2018).

³⁷⁸ University of Mpumalanga Programmes and Faculties, also available at <http://www.ump.ac.za/programmes/UJP%20Programmes%20and%20Faculties%20Brochure%20.pdf> (retrieved 31 July 2018).

³⁷⁹ *Ibid* footnote 376 above.

³⁸⁰ Hunter, T. (2011) Equality for the Earth, *The Role of Intergenerational Equity and Customary International Law*. Volume 17, Issue 1, Article 6, Autumn 2011.

³⁸¹ Weiss, B. (1999) *Intergenerational equity: a legal framework for global environmental change* also accessed 13 March 2017.

should be protected for the benefit of both the present and future generations.³⁸² Consequences that flow from lack or non-environmental protection is a loss of tourism resources found within the environment, thus negating tourism development required for socio-economic development.

According to Griffiths, illicit trade of wildlife includes the trade of live or deceased animals or plants on the black market as a lucrative business for profit.³⁸³ In South Africa animals targeted in the trade include lion, rhinos poached for their horns, elephants for their ivory, and cheetahs for their skin and so on³⁸⁴. Griffiths further provides that since the year 2007 the rates of rhino poaching have exponentially increased causing the potential extinction of one of the big five animals thus the decimation of one of the big five animals negatively impacts tourism and the economy.³⁸⁵ Legislation that seeks to protect South Africa's wildlife such as section 56 of the National Environmental Management Biodiversity Act of 2004 authorises the Minister to publish a list of endangered species facing extinction thus any person is barred from engaging in restricted activity such activity includes the use of any method or device for searching, luring, alluring, lying in wait with the intention to capture or kill such specimen or to exercise physical control and so on as provided by section 1³⁸⁶ of the Act, without obtaining the required permit in terms of chapter 7 of the, Section 71(1)³⁸⁷ which provides that no person may carry out a restricted activity without a permit, these provisions must be effectively enforced by South African judiciary to ensure wildlife protection.

According to the NEMBA "Biodiversity means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems".³⁸⁸ In order for South Africa's biodiversity to flourish, maintenance of a healthy environment must be prioritised because biodiversity is largely dependent on healthy environment. South Africa is

³⁸² Section 24 of the Constitution of the Republic of South Africa, 1996.

³⁸³ Griffiths, M. (2017) *The cultural impact of wildlife crime in South Africa*. AJOL SA Crime Quarterly Vol. 62 (2017) also available at <http://dx.doi.org/10.17159/2413-3108/2017/v0n60a1728> (retrieved 10 March 2018).

³⁸⁴ *Ibid.*

³⁸⁵ *Ibid.*

³⁸⁶ Section 1 of the National Environmental Management Biodiversity Act, 2004.

³⁸⁷ Section 71(1) of the National Environmental Management Biodiversity Act, 10 of 2004.

³⁸⁸ National Environmental Management Biodiversity Act, 10 of 2004.

well-renowned and rich in fauna and flora life, the need for South Africa to protect the environment is due to South Africa's dependence on tourism, therefore, the destruction of flora may have a negative impact on the tourism industry³⁸⁹. Therefore the provision of section 24³⁹⁰ of the Constitution together with other related legislation such as the National Environmental Management Act, 1998³⁹¹ and the National Environmental Management Biodiversity Act, 2004³⁹² must be enforced by the State through the Courts by prosecuting those offending against the provisions of the Acts to ensure environmental protection while promoting socio-economic development. The government's failure to ensure environmental conservation will continue to curtail the development of the tourism sector.³⁹³

3.4.5 Adequate Environmental Protection

Indicated above as a major threat to biodiversity and sustainable environmental conservation is the poaching of the big five animals such as the Elephant, Lion and Rhinos, this affects tourism growth as the country relies on these animals for tourism marketing and attraction. The Rhino species have recently been the mostly poached animals for their horns intended to be sold in the black market. One of the conventional methods used to try and protect Rhinos as they are threatened with extinction is to remove the horns the Rhino's the process is called "Dehorning".³⁹⁴ To ensure the safety of the Rhinos the process is carried out by a professional conservation team.³⁹⁵ The approach of this mechanism is termed "No horn, No poaching".³⁹⁶ The Convention on International Trade in Endangered Species of Wild Fauna and Flora at in 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 selling of Rhino horns will not curb illegal Rhino

³⁸⁹ Mafunganyika, D.G. (2009), *The right to development versus environmental protection in South Africa*.

³⁹⁰ Section 24 of the Constitution of the Republic of South Africa, 1996.

³⁹¹ National Environmental Management Act, 107 of 1998.

³⁹² National Environmental Management Biodiversity Act, 10 of 2004.

³⁹³ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

³⁹⁴ Rhino Dehorning Explained: *A Conservation Approach to Save the Rhino* (2007), also available at <https://wildlifeact.com/blog/rhino-dehorning-explained-conservation-approach/> (retrieved 14 June 2018).

³⁹⁵ Rhino Dehorning Explained: *A Conservation Approach to Save the Rhino* (2007), also available at <https://wildlifeact.com/blog/rhino-dehorning-explained-conservation-approach/> (retrieved 14 June 2018).

³⁹⁶ *Ibid.*

poaching but would encourage expand the market and availability of Rhino horns.³⁹⁷ On the 2nd of October 2016, the CITES CoP17 passed a resolution to shut down Ivory Markets defeating Namibia's and Zimbabwe's proposal to open Ivory Markets.³⁹⁸ The resolution is a step in the right direction as a mechanism of protecting Elephants from illegal poaching of their Ivory because without a market to sell Ivory there is no need or less desire to poach Elephants for their ivory.

Another approach that could enhance healthy environmental standards essential for tourism development that ensures the socio-economic transformation of the people of South Africa is to prevent environmental degradation from occurring taking into consideration all environmental impacts of any project, rather than seeking to remedy the environmental degradation after it has occurred. This 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 2,³⁹⁹ 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.⁴⁰⁰ These provisions then require parties to put in place an Environmental Impact Assessment (EIA) that will stipulate on how one intends on preventing harm to the environment or minimise the damage 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 person who lodges an application for mining right, reconnaissance permission, prospecting right or mining permit must submit an environmental management plan (EMP)⁴⁰¹, and must be in line with requirements of section 39(3) of the Mineral and Petroleum Resources

³⁹⁷ What happened at the CITES CoP17 meeting in Johannesburg (2016), also available at <https://www.elephantleague.org/happened-cites-cop17-meeting-johannesburg/> (retrieved 14 June 2018).

³⁹⁸ *Ibid.*

³⁹⁹ Section 23(2) (b) National Environmental Management Act, 107 of 1998.

⁴⁰⁰ Section 23(2) (c) National Environmental Management Act, 107 of 1998.

⁴⁰¹ Section 39 of the Mineral and Petroleum Resources Development Act, 28 of 2002.

Development Act, 28 of 2002 requiring 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.⁴⁰² The Environmental Impact Assessment Regulation of 2006 ensures that parties comply with the EIA by making providing offences in terms of section 81⁴⁰³ 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 1991.⁴⁰⁴ 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 2011.⁴⁰⁵ In this case, the matter essentially revolved around the dispute whether a wetland existed on the farm Randjlesfontein 405JR where construction of a development project was to take place.⁴⁰⁶ Accused no 1 Stefan Frylink and accused no 2 Mpofo 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 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.⁴⁰⁷

Despite mechanisms to ensure environmental protection that ensures the sustainable conservation of species essential for tourism development targeting socio-economic transformation, the decision of the North Gauteng High Court in the matter between Department of Environmental Affairs (DEA) and private rhino owners, Messrs. J Kruger and J Hume, 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

⁴⁰² Section 39(3) of the Mineral and Petroleum Resources Development Act, 28 of 2002.

⁴⁰³ Section 81 of the Environmental Impact Assessment Regulation of 2006.

⁴⁰⁴ Section 81(2) of the Environmental Impact Assessment Regulation of 2006.

⁴⁰⁵ *S v Frylink and Mpofo Environmental solution cc* 14/1740/2010.

⁴⁰⁶ *Ibid.*

⁴⁰⁷ *Ibid.*

setting it aside immediately is quite disappointing because it is a setback in the fight against Rhino poaching.⁴⁰⁸ The decision was based on the ground 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.⁴⁰⁹ 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.⁴¹⁰ The Constitutional Court on the 5th of April 2017 also dismissed the DEAs application for leave to appeal.⁴¹¹ The Endangered Wildlife Trust is of the view that the DEA should have been or be afforded the opportunity to meet the requirements of public participation as permitted by precedent.⁴¹² According to Watts the main reason why the Moratorium was implemented as a deterrence for those who seek to use the domestic trade of Rhino horn, derivatives or production as a cover for smuggling,⁴¹³ this therefore this means that declaring the Moratorium as invalid opens up room for smugglers to use the legalise domestic trade as a cover for illegal trade of Rhino horn, 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 Groendewald and Hugo Ras because the defendants might argue that Rhino horns found in their possession were intended for local buyers rather than exporting them.⁴¹⁴

3.4.6 Lack of infrastructure, particularly in rural areas

Failure of the local community to participate in the tourism industry is largely based on poor infrastructural development in the rural areas.⁴¹⁵ Limited transportation services prevent rural communities to have meaningful participation in the industry either as potential suppliers of products and services and as tourists themselves.⁴¹⁶

⁴⁰⁸ Endangered Wildlife Trust (2016) Response to the Constitutional Court Decision Regarding the Rhino Horn Moratorium, also available at https://www.ewt.org.za/media/2017/Public%20Response%20to%20the%20Constitutional%20Court%20Decision%20Regarding%20the%20Rhino%20Horn%20Moratorium_2017.pdf (retrieved 16 June 2018).

⁴⁰⁹ *Ibid.*

⁴¹⁰ *Ibid.*

⁴¹¹ *Ibid.*

⁴¹² *Ibid.*

⁴¹³ Traveller24, Avery, J. (11 March 2017) *New trade ruling spells end for rhinos say conservationists.*

⁴¹⁴ Traveller24, Avery, J. (11 March 2017) *New trade ruling spells end for rhinos say conservationists.*

⁴¹⁵ White Paper on Development and Promotion of Tourism in South Africa, May 1996.

⁴¹⁶ *Ibid.*

Tourism is all travel for whatever purpose that results in one or more nights being spent away from home.⁴¹⁷ This means that the country must have an integrated transport system which enables people to tour the country with ease; therefore the lack of an integrated transport system remains to be a challenge that undermines the growth of the industry.⁴¹⁸ Brown asserts that tourism development must support infrastructure development, furthermore tourism development that seeks to promote socio-economic transformation cannot lean only on natural attractions, natural attractions must be supported by tourist facilities and supporting infrastructure.⁴¹⁹

3.4.6.1 The solution for Infrastructural development in rural areas

The amount of R 1.1 Billion which is 14, 9% of the Department of Tourism total budget will fund the working for tourism sub-programme which aims to facilitate the development of tourism infrastructure leading to job creation. The funding is particularly for SMMEs, accredited training, skills development facilities, programmes targeting food safety, as well as young chefs and sommelier.⁴²⁰ The aforementioned initiatives of the working for tourism sub-programme are expected to yield 13 475 full-time jobs by the year 2020/21.⁴²¹

3.5 Information and Communication Technology (ICT) and Tourism

Addressing the Nation on the 16th of February 2018, the government of the Republic highlighted to the nation the significance of tourism impact on socio-economic development, stating that the current state of affairs indicates that tourism sustains 700 000 direct jobs, furthermore in comparison to other growth sectors, tourism is performing exceptionally well.⁴²² The government alluded that development of the country is dependent on the countries capabilities to adapt to the constantly evolving

⁴¹⁷ Tourism Development and Promotion in South Africa, White Paper, 1996.

⁴¹⁸ Bojanala, Tourism edition 04, October-December 2013.

⁴¹⁹ Brown, D.O (1999) *Political risk and other barriers to tourism promotion in Africa: Perceptions of US-based travel intermediaries*. Journal of Vacation Marketing Vol. 6 No. 3, 2000, pp. 197±210.

⁴²⁰ Department of National Treasury (2018) Budget Estimates of National Expenditure Vote 33 Tourism.

⁴²¹ *Ibid*.

⁴²² South Africa's State of the Nation Address by President Cyril Ramaphosa (16 February 2018) also available at <<https://www.timeslive.co.za/politics/2018-02-16-in-full--read-cyril-ramaphosas-first-state-of-the-nation-address/>> (retrieved 12 March 2018).

technological advancements.⁴²³ Developing countries like South Africa are sluggish in their approach to familiarise themselves with ICT regardless of the benefits of ICT to develop tourism.⁴²⁴ Despite South Africa's sophisticated ICT market, South Africa is identified as being left behind in ICT comparison to other African countries and ranking poorly on the overall global indices.⁴²⁵ The failure of South Africa to catch up in ICT presents an obstacle for tourism development and socio-economic transformation because Small Medium Tourism Enterprises (SMTEs) have been transformed globally.⁴²⁶ SMTEs are considered as powerful tools for socio-economic transformation. Creating jobs in tourism cannot be sustained independent from entrepreneurial and business development, hence ICT development in South Africa is important because of the entrepreneurial and business opportunities presented by SMTEs.⁴²⁷

South Africa must seek to include ICT infrastructure in tourism policy, legislative, and relevant mechanisms essential for poverty alleviation and encourage growth in sectors such as tourism.⁴²⁸ ICT infrastructure helps expose the rural communities to tourism socio-economic projects within their vicinity.⁴²⁹ One of the ways in which to ICT incorporated in tourism is for tour operators to computerise business functions such as facilitating online bookings and bookings.⁴³⁰ In this way South Africa will be enabled to actively compete and participate in the international tourism value chain, attracting more tourists and bringing much needed socio-economic advancement to the people of South Africa.

⁴²³ South Africa's State of the Nation Address by President Cyril Ramaphosa (16 February 2018) also available at <<https://www.timeslive.co.za/politics/2018-02-16-in-full--read-cyril-ramaphosas-first-state-of-the-nation-address/>> (retrieved 12 March 2018).

⁴²⁴ Shanker D (2008) *ICT and Tourism: challenges and opportunities*. Humanities & Soc. Sci., Indian Institute Technol. Guwahati-781039.

⁴²⁵ Tichaawa, T.M. et al (2017) *The Impact of Information Communication Technologies (ICTs) on Tourism Businesses in East London, South Africa*. Acta Universitatis Danubius Vol 13, no 3, 2017.

⁴²⁶ *Ibid.*

⁴²⁷ *Ibid.*

⁴²⁸ Van Heeden, H. et al (2015) *The Current Infrastructure Conditions and the Problems Relating to It*. EDIS-Publishing Institution of the University of Zilina, Vol 3, No 1, April 2015.

⁴²⁹ *Ibid.*

⁴³⁰ Lehloenyana, P.M, (2017), *Development and regulation of tourism for mutual benefit in the Southern African Development Community (SADC)*, Law, Democracy & Development/ VOL 21 (2017).

3.6 Conclusion

Having identified the challenges faced by the South African tourism industry which stand as a stumbling block towards tourism development and negates the aim of utilising tourism as an impetus for socio-economic transformation. The primary solutions to all the above-mentioned impediments are embedded in the already existing policies, institutions, legislation and so on, regulating the different problematic tourism areas. South Africa already has legislation, policies, regulations and institutions seeking to achieve adequate safety and security, environmental protection, infrastructural development, skills development and so on, however, the lack of or non-enforcement and lack of or non-compliance to policies, legislation, regulation, and institutions negates tourism development and socio-economic development for the people of South Africa.⁴³¹

⁴³¹ Lehloenya, P.M, (2017), *Development and regulation of tourism for mutual benefit in the Southern African Development Community (SADC)*, Law, Democracy & Development/ VOL 21 (2017).

CHAPTER 4: A COMPARATIVE ANALYSIS OF SOUTH AFRICA, AUSTRALIA AND CANADA REGARDING TOURISM LEGISLATION, REGULATIONS AND POLICIES DRIVING SOCIO-ECONOMIC TRANSFORMATION

4.1 Introduction

This Chapter deals with a comparative analysis between South Africa, Australia and Canada in respect of legislation, regulations and policies that drive socio-economic transformation for historically disadvantaged through tourism. The Chapter discusses on the consideration of tourism initiatives taken by both Australia and Canada to transform the lives of the indigenous people of both countries and how best these initiatives have been implemented and what South Africa's tourism can learn from them.

4.2 Brief historical background of Tourism in Australia

According to Van den Berg, Australia's tourism industry developed in as early as in 17th century.⁴³² The discovery of gold in Australia in the 18th century ignited Australia as a mineral and industrial attraction area that brought wealth, migrants and developed the modern cities such as Melbourne, Perth and Sydney.⁴³³ In comparison to South Africa, Australia's tourism developed earlier experiencing a steady flow of visitors between 1925 and 1933.⁴³⁴ The National Tourism Association founded in 1929 implemented policies in various tourism sectors such as hotels, shipping and Australian railways which were represented by the National Tourism Association.⁴³⁵ Van den Berg indicates that this shows that Australia started to develop policies regulating the Nations tourism.⁴³⁶ After Australia gained independence from Britain, the economy of Australia expeditiously grew as a result of government initiatives that include the Taronga Western Zoo offering safari

⁴³² Van den Berg, L.M. (2016), *Tourist guiding legislation: South Africa, Australia and Canada in a comparative perspective*, University of Pretoria.

⁴³³ *Ibid.*

⁴³⁴ *Ibid.*

⁴³⁵ *Ibid.*

⁴³⁶ *Ibid.*

accommodation and hosting animals from all over the world, Theme parks, Sydney Mardi Grass, and so on made Australia a popular destination up to date.⁴³⁷

4.3 Australia's tourism Legislation, Policies and Regulations promoting socio-economic transformation

Australia's unemployment rate is currently 5.4% significantly lower than South Africa's unemployment rate of 26.7%.⁴³⁸ Australia's low unemployment rate is relatively attributed to Australia's travel and tourism contributing to employment including jobs indirectly supported by tourism was 12.2% of total employment 1,501,500 jobs.⁴³⁹ This is expected to rise by 1.7% in 2018 to 1,527,500 jobs and rise by 1.3% pa to 1,743,000 jobs in 2028.⁴⁴⁰ Against this background, it is imperative to draw lessons that could be used in South Africa from Australia's tourism legislation, policies, initiatives and regulations that drive job creation, poverty alleviation, and socio-economic transformation for the people of Australia.

4.3.1 Tourism Australia Act, 74 of 2004

The Tourism Australia Act 74 of 2004 in Section 6(1)(e) provides that the objective of the Act is to help increase the economic benefits to Australia from tourism.⁴⁴¹ The provision of the Act clearly indicates that tourism is used as a tool to achieve socio-economic development for the people of Australia because the benefits of a growing economy supported by tourism are job creation, poverty alleviation and infrastructural development.

⁴³⁷ Van den Berg, L.M. (2016), *Tourist guiding legislation: South Africa, Australia and Canada in a comparative perspective*, University of Pretoria.

⁴³⁸ Australia's Unemployment Rate 1978-2018, Trading Economics, also available at <https://tradingeconomics.com/australia/unemployment-rate> (retrieved 27 June 2018).

⁴³⁹ UNWTO, Travel & Tourism Economic Impact 2018 Australia.

⁴⁴⁰ *Ibid.*

⁴⁴¹ Section 6(1) (e) of the Tourism Australia Act, 74 of 2004.

4.3.2 Australia's Tourism 2020 Policy

To achieve this, the government of Australia has put in place the National Long-Term Tourism Strategy launched in December 2009.⁴⁴² The National Long-Term Tourism was soon followed by the 2020 Tourism Industry Potential in November 2010.⁴⁴³ The two policies on tourism were merged together, as a result, the policy Tourism 2020 was launched in December 2011 this policy is regarded as a significant milestone in the development of Australia's tourism that would groundwork Australia's tourism to escalate its economic potential required to realise socio-economic transformation.⁴⁴⁴

This study focuses on some of the six cardinal pillars of Australia's Tourism 2020 policy that could help improve South Africa's tourism industry and maximise the number of jobs created by the industry, eliminate poverty and improve, grow the economy and improve the lives of the previously disadvantaged South Africans. The government of Australia seeks to build competitive digital capacity.⁴⁴⁵ Tourism 2020 provides that building competitive digital capacity is essential for Marketing Australia's tourism and facilitate tourism product distribution.⁴⁴⁶ With the limited number of tour operators in Australia having online booking and payment facilities limit their ability to service domestic and international customers.⁴⁴⁷ The action plan for Australia is to implement a National Online Strategy for Tourism.⁴⁴⁸ The purpose of the National Online Strategy for Tourism is to globally make Australia's tourism product visible and provide for online distribution.⁴⁴⁹ By making Australia's tourism product globally visible and easily accessible increases the demand. In order to meet the demand tourism jobs will be created through tourism businesses that will be provided with the market as the National Online Strategy for Tourism seeks to provide for online production.⁴⁵⁰ In this regard, Haxton indicates that to facilitate the use of online bookings by Small and Medium Tourism Enterprises the government of Australia provides free, simple to use software tool in a form of a widget which is

⁴⁴² Tourism 2020, *Whole of government working with industry to achieve Australia's tourism potential* December 2011.

⁴⁴³ Tourism 2020, *Whole of government working with industry to achieve Australia's tourism potential* December 2011.

⁴⁴⁴ *Ibid.*

⁴⁴⁵ *Ibid.*

⁴⁴⁶ *Ibid.*

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.*

⁴⁴⁹ *Ibid.*

⁴⁵⁰ *Ibid.*

easily installed to a tour operator's website.⁴⁵¹ The software caters for tourism businesses that were not exposed to online transactions for their bookings and helps to grow the businesses and provide employment opportunities.⁴⁵² The government of Australia uses social media platforms such as Facebook to market Australia's tourism and attract visitors.⁴⁵³ Australia's social media platforms have 7,884,258 Facebook followers and counting⁴⁵⁴, 152 000 twitter follows and counting⁴⁵⁵, this indicates that that the marketing strategy is effective.

Tourism 2020 provide for socio-economic transformation by increasing supply of labour, skills and indigenous people participation.⁴⁵⁶ The lack of skills makes tourism business for the indigenous people of Australia to lag behind in generating more jobs and contribute towards economic development therefore in order to close this gap the government of Australia fosters relations of skills transfer from non-indigenous tourism businesses which turn to thrive in the tourism industry to indigenous tourism businesses.⁴⁵⁷ Recognising the importance of education tourism required to uplift transform the lives of indigenous, Tourism 2020 provides online solutions for education, training, recruitment and retention for the tourism and hospitality industry which is accessible to the majority who can't afford to attend institutions providing tourism training, education, skills development and so on.⁴⁵⁸

Tourism 2020 aims to remove barriers that hinder investment because it is an important tool for socio-economic transformation, however, it is not enough to generate investment that will not be directed towards developing tourism, thus in this regard, Australia's Tourism 2020 policy establishes an Investment and Regulatory Reform Working Group.⁴⁵⁹ The Investment and Regulatory Working Group is responsible for monitoring the progress of any investments channelled to specific tourism businesses, infrastructure, education, training and so on.⁴⁶⁰ The Investment

⁴⁵¹ Haxton, P. (2015), "A Review of Effective Policies for Tourism Growth", *OECD Tourism Papers*, 2015/01.

⁴⁵² *Ibid.*

⁴⁵³ Tourism 2020, *Whole of government working with industry to achieve Australia's tourism potential December 2011.*

⁴⁵⁴ Australia.com, also available at <https://www.facebook.com/SeeAustralia/> (retrieved 29 June 2018).

⁴⁵⁵ Tourism Australia (@TourismAus) Twitter, also available at <https://twitter.com/TourismAus> (retrieved 278 June 2018).

⁴⁵⁶ *Ibid* footnote 453 above.

⁴⁵⁷ *Ibid.*

⁴⁵⁸ *Ibid.*

⁴⁵⁹ *Ibid.*

⁴⁶⁰ *Ibid.*

and Regulatory Working Group is an important tool that ensures accountability and combat corruption because of lack of accountability and corrupting stand in the way of tourism being used as an impetus for socio-economic transformation.

4.4 Australia as a Model for South Africa to utilise tourism as a tool achieve socio-economic transformation

The Department of Tourism in South Africa doesn't provide an overall exposure of all tourism products and tourism business found in the marginalized rural areas , only famous attractions such as the Kruger National Park, Gold Reef City, Sun City and so on are exposed and have the necessary online facilities that provide for online bookings and product distribution. Therefore South Africa should implement a system similar to Australia's National Online Strategy for Tourism that will expose Small and Medium Tourism Enterprises in rural areas and provide them with free and simple software that will facilitate for online bookings and product distribution, this will in turn help develop black people's tourism businesses because they will access the market, thus creating more jobs and reducing poverty. South Africa should also be more proactive in using social media platforms as medium of marketing tourism and attracting tourists, it is disappointing that the Department of Tourism tweeter account that has 13 300 followers and counting⁴⁶¹, Facebook account has 19,319, followers and counting⁴⁶² which is very low compared to Australia's tweeter account that has 152 000 followers and counting and Facebook that has 7,884,258 followers and counting. Apart from using social media as a marketing strategy, the youth should be employed as managers of these social media accounts ensuring that tourism gets the necessary exposure.

South Africa's transformation policy the Tourism B-BBE recognises that skills development for black South Africans in the tourism must be at the forefront.⁴⁶³ This calls for South Africa to also adopt Australia's policy of fostering relationships between tourism businesses not owned by blacks and tourism businesses owned by

⁴⁶¹ Department of Tourism (@Tourism_gov_za) Twitter, also available https://twitter.com/tourism_gov_za?lang=en (retrieved 29 June 2018).

⁴⁶² Department of Tourism at <https://www.facebook.com/NationalDepartmentOfTourism/> (retrieved 29 June 2018).

⁴⁶³ Department of Tourism, *Easy Guide for the Amended Tourism B-BBEE Sector Code*.

blacks as a mechanism for skills transfer especially to new black entrepreneurs entering the tourism industry.

The Department of the National Treasury has channelled a huge amount of money towards funding tourism an economic sector recognised to achieve socio-economic transformation. To ensure that the funds actually benefit the countries tourism development without being hindered by corruption, South Africa should also follow suit in Australia's mechanism and implement an Investment and Regulatory Working Group. The group will in turn work with other agencies dedicated to fighting corruption such as the institution of the Public Protector, Corruption Watch and the Hawks.

4.5 Brief historical background of Canada's tourism

During the period of 1925 to 1933, the Canadian government recognised the economic significance of tourism even though not recognised as being a major industry, tourism was ranked as number six amongst other top Canadian industries.⁴⁶⁴ The Canadian Tourism Commission launched in 1995 was entrusted with the duty to promote tourism trade in and to Canada.⁴⁶⁵ The Commission developed the Travel Bureau of Canada and put in place a progressive programme for the development and promotion of the tourism industry.⁴⁶⁶ When the tourism industry of Canada gained momentum and thriving as an economic growth sector, the Canadian government mandated that tourism development must be interconnected with tourism policy development.⁴⁶⁷ The mandate of the government led to the establishment of the Tourism Industry Association of Canada and the Hospitality Leisure and Tourism Advisory which recognised tourism as an economic sector bearing the impact of providing employment for all Canadians.⁴⁶⁸ The

⁴⁶⁴ Van den Berg, L.M. (2016), *Tourist guiding legislation: South Africa, Australia and Canada in a comparative perspective*, University of Pretoria.

⁴⁶⁵ *Ibid.*

⁴⁶⁶ *Ibid.*

⁴⁶⁷ *Ibid.*

⁴⁶⁸ *Ibid.*

Canadian tourism industry continues to develop and provide socio-economic transformation by creating more jobs and reducing poverty.⁴⁶⁹

4.6 Canada's tourism Legislation, Policies and Regulations promoting socio-economic transformation

The 5.8% unemployment rate of Canada indicates that Canada's economy continues to grow and provide employment for millions of Canadians thus eliminating poverty and improving their livelihoods.⁴⁷⁰ On the other hand, South Africa's high unemployment rate of 27.7% indicates that that South Africa's economy is not growing according to the required pace to meet the continued demands of unemployed South Africans. Failing to have a growing economy that creates jobs millions of South Africans will continue to live in poverty. According to the UNWTO World Tourism and Travel Economic Impact 2018 Canada, in 2017 Canada's tourism industry contribution to employment, including jobs indirectly supported by the industry was 8.6% of total employment 1,588,500 jobs.⁴⁷¹ This is expected to rise by 1.7% in 2018 to 1,615,000 jobs and rise by 2.0% pa to 1,960,000 jobs in 2018.⁴⁷² This shows that Canada's tourism is a key driver for socio-economic development, employment and poverty alleviation, therefore the study hereafter analysis and draws lessons from Canada's tourism policies that drive socio-economic transformation.

4.6.1 Canadian Tourism Commission Act, S.C. 2000, c. 28

According to the Canadian Tourism Commission Act, Canada's tourism is founded on the principles of making a contribution to the economic well-being of Canadians and to the economic objectives of the government of Canada.⁴⁷³ The Canadian tourism is comprised mainly of Small and Medium-sized businesses essential for

⁴⁶⁹ *Ibid.*

⁴⁷⁰ Canada's Unemployment Rate 1996-2018, Trading Economics, also available at <https://tradingeconomics.com/canada/unemployment-rate> (retrieved 04 July 2018).

⁴⁷¹ UNWTO, Tourism & Travel Economic Impact 2018 Canada.

⁴⁷² *Ibid.*

⁴⁷³ Preamble of the Canadian Tourism Commission Act, S.C. 2000, c.28.

Canadian goals for entrepreneurial development and job creation.⁴⁷⁴ Section 4(a) provides sets out that the objective of the Canadian Tourism Commission established in terms of section 3 is to sustain a vibrant and profitable tourism industry.⁴⁷⁵ These indicate that Canada's tourism is set up as a business that drives the economy, and generates income in order to achieve socio-economic transformation.⁴⁷⁶

4.6.2 Canada's Tourism Vision policy

The Minister of Small business and Tourism and Leader of the government in the House of Commons in Canada implemented Canada's Tourism Vision a five year whole of government approach launched was launched in 2011 for the purpose of encouraging visitors to visit Canada and capitalise on the opportunity presented by tourism to transform the livelihoods of Canadians.⁴⁷⁷

Since the launch of Canada's Tourism Vision in 2017 Canada attracted 20, 8 million visitors from across the globe, generating \$21.3 billion in revenue.⁴⁷⁸ Thus Canada's tourism is a major driver of Canada's economy, transforming the lives of Canadians in every region, present opportunities of employment for middle-class Canadians by supporting one in every ten Canadian job and responsible for 1, 8 million jobs dependant on the tourist economy.⁴⁷⁹ The efforts of the government of Canada to grow tourism as an economic tool for transformation have been recognised by The New York Times, National Geographic Travel and Lonely Planet including other naming Canada as a top destination to visit.⁴⁸⁰ This, in turn, helps to further develop tourism in Canada and continue providing socio-economic transformation through tourism.

The Canadian Tourism Vision utilises tourism product as a strategic tool to achieve socio-economic transformation.⁴⁸¹ Canada's Tourism Vision makes provision for

⁴⁷⁴ *Ibid.*

⁴⁷⁵ Section 4(a) of the Canadian Tourism Commission Act, S.C. 2000, c. 28.

⁴⁷⁶ The Canadian Tourism Industry (2012) A Special Report Fall.

⁴⁷⁷ Canada's Tourism Vision, also available at <https://www.ic.gc.ca/eic/site/095.nsf/eng/00002.html> (retrieved 04 July 2018).

⁴⁷⁸ *Ibid.*

⁴⁷⁹ *Ibid.*

⁴⁸⁰ *Ibid.*

⁴⁸¹ *Ibid.*

collaboration between the government and the Indigenous Tourism Association of Canada (ITAC) for the purpose of maximising the number of indigenous tourism businesses that would provide for more employment.⁴⁸² To achieve this, the sum of \$8.6 million was allocated to this course in the 2017 budget.⁴⁸³ Destination Canada and ITAC have helped provide marketing strategies for 65 indigenous businesses and provide an export market which enables indigenous tourism business to export some of their products.⁴⁸⁴ Establishing an export market for tourism products is crucial because it helps generate income and maintain employment even when there is a low rate of visitors.

The Canadian Tourism Vision provides for socio-economic transformation by providing employment to the youth through the Youth Employment Strategy (YES) is driven by the Employment and Social Development Canada (ESD).⁴⁸⁵ To accelerate youth employment the YES made provision for the Canada Summer Jobs Programme that ensures that the youth is employed in the tourism sector during the school's vacation furthermore provides information and skills required to remove the barriers of employment.⁴⁸⁶

4.7 Canada as a Model for South Africa to utilise tourism as a tool achieve socio-economic transformation

To achieve socio-economic transformation is to learn from Canada's Tourism Commission Act and tailor South Africa's tourism industry as a business sector that drives to make profit through Small and Medium-sized Enterprises. The South African Tourism Act, 3 of 2004 is more of a regulatory Act making provision for the National Grading System in terms of section 48, the National Registrar of Tourist Guides in terms of section 48, Norms and Standards in terms of section 71 so on, other than seeking to make tourism a business commodity striving to drive the economy and provide employment through Small and Medium-sized Enterprises. To

⁴⁸² *Ibid.*

⁴⁸³ *Ibid.*

⁴⁸⁴ Canada's Tourism Vision, also available at <https://www.ic.gc.ca/eic/site/095.nsf/eng/00002.html> (retrieved 04 July 2018).

⁴⁸⁵ *Ibid.*

⁴⁸⁶ *Ibid.*

achieve a model of business tourism similar to that of Canada, the National Convention Bureau established in terms of section 10(e) of the Tourism Act, 3 of 2004⁴⁸⁷ which provides that the functions of the South African Tourism Board are to with the approval of the Minister, establish a National Conventions Bureau to

Market South Africa as a business tourism destination by—

- (i) Coordinating bidding for international conventions; and
- (ii) Liaising with other organs of state and suitable bodies to promote South Africa as a business tourism destination.

According to the Minister of the Department of Tourism Derek Hanekom, a three-years study commission by the South African National Bureau seeking to determine the economic value of the business events industry indicates that business tourism contributed R42.4 billion in 2015.⁴⁸⁸ The Study further indicates that in 2015, 280 000 direct and indirect jobs were supported by meetings, conventions, incentives, and exhibitions.⁴⁸⁹ In the financial year 2017/2018, the amount of R20 million and an additional R90 million for the following three years was allocated by the Department of the National Treasury for bidding that focuses on business events that are aligned with the priority economic sectors that government has identified for development.⁴⁹⁰ These include manufacturing, mining and metals, business process outsourcing, creative industries, life sciences and ICT.⁴⁹¹ The only problem with this approach is that it doesn't provide sustainable socio-economic transformation as it only provides temporary employment because events, meetings, exhibitions, conventions come and go, moreover bidding doesn't guarantee that South Africa will be successful in winning the bids, thus South Africans find themselves unemployed. Adopting Canada's tourism strategy of prioritising Small and Medium-sized businesses and providing them with necessary business advice, funding, export market and skills will provide sustainable socio-economic transformation for South Africans by creating

⁴⁸⁷ Section 10(e) of the Tourism Act, 3 of 2004.

⁴⁸⁸ Department of Tourism, Speech by Minister Derek Hanekom at the Opening Ceremony for Meetings Africa 2017 Sandton Convention Centre, Johannesburg, also available at <https://www.tourism.gov.za/AboutNDT/Publications/Speech%20by%20Minister%20Derek%20Hanekom%20at%20the%20Opening%20Ceremony%20for%20Meetings%20Africa%202017%20Sandton%20Convention%20Centre,%20Johannesburg.pdf> (retrieved 05 July 2018).

⁴⁸⁹ *Ibid.*

⁴⁹⁰ *Ibid.*

⁴⁹¹ *Ibid.*

permanent employment and creating more jobs thus winning the fight against poverty.

Socio-economic transformation in South Africa can be improved by launching an association or organisation similar to Canada's Indigenous Tourism Association of Canada that would ensure the historically disadvantaged South Africans are socially and economically liberated by penetrating the business sector in tourism. The Tourism B-BBEE is a very important tool to help the historically disadvantaged to enter the tourism business sector. One of the hindrances that make the Tourism B-BBEE not to achieve its objective of providing socio-economic transformation is acts of crime such as fronting clearly defined in terms of Section 4 of the Broad-Based Black Economic Empowerment Amendment Act No.46 of 2013. The devastating impact of this criminal act was illustrated in the case of *Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd*.⁴⁹² The case relates to the award of a tender to Swifambo by the Passenger Rail Agency of South Africa (PRASA) in which Swifambo was to supply PRASA with locomotives.⁴⁹³ Swifambo outsourced the locomotives from Vossloh a company based in Spain.⁴⁹⁴ The court set aside the decision to award Swifambo with the tender on the ground that an arrangement between Swifambo and Vossloh constituted fronting on the basis that;

- Swifambo was merely a “token participant” which had received monetary compensation in exchange for the use of its B-BBEE rating by Vossloh;⁴⁹⁵
- Vossloh maintained complete control of the operations of the business (including the appointment of members of the steering committee) and Swifambo's role was limited to minor administrative activities. There was no transfer of skills to Swifambo;⁴⁹⁶
- Vossloh had chosen not to take advantage of the “equity equivalent” programme whereby multinational firms may earn B-BBEE ownership points by contributing to an approved programme instead of having a

⁴⁹² *Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd* (2015/42219) [2017] ZAGPJHC 177; [2017] 3 All SA 971 (GJ); 2017 (6) SA 223 (GJ) (3 July 2017).⁴⁹²

⁴⁹³ Go Legal, Lex Africa, Steyn, P. (2017) Recent High Court case clarifies fronting practices <https://www.golegal.co.za/fronting-practices-b-bbee/> (retrieved 05 July 2018).

⁴⁹⁴ *Ibid.*

⁴⁹⁵ *Ibid.*

⁴⁹⁶ *Ibid.*

B-BBEE shareholder. Vossloh had instead used Swifambo as a vehicle to tender for the locomotive contract even though Swifambo had no resources or technical capabilities, operational capacity, staff or other resources and its business operations were accordingly improbable. It was effectively a shelf company;⁴⁹⁷

- The true nature of the relationship between Swifambo and Vossloh was that Swifambo was a front for Vossloh and had effectively subcontracted 100% of the work required under the PRASA contract to Vossloh.⁴⁹⁸

This kind of business practice negates South Africa being promoted as a business tourism destination and exploits the historically disadvantaged by denying them socio-economic transformation. South Africa should have an association like the Indigenous Tourism Association of Canada working with government will be helpful in ensuring that historically disadvantaged South Africans receive the benefits of policies like the Tourism B-BBEE that seeks to provide socio-economic empowerment.

The lack of work experiences form part of the many barriers hindering the youth of South Africa to access employment because employment opportunities often require work experience. To circumvent this position South Africa must set up programmes similar to Canada's summer jobs programme that will provide the youth of South Africa with work experience in various tourism sectors during the course of their studies. This will enable the youth to compete effectively for sustainable employment in the tourism industry other than relying only on South Africa's current internship programmes that seeks to provide work experience after obtaining a qualification only being able to accommodate a limited number of graduates who receive little remuneration and find themselves unemployed and unable to be part of another internship programme.

⁴⁹⁷ *Ibid.*

⁴⁹⁸ Go Legal, Lex Africa, Steyn, P. (2017) Recent High Court case clarifies fronting practices <https://www.golegal.co.za/fronting-practices-b-bbee/> (retrieved 05 July 2018).

4.8 Conclusion

This chapter Compared legislation, regulations and policies of tourism essential for socio-economic transformation between South African, Australia and Canada, moreover the chapter fully considered and exhausted initiatives taken by both Australia and Canada and how such initiatives can be used as models to develop South Africa's tourism into a tool that provides socio-economic transformation.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

South Africa has robust legislation, policies and other instruments promoting tourism development that brings about socio-economic transformation for all marginalized and historically disadvantaged South Africans. These measures are supported, recognised and protected by a variety of both national and international instruments. Despite this, there are impediments that impede tourism to achieve its maximum potential of alleviating poverty and creating employment.

The Department of Tourism has done much to ensure that South Africa's tourism industry develops into an economic sector that emancipates South Africa's ailing economy to create jobs for millions of South Africans, this is in line with the National Development Plan 2030 vision which aims to alleviate poverty and reduce inequality by creating 24 million jobs in 2030 through tourism targeting to establish guest houses, bed and breakfast establishments, hotels and lodges, tour operators and Small and Medium Tourism Enterprises to support job creation.⁴⁹⁹

5.2 Recommendations

In order to ensure that the potential of tourism in bringing about socio-economic development in South Africa is fully exhausted this mini-dissertation recommends that:

- Increase public engagement and education on the significance of protecting and conserving biodiversity as it is a crucial source of South Africa's tourism.
- Subject people who destroy biodiversity to both criminal prosecution and civil liability
- The Department of Tourism must make a request to state with reason to the national government, why it is necessary to increase budget allocated to tourism development

⁴⁹⁹ National Development Plan 2030, Our Future-make it work.

- The Department of Tourism must foster co-operative governance provided by Chapter 3 of the Constitution of the Republic of South Africa, 1996 with other structures and institution of government such as the Department of Home Affairs and Department of Environmental Affairs because their decision directly or indirectly affect tourism development.
- Bursaries should be made available to encourage students to study tourism in order to enhance their skills that will enable them to compete effectively for employment or establish their own businesses in the tourism industry.
- South Africa should immitate Australia's Investment and Regulatory Working Group that ensures that investments and funds channelled to tourism development benefit tourism development and combat acts such as corruption within the tourism sector by officials or any other person.
- South African should also immitate Canada's tourism structure which is a business orientated tourism structure prioritising tourism businesses of indigenous people by offering them with marketing strategies and an export market for tourism products.
- The lack of work experience is one of the major factors contributing to youth unemployment in South Africa, to solve this, this mini-dissertation recommends that South Africa Should implement a programme similar to Canada's Youth Employment Strategy which ensures through students obtain work experience in the tourism sector during school vacations. This will enable the South African youth to effectively find employment after completing their studies because they would have acquired the necessary work experience.
- Heavy fines and sanctions should be imposed to companies in the tourism sector who fail to implement Tourism Broad-Based Black Economic Empowerment sector code, the legal framework for tourism development and socio-economic transformation, seeking to address the injustices of the past that excluded the majority of black people from the opportunities and benefits arising from the tourism sector.
- Development of South Africa's tourism industry must be in line with the principles of the United Nations Framework Convention on Tourism which is to provide tourism that is responsible, sustainable and universally accessible.

- Ensure implementation of the amended Immigration Regulations by the Department of Home Affairs which promote tourism development through making travelling to South Africa easy and less expensive.
- The recent amendments to the Immigration law which require consent of both parents where children are travelling and an abridged certificate needs to be reversed since it hamper tourism and makes travelling complicated.

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