



# Transformative tourism legislation: an impetus for socio-economic development in South Africa

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## Abstract

In South Africa, apart from different interventions that have been put in place to ensure that the general wellbeing of the citizens is secured, laws and regulations play a critical role in ensuring that all these interventions become achievable and successful. Pursuant to this, this article strategically accentuates that there are laws that have been strategically put in place to foster tourism for socio-economic growth and development. These laws have been put in place to drive and deliver socio-economic goods, reduce poverty and improve the standard of living, especially of the Historically Disadvantaged Black South African (HDBSA). In order to establish why the black majority were excluded from the tourism sector during apartheid era, the article provides sources and historical background on the apartheid tourist business exclusion. It demonstrates that these restrictive apartheid laws were deliberately promulgated to exclude HDBSA from tourism enterprises. The researchers reviewed relevant literature linked and related to the problem identified. To this end, they considered salient provisions of the laws and examined court's decision that seeks to preserve, conserve and protect the existence of heritage sites for sustainable tourism. This was considered in view of the fact that tourism is regarded as a potent driver of economic activities which create employment and income for small and big enterprises. But at the same time cautions that the environment should not be destroyed and degraded and as such there is need to use the existing legal frameworks and regimes to conserve the environment, ecosystem, endangered species, heritage sites as well as other important tourism and social monuments.

**Keywords:** Inequality, Poverty alleviation, Employment, Sustainability, Conservation.

## Introduction

Tourism has been identified as a transformative mechanism to drive and deliver socio-economic rights, goods, amenities and services to South Africans (Pandy et al, 2014), particularly the Historically Disadvantaged Black South Africans (HDBSA) who were deliberately denied and prevented from participating during the apartheid era. (Mataboge et al, 2007). In order to correct this historical discrimination and injustice and make tourism more inclusive where everyone is given the opportunity to participate, the country enacted the Constitution of the Republic of South Africa, 1996, wherein it explicitly provides that everyone is equal before the law and everyone has the right to fair labour practice. Pursuant to this, inclusive and transformative 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 (Pieterse, 2006). This is critically necessary and imperative because there is high rate of unemployment and chronic poverty in South Africa particularly among the HDBSA. In South, unemployment rate is dire and as at 2017 stands at 27.7%. Due to lack of jobs, many South Africans do not have income to spend on socio-economic goods and most live in abject poverty with several households severely food insecure (Sachs, 2008). In addition, many of the HDBSA still live in shacks in the informal sectors without any access to modern infrastructure and developmental amenities. Therefore, most HDBSA are still excluded from basic socio-economic rights as they are often unable to afford them because they are mostly unemployed and have no source of income (Kawachi and Subramanian, 2014). In order to find solution to these problems, tourism and related enterprises are therefore impetus to provide people with job opportunities and



entrepreneurship that will generate income to alleviate poverty and improve standard of living (Jamieson et al, 2004).

Against the backdrop of the opportunities derivable from tourism as a tool to drive and deliver socio-economic rights and benefits to the people, there is a need to analyse the significance of tourism transformative legislative interventions as a panacea for socio-economic transformation and development (Atkinson, 2008). This will ensure that the past inequalities and injustices are addressed by fostering the inclusion of black entrepreneurs to play active roles and participate in the tourism sector in order to alleviate poverty (Mofokeng et al, 2018). The significance of using tourism sector as one of the tools to reduce poverty and create jobs for the poor is that by allowing them to participate actively there will be a “trickle down” effect (Jamieson et al, 2004). This is because the sector will create many job opportunities for people in the lower social and economic classes. It is pertinent to point out that the local elites, international and expatriate companies will also benefit. (Leigh and Blakely, 2016).

Therefore, this article analyses salient laws that promote South Africa’s tourism industry for the realisation of socio-economic development. The objectives are to examine and articulate whether the current legislation, policies and regulations regarding tourism are being properly implemented in order to use tourism for poverty alleviation and sustainable development. The article points out that if not properly managed and planned; “tourism can destroy ecological systems, raise the cost of living for local people and damage social and cultural traditions and lifestyles” (Johnston, 2014). Against the backdrop of this, there is need to ensure that tourism is conducted sustainably. To this end, courts decisions on how to protect and conserve the environment in order to achieve sustainable tourism are also considered and used to demonstrate responsible tourism (Frey and George, 2013 ). Lastly, having recognised the potentials of tourism in creating jobs and alleviating poverty, this article analyses how the existing laws on tourism in South Africa can be improved and strengthened in order to make tourism more inclusive by creating more flourishing jobs, reduce unemployment and poverty and at the same time improve the standard of living of all South Africans (Swanson and Edgell, 2013).

## **Background and sources of the problem**

The 19<sup>th</sup> century period signified the establishment of South Africa’s tourism reputation (Strange and Kempa, 2003). South Africa’s Railways was formed in 1906 and constituted a publicity department to promote tourism, which resulted in the establishment of the renowned Kruger National Park in 1926 (Jonker, 2004). From 1906 to 1938, South Africa’s Railways remained the main source of promoting tourism through its publicity and travel department (Page, 2014). In 1938, the Tourism Department Corporation tasked to promote South Africa’s tourism failed because of the World War II (Jonker, 2004). This led to the formation of the South African Tourism Corporation (SATOUR) to carry on the torch of promoting South Africa’s tourism. Significant developments ensued thereafter, when the Department of Tourism was founded in 1963 followed by the Hotel Board in 1965. They were charged with the mandate of improving the standards of accommodation by constructing new hotels and refurbishment of the existing hotels. 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 (Acheampong, 2011). However, the new South African Tourism Board found it very difficult to bring much transformation in tourism because of the ripple effect of apartheid system of government which have tremendous effect on the growth of tourism (Ashley and Mitchell, 2009).

In 1994, South Africa became a constitutional democratic country followed by the promulgation of the Constitution of the Republic South African Constitution, 1996. The Constitution brought about transformation and recognition of the rights of all the citizens who live in South Africa.



Section 7(1) of the Constitution provides that “the Bill of Rights is a cornerstone of democracy in South Africa, it enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.” This affirms that all are equal and have same rights and that discrimination and segregation are not to be tolerated in any sector in South Africa including accommodation and tourism sectors. Consequently, the black majority who were deliberately discriminated and excluded during the apartheid regime now have constitutional protection from discrimination. As such they became eligible to participate in the economic and developmental sectors of the South African economy (Beall et al, 2014). Undoubtedly, tourism and hospitality businesses were identified as sectors that would enable the black majority to participate and produce positive results that will alleviate poverty and improve their socio-economic well beings and standard of living (Binns and Nel, 2002).

The government has taken a variety of measures in order to realise socio-economic development of the previously disadvantaged South Africans. However, the country still faces challenges of poverty, inadequate housing, and high unemployment rate. In order to find sustainable solution to these problems, the government has been promoting tourism as they have identified tourism as a key job driver. As a result, the tourist arrival numbers from January to November 2016 increased to nine million, an increase of over one million arrivals from 2015. This represents a thirteen per cent growth in tourist arrivals and undoubtedly, a lot of South Africans benefit from this growth (Zuma, 2017).

The apartheid system of governance introduced in 1948 hampered the growth of tourism in South Africa as a result of various international boycotts and punitive sanctions (Lubbe, 2003). The segregation and deliberate discriminative policies enshrined in various apartheid laws negatively impacted and limited the development and growth of tourist enterprises of those previously disadvantaged people who attempted to venture into the sector (Lubbe, 2003). Furthermore, 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 advantages, tourism growth was slow because the apartheid regime prioritised the protection of South African airports making the cost of travelling into South Africa expensive (Allen and Brennan, 2004). 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 South Africa (Ally and Lissoni, 2017). Steyn and Spencer (2011) 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 resulted in the black majority being excluded from the industry. Monopolizing the tourism industry in the hands of the white minority also hindered the growth of tourism (Rogerson, 2002). Similarly, the international sanctions imposed the international community also made South Africa suffered economically (Allen and Brennan, 2004).

Adinolfi and Ivanovic (2015) 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 include but are not limited to the Group Areas Act of 1950. Section 2(1)(a)(c) of the Act segregated people into three racial groups, that namely, Whites, Native Africans and Coloureds. The Pass laws 67 of 1952, Section 15 of the Act provided that any person being classified as a natives and fails to produce, alters or destroys his/her “Reference Book” shall be guilty of an offence upon conviction be subjected to a fine or imprisonment. These laws had the effect of restricting movement of the black majority of South Africans. These restrictive laws were obstacles to tourism because tourism requires the movement of people unhindered. It is against the backdrop of these obstacles that the Department of Environmental Affairs and Tourism (DEAT) indicated that prior to 1994 South Africa’s failure to enter the world market of tourism is based on the isolationism of apartheid policy. This policy prevented tourism from



achieving its potential to create employment, promote environmental protection and economic growth.

## Literature Review

Socio Economic Development definition and development are intrinsically linked because they are both progressive concepts (Hopwood et al, 2005). Socioeconomic development is “the process of social and economic development in a society and it is measured with indicators, such as GDP, life expectancy, literacy and levels of employment” (Szirmai, 2005). And development can be defined “as a people-centred 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”(Fowler, 2013). Against the backdrop of this, this article analyses the intrinsic role of law as an instrument to promote economic and social development, foster growth and opportunities and empowerment. This is because; there is the drive to engage in cutting edge cross-disciplinary research in using law to promote development and socio-economic emancipation especially in the developing countries. This will reduce poverty and improve standard of living of the poor and indigents (Leys, 2010). This resurgence of interest is the basis for using existing legislative tools to critically examine tourism for suitable economic growth, job opportunities and development.

According to the United Nations World Tourism Organisation (UNWTO) tourism is a formidable tool for development contributing 7% of all of Africa's exports. The UNWTO provides that tourism aids in Africa's participation in the global economy and promotes environmental and cultural preservation for host communities. Tourism is rapidly becoming a socio-economic development sector, therefore the UNWTO suggests that African countries must have effective strategies to promote competitive tourism and provide for a marketplace for the desires of potential visitors (Sharpley and Telfer, 2015). Therefore, effective law will be a major drive to drive the strategy to fruition in order to achieve the desired outcome.

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. Therefore, if developed effectively tourism will become a contributor of poverty alleviation, infrastructure development, employment opportunities and attract investment opportunities (Mowforth and Munt, 2015). 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.

In South Africa, the Reconstruction Development Plan (RDP) was deliberately introduced in order to drive and deliver “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.” Therefore, the RDP as an economic policy is being 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 that created inequality and an ailing economy. The RDP sets itself up to be a beacon of hope to achieve socio-economic development based on four key programmes which include the meeting of the basic needs; developing of human resources; building the economy; democratising of the state and society, and effective implementation of the RDP.

Tourism sector is potent for the realisation of the most of the RDP programmes. Undoubtedly, by empowering and skilling the previously disadvantaged black, they would be able to participate effectively in socio-economic activities and opportunities present by the RDP.





The post-apartheid development of the tourism industry in South Africa was spear headed by the White Paper on Development and Promotion of Tourism in South Africa, 1996 (WPDPTSA). According to the White Paper, tourism in South Africa is a missed opportunity because it has 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.

At the dawn of South African democratisation, the White Paper recognises that the tourism industry is one sector that has the potential to achieve the objectives of the RDP. Reasons that make tourism a sector that will provide the disadvantaged with the capability of bringing development include the following; tourism is one of the world's largest generator of jobs (Budeanu, 2005), it provides immediate employment, while employing a multiplicity of skills and expertise, the tourism sector creates entrepreneurial opportunities and jobs, brings development to rural areas and the indigents, and generates foreign exchange for the country (Spenceley, 2001).

According to Zarenda (2013), the New Growth Path (NGP) released in the year 2010 identified job creation as its main objective. To achieve this objective tourism was identified as one of the six areas to achieve job creation. The current tool for socio-economic development is the National Development Plan (NDP) adopted by the government in 2012/2013. The NDP aims to alleviate poverty and reduce inequality. The NDP provides marginalized rural areas the opportunity to have meaningful participation in the economy by identifying tourism as an engine to achieve this goal.

It is of paramount importance to ensure that environmental conservation is effected through implementation of legislation, for the purpose of allowing tourism to flourish and address the developmental issues of poverty, unemployment, and infrastructural development. Environmental degradation and destruction are inimical to sustainable tourism Kotze (2003). This assertion is supported by section 24(b)(ii) of the Constitution which clearly provides for promotion of environmental conservation. And in order to achieve this, section 2(4) of the National Environmental Management Act, 1998 (NEMA) provides that any disturbance of the ecosystem or biodiversity must be avoided, where they cannot be avoided, disturbance must be minimised and remedied.

The section also provides that any form of pollution must be avoided. The NEMA is complimented by National Environmental Management Biodiversity Act, 2004 (NEMBA) which aims to achieve the conservation and sustainability of South Africa's abundant biodiversity resources which are beneficial to tourism sector. Both Acts relate to the issues of conservation of biodiversity because it is one of the potent sources of tourism attractions. Failure to comply with these pieces of legislation could result in catastrophic impact on the environment and tourism. This is quite evident when one considers the impact of Acid Mine Drainage (AMD) and its devastating impacts and effects on the environment. According to McCarthy (2011), AMD "is a process where mineral pyrite ('fool's gold' or iron disulphide) comes into contact with oxygenated water. The mineral pyrite then pollutes the water and changes the colour of the water to orange making the water unconsumable and harmful to aquatic life.

Leonard and Langton (2016) indicate 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 human kind which contribute highly to the provinces tourism and economy. According to Ochieng et al (2010), 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. 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 (Ramaphosa, 2018). Foreign Direct Investment (FDI) is one type of investment that can assist the growth of South Africa economy and address the challenges identified by government (Adjei, 2007). Snyman and Saayman (2009) defined FDI as “when an investor based in one country acquires an asset in another country with the intent to manage the asset.” According to Snyman and Saayman (2009) 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. South Africa’s poverty originates from the legacy of apartheid. Muhanna (2007), points out that creation of employment in South Africa is significant in fighting poverty alleviation and inequality. 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). This concept aims to channel the benefits of tourism towards the poor. Tourism should not be understood as an isolated sector of the economy. Tourism has a multiplier effect which means that it links with other sectors of the economy and helps to improve such sectors. For example, crops produced from farms may be supplied to hotels to provide food for tourists.

Recent case law has demonstrated the courts’ 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* (216/2016) [2017] ZASCA 9 (14 March 2017) the facts of the case are as follows:

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. These areas have been placed on the National List of Terrestrial Ecosystems that are threatened and in need of perpetual 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. This 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 section 18 of the MPRDA.

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 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 foresaid 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 section 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 Section 24 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 *Mpumalanga Tourism and Parks Agency's* case vividly demonstrated the intrinsic role and power of the law to conserve heritage site for sustainable tourism. While the case is commended, it is important to point out that the presiding judge should be commended for applying the law to conserve and preserve the heritage site in the face of lucrative mining operations if allowed would have destroyed and degraded the environment and the site.

The decision in the case also demonstrated that 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. This is because people of that community can be employed in various positions such as tour guides and cleaning staff and so on. Similarly, in the case of *Provincial Heritage Resources Authority, Eastern Cape v Gordon* 2005 (2) SA 283 (E), the court was approached in order to enforce section 34(1) of the Heritage Resources Act, 25 of 1999. This section 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. Consequently, the Eastern Cape High Court prohibited the demolition of Cocks Castle building under section 34(1). The court 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. The building was saved from being destroyed in order to preserve the site for sustainable tourism. Furthermore, tour guards and others who worked in the building were able to continue working to earn a living. By preserving the building, the environment was not degraded and the underprivileged working in the building were able to retain their jobs for livelihood.

Another area which needs effective law intervention is the issue surrounding immigration, particularly at the airports and other ports of entries into South Africa. South African tourism industry is faced with a great threat of reduction in influx of tourists because of the final Immigration Regulation which came into effect on the 26 of May 2014. The then Minister of



Tourism expressed great concerns over certain provisions of the immigration regulation, he 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.” (Hanekom, 2014).

Section 6(12) of the Immigration Amendment Act, 3 of 2007 provides that when a minor travels with both parents, they should provide an unabridged birth certificate for the minor. 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 child. Furthermore, when an adult is travelling with a minor who is not his/ her biological child, he/she needs to produce a copy of the child’s unabridged birth certificate together with permission from the parents or guardian to travel with the child. Regarding the issues of biometrics Section 6(3) provides that if any person wishes to depart or be admitted into the Republic of South Africa, he/she must subject himself to the immigration officer prior to their departure from the Republic or admission into the Republic (Hanekom, 2014), 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 attain the relevant documentation required for travelling and submission of their biometric. Even though there have been interventions strategically made by the government to whittle down these immigration problems, the situation has not changed as overzealous immigration officials still mete out unpleasant treatments to tourists. There is need for the Department of Home Affairs make sure that their officials are always updated and knowledgeable on new development and changes in order to ensure free flow of legal tourists arriving at the airports and points of entry. It is therefore important to point out that while regulations could be used as potent tools to drive tourism, unrealistic regulations by the people responsible for legislating and drafting the law could become an impediment to sustainable tourism.

State safety and security are other major role players in the tourism industry. The alarming increased crime rate in South Africa undermine the growth of the industry. According to Nkosi (2010), crimes perpetuated against tourists do not only affect the victims but also the number of tourists visiting particular destinations as both domestic and international tourists publicize their unpleasant experiences of crimes against their body integrity and their property. Mabudafhasi (2017), stated that “with 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.” To this end, effective implementation and enforcement of all criminal laws and codes become critically imperative in order to ensure that tourists in South Africa are safe from criminals and bandits.

It is noteworthy, that it is not only crimes perpetuated against tourists that affect tourism growth in South Africa. Illegal trade of wildlife also threatens tourism. In the same vein, destruction of biodiversity offends 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 (Hunter, (2011). According to Griffiths (2017) illicit trade of wildlife includes the trade of live or deceased animals or plants in the black market for profit. In South Africa, animals targeted in the trade include lions, rhinos poached for their horns, elephants for their ivory, and cheetahs for their skin. Griffiths (2017) further also observes that since 2007, the rate of rhino poaching exponentially increased, causing potential extinction of the animal. Thus the decimation of rhino negatively impacts tourism and the economy. Legislation that seeks to protect South Africa’s wildlife must be properly enforced. For example, section 56 of the National Environmental Management Biodiversity Act of 2004 authorises the Minister to publish a list of endangered species facing extinction. Any person is barred from engaging in restricted activities that include 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 1 of the National Environmental Management Biodiversity Act, 2004. In terms of Section 71(1), without obtaining the required permit no person may carry out restricted activity.

Tourism as an adventure is all travel to wherever and for whatever purpose that results in one or more nights being spent away from home (Fyall et al, 2009). This presupposes that the destination country must have an integrated transport system which enables people to tour the country with ease; therefore the lack of an integrated transport system is a challenge that undermines the growth of the industry (Bojanala, 2013). The traffic sector must be manned by competent officials who would be able to ensure free flow of traffic, curtail and contain over speeding and illicit activities on the roads.

Similarly, tourism is aimed at uplifting the image of the country for the purpose of attracting foreign nationals to spend money in South Africa. Xenophobia and xenophobic attacks undermine the growth of the tourism industry (Adeleke, et al, 2008). The attacks directed towards foreign nationals destroy the economy structure that tourism has built and further hinders socio-economic development accrued to community residents through tourism enterprises (Sharpley and Telfer, 2014). The government must take steps to educate people about the resultant effects of xenophobic attacks on tourism and punish those who perpetuate such hate crimes. This will help protect the country's image internally and internationally, protect tourists and foreign nationals, thus promoting tourism, which then helps to bring about socio-economic development to the people of South Africa. Therefore, laws that prohibit xenophobia and hate speech against non-South Africa are imperative. The Constitution abhors discrimination of all sorts. More importantly, the Constitution is so pragmatic to the extent that it provides that South Africa belongs to all who live in it including foreigners and tourists.

According to 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." In order for South Africa's biodiversity to flourish, the need to maintain a healthy environment must be realised because biodiversity is largely dependent on a clean environment. South Africa is well-renowned and rich in fauna and flora life that flourish in good and clean environment and as such they are known to be very good tourist attractions. Therefore, for flora and fauna to continue to flourish, the environment needs to be protected so that it can be conducive for sustainability (Mafunganyika, 2009). The 1972 United Nations Conference on Human Environments and the Constitution declared that there is a need to protect the environment for both the present and future generations. Therefore, the provision of section 24 of the constitution together with other related legislation such as the National Environmental Management Act (NEMA) and the National Environmental Management Biodiversity Act 107 of 1998 (NEMBA) must be implemented and enforced whenever the environment is threatening to ensure environmental protection while promoting socio-economic development. Effective implementation and enforcement of these Acts at all times will definitely promote conservation, preservation of the environment and all the heritage sites.

## **Synthesis**

Undoubtedly, legislation play a critical and intrinsic role in all aspects of tourism and related enterprises (Page, 2014). These legislations also play a major role in ensuring that tourism are conducted in a legal way. If there is any aspect of tourism that is inimical and impediment to leveraging previously disadvantaged, and neglected black South Africa, the laws will not hesitate to intervene and ensure that the wrong is corrected. South Africa apartheid history has shown that the apartheid regime deliberately used laws to deny and exclude blacks from



tourism and tourism enterprises (Cornelissen, 2017). To this end, this article demonstrates that having achieved Constitutional democracy in 1996 good and inclusive laws are used to include all, particularly those previously denied the opportunity to participate and unleash their potential in the potent tourism sector. As a result, the previously disadvantaged will be able to participate effectively in the tourism sector, get jobs and good income which will alleviate poverty and improve their standard of living. This is the reason why the Tourism Act, 3 of 2014 was promulgated to repeal the Tourism Act 72 of 1993. The Objectives were, according to section 2(1)(e) to enhance co-operation and coordination between all spheres of government in developing and managing tourism. The co-operation of spheres of government is important for tourism development; (Sharpley and Telfer, 2014). In South Africa, this predicament has been exposed wherein the Department of Home Affairs failed to consult the Department of Tourism and developed immigration regulations that negatively affect the tourism industry. Also, lack of co-operation and coordination frequently occurs with the Department of Mineral Resources and Department of Environmental Affairs when issuing mining rights and permits (Rogerson, 2011). Oftentimes, such rights are given without proper consultation and the required environmental impact plan in environmentally sensitive areas, cultural sites, historical sites and wetlands essential for tourism development.

At all times, legislation must be used to promote responsible tourism as set out in section 2(2) of the Act. The 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, providing that development must be socially, environmentally and economically sustainable. 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. In addition, tourism as an economic sector promotes values for environmental protection. This is the reason why Muhanna (2006) asserts that tourism is a positive incentive for the preservation of the natural area. According to Muhanna (2006), tourism projects are beneficial to environmental conservation because some projects prohibit local communities from illegal use and over the use of natural resources. Furthermore, tourism is less damaging to nature in comparison with other economic sectors such as agriculture and forestry. Sustainable 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 (Choi and Turk, 2011). These contemporary legislative interventions are progressive because they set out to address inequality in the tourism enterprises by forging inclusiveness where the previously disadvantaged have leverage to enter and effectively participate in the thriving sector.

## Conclusion

While there is plethora of literature on how legislation can play a substantial role in promoting tourism for sustainable socio-economic development, these laws need to be effectively implemented by those who have been given responsibility to make tourism key for socio economic development and poverty alleviation. If implementation is slow or not effective, then enforcement should kick-in in order to use tourist's asset for growth and development, job creation and poverty alleviation. Whenever there is a threat to any tourist sites such as AMD, poaching, destruction of heritage sites and so on. There should be prompt intervention to stop the obstacle as demonstrated in the cases of *Mpumalanga Tourism and Parks Agency v Barberton Mines (Pty) Ltd* (216/2016) [2017] ZASCA 9 (14 March 2017) and *Provincial Heritage Resources Authority, Eastern Cape v Gordon* 2005 (2) SA 283 (E) where the court used the laws to prohibit destruction of heritage sites. By so doing, the sites continue to be assets not only to tourism but also to those who work at the sites. These demonstrate proactive judicial interventions to protect, preserve and conserve nature and uphold environmental integrity for present and future generations.



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