

Environmental law perspectives on the regulation of ecotourism in South Africa's transition to a green economy

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**Environmental law perspectives on the regulation of ecotourism in South
Africa's transition to a green economy**

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LIST OF ABBREVIATIONS

BMP	Biodiversity Management Plan
BRP	Bioregional Plan
CER	Centre for Environmental Rights
CMP	Conservation Management Plans
DEA	Department of Environmental Affairs
ECI	Earth Charter International/Initiative
EIA	Environmental Impact Assessment
EIP	Environmental Implementation Plan
EMCA	Environmental Management Co-operation Agreement
EMP	Environmental Management Plan
HRA	Heritage Resources Authority
IDP	Integrated Development Plan
IMP	Integrated Management Plan
IUCN	International Union for Conservation of Nature
MEA	Millennium Ecosystem Assessment
MEC	Member of the Executive Council
NBF	National Biodiversity Framework
NEMA	National Environmental Management Act 107 of 1998
NEMBA	National Environmental Management: Biodiversity Act 10 of 2004

NEM:ICMA	National Environmental Management: Integrated Coastal Management Act 24 of 2008
NEMPAA	National Environmental Management: Protected Areas Act 57 of 2003
NHRA	National Heritage Resources Act 25 of 1999
NPC	National Planning Commission
NSSD1	National Strategy for Sustainable Development and Action Plan 2011-2014
S&EIR	Scoping and Environment Impact Reporting
SAHRA	South African Heritage Resources Authority
SANBI	South African National Biodiversity Institute
SANParks	South African National Parks
SDF	Spatial Development Plan
TIES	The International Ecotourism Society
ToPS	Threatened or Protected Species
UN	United Nations
UNEP	United Nations Environment Programme
UNDESA	United Nations Division for Sustainable Development
UNWTO	United Nations World Tourism Association
WHCA	World Heritage Convention Act 49 of 1999

Summary

South Africa and the rest of the world currently face an exacerbating threat of environmental degradation, which can be partly ascribed to the fact that some parts of society still place economic growth as a priority over environmental conservation. This study shows that such an approach is only profitable over the short term and actually causes more harm than good. On the other hand, the world is still recovering from the major 2008 global financial crisis. To tip the scale back into balance, it is crucial that economic -, social -, and environmental development be sustainable; from now and into the future.

This study recognises that, to achieve sustainable development at all three levels, a transition to a green economy is needed. In essence a green economy requires investment in the environment for the benefit of both society and the economy.

This study then goes on to show that ecotourism can be used as a manner to invest in the environment, whilst at the same time uplifting society and improving the economy. Subsequently it is identified as a key driver of a green economy.

However, a daunting reality is that ecotourism developments and - activities also threaten the environment. This study therefore argues that ecotourism has to be regulated effectively; otherwise it will not live up to its purpose and may, as a result, curtail South Africa's efforts of a transition to a green economy, instead of positively contributing to it.

This study asks the question: Does South Africa's environmental legislation provide for the effective regulation of ecotourism? This question is answered by considering whether various relevant pieces of national environmental legislation measure up to certain criteria that is inherent to the effective regulation of ecotourism.

Finally this study serves to show that; from an environmental law perspective, and to the extent that this study investigated the ecotourism environment, ecotourism as a phenomenon is regulated effectively in South Africa. However, it appears that there still remains tremendous scope for improvement.

Keywords

Green economy, sustainable development, ecotourism, sustainable tourism, responsible tourism, nature-based tourism, driver of a green economy, regulation of ecotourism, legal framework, environmental law perspectives, environmental conservation, co-operative governance, environmental law objectives, South Africa.

Opsomming

Suid-Afrika en die res van die wêreld word tans bedreig deur 'n verergerende agteruitgang van die omgewing wat deels te wyte is aan die feit dat dele van die gemeenskap ekonomiese groei steeds as 'n prioriteit bo omgewingsbewaring stel. Hierdie studie beklemtoon dat so 'n benadering slegs oor die kort termyn winsgewend kan wees en uiteindelik meer nadele as voordele inhou. Verder herstel die wêreld ook nog van die groot globale finansiële krisis wat in 2008 getref het. Om die skaal terug in balans te bring, sal ontwikkeling op ekonomiese -, sosiale -, en omgewingsvlak van die huidige af – en die toekoms in – volhoubaar moet wees.

Hierdie studie erken dat, om volhoubare ontwikkeling ten aansien van al drie dimensies te kan bereik, 'n oorgang na 'n groen ekonomie van groot belang is. In wese vereis 'n groen ekonomie belegging in die omgewing sodat beide die gemeenskap én die ekonomie voordeel daaruit kan trek.

Hierdie studie gaan dan voort om te toon dat ekotoerisme gebruik kan word as 'n manier om in die omgewing te belê, terwyl dit tegelykertyd lei tot opheffing van die gemeenskap, en ook tot verbetering van die ekonomie. Gevolglik word ekotoerisme uitgewys as een van die primêre drywers van 'n groen ekonomie.

'n Uitdagende werklikheid is egter dat ekotoerisme-ontwikkeling en -aktiwiteite ook 'n bedreiging vir die omgewing se welstand inhou. Dit word in hierdie studie geargumenteer dat ekotoerisme doeltreffend gereguleer moet word om te verseker dat dit ooreenstem met die doel waarvoor dit ontwikkel is; dus moet dit 'n positiewe bydrae lewer tot Suid-Afrika se oorgang na 'n groen ekonomie. Indien ekotoerisme nie doeltreffend gereguleer word nie, kan dit Suid-Afrika se pogings vir 'n oorgang na 'n groen ekonomie kniehalter.

Na aanleiding daarvan stel hierdie studie die vraag: Maak Suid-Afrika se omgewingswetgewing wel voorsiening vir die doeltreffende regulering van

ekotoerisme? Die antwoord op dié vraag blyk duidelik wanneer die relevante gedeeltes van die nasionale omgewingswetgewing ondersoek en gemeet word aan sekere kriteria wat inherent is aan die doeltreffende regulering van ekotoerisme.

Ten slotte toon hierdie studie dat; uit 'n omgewingsregperspektief – en tot die mate wat hierdie studie dit ondersoek het – ekotoerisme doeltreffend gereguleer word in Suid-Afrika. Tegelyk blyk dit egter wel waar te wees dat daar steeds baie ruimte vir verbetering is.

Sleutelwoorde

Groen ekonomie, volhoubare ontwikkeling, ekotoerisme, volhoubare toerisme, verantwoordelike toerisme, drywer van 'n groen ekonomie, regulering van ekotoerisme, natuur-gebaseerde toerisme, regsraamwerk, vanuit 'n omgewingsregperspektief, omgewingsbewaring, samewerkende regering, omgewingsreëgoogmerke, Suid-Afrika.

1 Introduction

Only one earth, care and share.¹ This was the slogan for the annual *World Environment Day* held in 1992. Partly due to the world's relentless pursuit of economic growth, this slogan is even more relevant today than it was twenty one years ago.² According to the Millennium Ecosystem Assessment (hereafter MEA), which was conducted in 2005, sixty per cent of the world's major existing ecosystem services and goods have already been degraded or is being used unsustainably.³ This has resulted in various other related problems around the world, such as; climate change, biodiversity loss, food insecurity, water scarcity and energy dependency.⁴

The daunting reality is that nature and humanity are interdependent – the one cannot survive at the cost of the other.⁵ The preamble of the *Earth Charter of 2000*⁶ depicts this truth:

Humanity is part of a vast evolving universe. Earth, our home, is alive with a unique community of life. The forces of nature make existence a demanding and uncertain adventure, but Earth has provided the conditions essential to life's evolution. The resilience of the community of life and the well-being of humanity depend upon preserving a healthy biosphere with all its ecological systems, a rich variety of plants and animals, fertile soils, pure waters, and clean air. The global environment with its finite resources is a common concern of all peoples. The protection of Earth's vitality, diversity, and beauty is a sacred trust.

In light of this, it is crucial that the outdated 18th century notion that "nature should be conquered or, at best, be selectively conserved for the benefit of humanity", which some still conveniently hold on to, be done away with.⁷ A new

1 UNEP Date Unknown <http://www.unep.org>.

2 UNEP Date Unknown <http://www.unep.org>; IUCN 2011 <http://www.iucn.org>. See also: Preamble of the *Earth Charter*, 2000 - "The Global Situation".

3 Millennium Ecosystem Assessment Date Unknown <http://www.millenniumassessment.org>; UNEP 2011 <http://www.unep.org>.

4 IUCN 2011 <http://www.iucn.org>.

5 ECI 2011 www.earthcharterinaction.org.

6 See paragraph in preamble titled: "Earth, our home".

7 ECI 2011 www.earthcharterinaction.org.

way of thinking should support the fact that economic growth can only be efficient and sustainable if greater resilience is built into social and ecological systems.⁸

This way of thinking has been advocated since the 1970s when the concept of sustainable development was initiated.⁹ Its most popular definition to date¹⁰ can be found in the 1987 World Commission on Environment and Development report, *Our Common Future* (hereafter Brundtland Report), which describes it as; "...development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs".¹¹ This is premised on the idea that the needs of current and future generations can only be met if there is a state of harmony between economic development, social development and ecological development.¹² Kidd¹³ has attempted to explain this by way of an analogy of a three-legged cooking pot: "...unless all the legs [economic development, social development and ecological development] are equal in length and strength, the pot will be unstable".

Sustainable development remains, both internationally and nationally, the main focus in overcoming these major global challenges of today.¹⁴ In South Africa, for example, this is reflected in, *inter alia*, section 24 of the *Constitution of the Republic of South Africa* of 1996 (hereafter Constitution), the principles of the *National Environmental Management Act* 107 of 1998 (hereafter NEMA),¹⁵ and the National Strategy for Sustainable Development and Action Plan, 2011-2014 (hereafter NSSD1). However, it appears that there has all the while also been

8 IUCN 2011 <http://www.iucn.org>.

9 Magraw and Hawke "Sustainable Development" 614-618; Beyerlin "Policies, Principles and Rules" 443.

10 "Most often quoted" – See Magraw and Hawke "Sustainable Development" 614-618.

11 Brundtland Report 1987 www.un-documents.net.

12 Kotzé "Towards a Tentative Legal Formulation of Environmental Governance" 19; Kidd *Environmental Law* 17-18.

13 Kidd *Environmental Law* 17-18.

14 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 15-24 available at <http://www.unep.org>; TIES Date Unknown <http://www.ecotourism.org>.

15 S 2 of the NEMA.

an urgent need for a concrete global plan/pathway in respect of which sustainable development can be accomplished.¹⁶ The relatively novel notion of "a green economy" has now globally been identified as such a pathway.¹⁷

The international community has not yet been able to agree on a single definition of "a green economy",¹⁸ but the definition that has gained the most recognition up until now, is the definition brought forward by the *United Nations Environmental Programme* (hereafter UNEP).¹⁹ UNEP has defined a green economy as; "...an economy that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities".²⁰ UNEP has also provided a more simplified version of this same definition, namely "low-carbon, resource efficient and socially inclusive".²¹

In the context of this study it is also necessary to note what is regarded by South Africa as "a green economy". The Department of Environmental Affairs²² (hereafter DEA) has put forward the following formal definition: "A system of economic activities related to the production, distribution and consumption of goods and services that result in improved human well-being over the long term, while not exposing future generations to significant environmental risks or ecological scarcities."

It has been said that South Africa has taken the continental lead in transitioning to a green economy.²³ This is, *inter alia*, because South Africa is one of the most biologically diverse countries in the world,²⁴ and therefore recognises that

16 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 15-24 available at <http://www.unep.org>.

17 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 15-24 available at <http://www.unep.org>.

18 UNDESA 2012 www.uncsd2012.org.

19 UNDESA 2012 www.uncsd2012.org.

20 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 15-24 available at <http://www.unep.org>.

21 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 15-24 available at <http://www.unep.org>.

22 DEA Date Unknown www.environment.gov.za.

23 Vermeulen 2012 <http://www.engineeringnews.co.za>.

24 SANBI 2012 <http://www.sanbi.org>; Vermeulen 2012 <http://www.engineeringnews.co.za>.

it is heavily dependent on its natural resources for economic growth.²⁵ In May 2010, for example, four national governmental departments co-hosted the *Green Economy Summit* which set the stage for moving towards a green economy.²⁶ In 2011, at the 17th *Conference of the Parties to the United Nations Framework Convention on Climate Change* (hereafter COP 17), South Africa confirmed its commitment to build a green economy by signing the *Green Economy Accord*.²⁷ Then, in 2012, South Africa participated in the *Rio Earth Summit* (hereafter Rio+20) which dealt with two major topics, one of which addressed the issue of; "[a] Green Economy in the Context of Sustainable Development and Poverty Eradication".²⁸

It has been argued that, due to South Africa's richness in biodiversity and subsequent dependence on natural resources for economic growth; ecotourism, in particular, is potentially able to play a major role in South Africa's transition to a green economy.²⁹ The concept of ecotourism was founded in the 1960s.³⁰ However, up until the present there is still no single universally adopted definition of the term.³¹ The most popular definition of ecotourism seems to be the one formulated by the world's oldest and largest ecotourism organisation, namely The International Ecotourism Society (hereafter TIES).³² According to TIES,³³ ecotourism is the following: "...responsible travel to natural areas that conserves the environment and improves the well-being of local people".³⁴ Ecotourism is also said to be a type of speciality travel which incorporates

25 Vermeulen 2012 <http://www.engineeringnews.co.za>; SANBI 2012 <http://www.sanbi.org>.

26 South African Government 2010 <http://www.environment.gov.za>.

27 South African Government 2011 <http://www.info.gov.za>.

28 DEA 2012 www.environment.gov.za; UNEP 2011 <http://www.unep.org>.

29 SANBI 2012 <http://www.sanbi.org>; Vermeulen 2012 <http://www.engineeringnews.co.za>; ETC 2012 <http://www.etc.corporate.org>; UNEP 2011 <http://www.unep.org>.

30 Björk "Definition Paradoxes: From Concept to Definition" 26.

31 Björk "Definition Paradoxes: From Concept to Definition" 26; Honey *Ecotourism and Sustainable Development* 28; Sirakaya, Sasidharan and Sönmez "Redefining Ecotourism: The Need for a Supply-side View" 616-620; ETC 2012 <http://www.etc.corporate.org>.

32 Honey *Ecotourism and Sustainable Development* 6; TIES Date Unknown <http://www.ecotourism.org>.

33 TIES Date Unknown <http://www.ecotourism.org>.

34 Note that other relevant definitions of ecotourism are considered in s 3 of this study.

dimensions of various forms of nature-based tourism,³⁵ such as wildlife tourism,³⁶ adventure tourism,³⁷ and culture tourism,³⁸ depending on the recreational activities it offers the tourist,³⁹ and therefore has become a very popular and rapidly expanding industry.⁴⁰ However, that which distinguishes ecotourism from other types of tourism, is the fact that its purpose is to benefit local communities and destinations environmentally, socially and economically.⁴¹ It is therefore also argued that ecotourism can be a key driver for South Africa in its transition toward a green economy, because its purpose is in line with the objectives and outcome of a green economy.⁴²

Ecotourism in South Africa does, however, not exist in a legal vacuum, but must *inter alia* be in line with the constitutional environmental right provided for in section 24 of the Constitution, as well as the objectives, regulatory provisions, and environmental management principles provided for in the framework of environmental laws of South Africa.⁴³ Against the background of the above, this

35 "Nature-based tourism" as defined by Ingram and Durst: "Travel to participate in outdoor activities, utilizing the natural resources of an area." See Björk "Definition Paradoxes: From Concept to Definition" 34, 42-45.

36 "Wildlife tourism" as defined by Shackley: "Travel to areas where wildlife can be watched." See Björk "Definition Paradoxes: From Concept to Definition" 34, 42-45.

37 "Adventure tourism" as defined by Kane and Zink: "Travel that involves risk, danger and adrenalin; a tourism that may require physical stamina." See Björk "Definition Paradoxes: From Concept to Definition" 34, 42-45.

38 "Culture tourism" can be defined as: "Travel to areas where culture can be studied or participated in." See Björk "Definition Paradoxes: From Concept to Definition" 34, 42-45. Just to be clear - also please note the phrasing of this entire sentence. It would be incorrect to place ecotourism in the same category as these other types of tourism. Whilst these other types of tourism focus specifically on the recreational activities they offer the tourist, ecotourism focuses specifically on the benefits to conservation and the local community. In this regard, see Honey *Ecotourism and Sustainable Development* 6-7.

39 Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* xii; Björk "Definition Paradoxes: From Concept to Definition" 34.

40 Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* xii-xiii.

41 This will be explained in 3.2 of this study. Björk "Definition Paradoxes: From Concept to Definition" 34-35; Honey *Ecotourism and Sustainable Development* 7; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14.

42 This will be explained in greater detail in 3.3. TIES Date Unknown <http://www.ecotourism.org>; UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 418-419 available at <http://www.unep.org>; Chief Directorate of the DEA Date Unknown <http://www.enviropaedia.com>; SANBI 2012 <http://www.sanbi.org>; Vermeulen 2012 <http://www.engineeringnews.co.za>.

43 See s 2 of this study. Van der Bank and Van der Bank 2012 *Business Management Dynamics* 1-9.

study critically considers South African environmental law objectives, principles and applicable provisions to ascertain how ecotourism should be regulated in the future while moving towards a green economy.

This study takes the form of a literature review. In considering the critical link and mutual relationship between ecotourism and green economy discourse, the Constitution, NEMA, the *National Environmental Management: Biodiversity Act* 10 of 2004 (hereafter NEMBA), the *National Environmental Management: Protected Areas Act* 57 of 2003 (hereafter NEMPAA), the *National Environmental Management: Integrated Coastal Management Act* 24 of 2008 (hereafter NEM:ICMA), the *National Heritage Resources Act* 25 of 1999 (hereafter NHRA) and the *World Heritage Convention Act* 49 of 1999 (hereafter WHCA), are critically explored and evaluated. Although this study acknowledges that environmental laws at provincial-, and also municipal level, also play a crucial role in regulating ecotourism, the limited scope of this study does not allow for specific provincial environmental acts and regulations, or municipal bylaws, to be discussed. Critical consideration is given to the scholarly opinions and legal perspectives contained in relevant sources, such as textbooks, government policy, electronic sources and international instruments.

Section 2 of this study commences with a discussion on why there is a need for transition to a green economy, not only globally, but also specifically for South Africa. It proceeds to explain the notion of a green economy, and highlights what South Africa has done thus far towards transitioning to a green economy. Section 3 then shifts the focus to ecotourism. It initially gives an explanation on the nature of ecotourism to provide a better understanding of what it is. Subsequently it helps the reader connect the dots between ecotourism and a green economy, and provides an understanding on why and how ecotourism can promote South Africa's transition to a green economy. It proceeds to explain further why it is crucial for South Africa to regulate ecotourism effectively under the circumstances. Finally, section 4 looks at each different piece of

national environmental legislation which is deemed to be of significance for the effective regulation of ecotourism in South Africa. Each of these is critically considered against certain criteria to ascertain whether South Africa regulates ecotourism effectively from an environmental law perspective. Section 5 concludes with some observations and recommendations.

2 The parameters of a green economy in the South African context

2.1 Introduction

It is said that the environment provides a wide range of benefits to people, society and the economy.⁴⁴ Before elaborating on this fact, it is important to consider the description that section 1(xi) of the NEMA gives of an environment:

"Environment" means the surroundings within which humans exist and that are made up of

- (i) the land, water and atmosphere of the earth;
- (ii) micro-organisms, plant and animal life;
- (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and
- (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.

Therefore, it is safe to deduce that the South African definition of "environment" is broad enough to include any reference to "nature" or "ecosystem".⁴⁵

The environment provides a wide range of benefits for people via ecosystem services, for example; water, food and fuel.⁴⁶ Furthermore, air, water, and soil quality is maintained, climate is regulated, hazards are mitigated, crops are

44 Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* 4 available at <http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy-Report.pdf>; EFTEC *The Economic, Social and Ecological Value of Ecosystem Services* 1-2.

45 The reason for this is that many sources utilised for this study refer primarily to "nature" or "ecosystem" and, instead of its use leading to confusion, it can now be used interchangeably.

46 EFTEC *The Economic, Social and Ecological Value of Ecosystem Services* 1-2; TenBrink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* 4 available at <http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy-Report.pdf>.

pollinated and nutrients are recycled via ecosystem processes.⁴⁷ The environment generally has a positive impact on people's cultural identity and their spiritual well-being, and it is said to play a significant role in people's enjoyment of life.⁴⁸

However, for humankind to reap these benefits fully, the quality, quantity and diversity of all that is inherent to a natural and healthy environment, must be protected and preserved.⁴⁹ Failure to do this properly could significantly influence and threaten people's health, security, social relations, community well-being, and opportunities for employment.⁵⁰ Unfortunately, this is already acknowledged as a reality.⁵¹ The subsequent sub-sections elaborate on why it is acknowledged as reality.⁵² It will also indicate that a transition to a green economy has been established as a way to deal with this unfortunate reality globally, as well as in South Africa.⁵³

47 EFTEC *The Economic, Social and Ecological Value of Ecosystem Services* 1-2; TenBrink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* 4 available at http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy_Report.pdf.

48 Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* 4 available at http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy_Report.pdf; EFTEC *The Economic, Social and Ecological Value of Ecosystem Services* 1-2.

49 Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* 4 available at http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy_Report.pdf; EFTEC *The Economic, Social and Ecological Value of Ecosystem Services* 1-2.

50 Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* 14 available at http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy_Report.pdf; WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 8 available at <http://worldwildlife.org/publications/living-planet-report-2012> biodiversity biocapacity-and-better-choices; EFTEC *The Economic, Social and Ecological Value of Ecosystem Services* 3-4.

51 DEA 2013 *Strategic Plan 2013-2018* 18-19 available at https://www.environment.gov.za/sites/default/files/docs/publications/strategicplan%20013_18_annualperformanceplan.pdf; EFTEC *The Economic, Social and Ecological Value of Ecosystem Services* 2-3.

52 See 2.2.

53 See 2.2-2.4.

2.2 Background to the need for a green economy

As was mentioned briefly in section 1, the world is currently facing the daunting reality of environmental degradation at an accelerating pace.⁵⁴ The MEA of 2005 has indicated that sixty per cent of the world's major existing ecosystem services and goods have already been degraded or is being used unsustainably.⁵⁵ The World Wide Fund for Nature (hereafter WWF)⁵⁶ has also published research on this matter in the 2012 *Living Planet Report*, which shows that there has been a thirty per cent decline in overall global biodiversity health since 1970. Between 2000 and 2010 alone, it appears that around thirteen million ha of forest were destroyed.⁵⁷ Over the past hundred years the utilisation of the sea and its resources has left many resources overexploited and/or even collapsed.⁵⁸ Furthermore the rise in greenhouse gas emissions has led to the rise of global temperatures – it is said that the last decade has been warmer than any other comparable period for at least four hundred years.⁵⁹ This, in turn, has resulted in a thirty per cent increase in the oceans' acidity and a decrease in the volume of arctic ice, to name but a few consequences.⁶⁰

54 EFTEC *The Economic, Social and Ecological Value of Ecosystem Services* 1-5; WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 6 available at http://worldwildlife.org/publications/living-planet-report-2012-biodiversity_biocapacity-and-better-choices.

55 Millennium Ecosystem Assessment Date Unknown <http://www.millenniumassessment.org>; UNEP 2011 <http://www.unep.org>.

56 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 8 available at http://worldwildlife.org/publications/living-planet-report-2012-biodiversity_biocapacity-and-better-choices.

57 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 76 available at http://worldwildlife.org/publications/living-planet-report-2012_biodiversity_biocapacity-and-better-choices.

58 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 84 available at http://worldwildlife.org/publications/living-planet-report-2012_biodiversity_biocapacity-and-better-choices.

59 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 92-93 available at http://worldwildlife.org/publications/living-planet-report-2012_biodiversity_biocapacity-and-better-choices.

60 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 92-93 available at

Moreover the planet is also said to be facing that which is called an "ecological overshoot".⁶¹ This means there is an increase in humanity's ecological footprint, while the earth's bio-capacity is simultaneously decreasing – or in simplified terms: humanity's demand on the environment and its resources are more than what the earth can reasonably provide.⁶² It is argued that in 2008 this ecological overshoot had already reached more than fifty per cent which in effect means that; if a business-as-usual approach is applied, by 2030 not even two planets will be enough to sustain humanity.⁶³

According to the various situational analyses that have been done by the DEA,⁶⁴ continuous environmental degradation is as much of a manifestation in South Africa as it is all over the globe.⁶⁵ It appears that water quality has been compromised in numerous areas and it is estimated that the demand on water will exceed its availability in South Africa by 2025.⁶⁶ Furthermore land degradation and soil erosion is proving to be a challenge. It is estimated that only 7.5 per cent of South Africa's land surface can be utilised for crop

<http://worldwildlife.org/publications/living-planet-report-2012> biodiversity biocapacity-and better-choices.

61 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 8, 40-41 available at

<http://worldwildlife.org/publications/living-planet-report-2012> biodiversity biocapacity-and better-choices.

62 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 8, 40-41 available at

<http://worldwildlife.org/publications/living-planet-report-2012> biodiversity biocapacity-and better-choices.

63 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 8, 100 available at

<http://worldwildlife.org/publications/living-planet-report-2012> Biodiversity, biocapacity-and better-choices

64 DEA 2013 *Strategic Plan 2013-2018* 18-19 available at

https://www.environment.gov.za/sites/default/files/docs/publications/strategicplan%20013_18_annualperformanceplan.pdf; DEA *South African Environment Outlook Report*; UNEP *Green Economy Scoping Study* 1-8.

65 DEA 2013 *Strategic Plan 2013-2018* 18-19 available at

https://www.environment.gov.za/sites/default/files/docs/publications/strategicplan%20013_18_annualperformanceplan.pdf; DEA *South African Environment Outlook Report*; UNEP *Green Economy Scoping Study* 1-8.

66 DEA 2013 *Strategic Plan 2013-2018* 18-19 available at

https://www.environment.gov.za/sites/default/files/docs/publications/strategicplan%20013_18_annualperformanceplan.pdf; DEA *South African Environment Outlook Report*; UNEP *Green Economy Scoping Study* 1-8.

production.⁶⁷ It has also been noted that air pollution and poor waste management is affecting people's health.⁶⁸ Keep in mind that South Africa is known to be the third most biologically diverse country in the world. However,⁶⁹ studies done by the DEA found that:⁷⁰

About 34 per cent of the country's terrestrial ecosystems, 82 per cent of its main river ecosystems and 65 per cent of its marine bio-zones are threatened, while 50 per cent of its wetlands have already been destroyed and living marine resources are either maximally or over-exploited.

A study done by the WWF and the African Development Bank (hereafter AfDB) has also revealed a shocking fact: That South Africa's ecological footprint exceeds that of not only the entire African continent, but also the ecological footprint of the entire world.⁷¹ This is largely due to South Africa's heavy reliance on fossil fuels for energy production.⁷² It is an established fact that South Africa is one of the world's twenty biggest greenhouse gas emitters, and it is apparently this that causes fifty per cent of South Africa's staggering ecological footprint.⁷³

67 DEA 2013 *Strategic Plan 2013-2018* 18-19 available at https://www.environment.gov.za/sites/default/files/docs/publications/strategicplan%20013_18_annualperformanceplan.pdf; DEA *South African Environment Outlook Report*; UNEP *Green Economy Scoping Study* 1-8.

68 DEA 2013 *Strategic Plan 2013-2018* 18-19 available at https://www.environment.gov.za/sites/default/files/docs/publications/strategicplan%20013_18_annualperformanceplan.pdf; DEA *South African Environment Outlook Report*; UNEP *Green Economy Scoping Study* 1-8.

69 SANBI 2012 <http://www.sanbi.org>.

70 DEA 2013 *Strategic Plan 2013-2018* 18-19 available at https://www.environment.gov.za/sites/default/files/docs/publications/strategicplan%20013_18_annualperformanceplan.pdf; DEA *South African Environment Outlook Report*; UNEP *Green Economy Scoping Study* 1-8.

71 Africa's ecological footprint is said to be 1.2 hectares per person, whereas the world's ecological footprint is an average of 2.2 global hectares per person and South Africa's ecological footprint is a staggering average of 2.8 global hectares per person. UNEP *Green Economy Scoping Study* 1-8; WWF and AfDB *African Ecological Footprint Report*.

72 DEA 2013 *Strategic Plan 2013-2018* 18-19 available at https://www.environment.gov.za/sites/default/files/docs/publications/strategicplan%20013_18_annualperformanceplan.pdf, DEA *South African Environment Outlook Report*, UNEP *Green Economy Scoping Study* 1-8, WWF and AfDB *African Ecological Footprint Report*.

73 DEA 2013 *Strategic Plan 2013-2018* 18-19 available at https://www.environment.gov.za/sites/default/files/docs/publications/strategicplan%20013_18_annualperformanceplan.pdf

It is argued that this degradation of the environment all over the world, as well as in South Africa, is at least partly due to a relentless pursuit of economic growth.⁷⁴ This is because, apparently, since the 18th century there has been a wide held view that "nature should be conquered, or at best be selectively conserved, for the benefit of humanity."⁷⁵ The latter view clearly does not recognise the fact that economic growth, at the cost of our finite planet and its resources, is a recipe for disaster.⁷⁶

It appears that many, despite having realised that there is a problem in this regard, still have reservations about changing their destructive ways.⁷⁷ These reservations is said to have arisen from two widespread myths, namely; that "there is an inescapable trade-off between environmental sustainability and economic progress",⁷⁸ and that environmental sustainability is either "a luxury only wealthy countries can afford or a ruse to restrain development and perpetuate poverty in developing countries".⁷⁹ Moreover, many still embrace the Environmental Kuznets Curve theory,⁸⁰ which suggests that the richer people become, the greener the planet will become.⁸¹ It places economic growth above the environment as a priority – in effect propagating that the world should "grow first, and clean up later".⁸²

013_18_annualperformanceplan.pdf; UNEP *Green Economy Scoping Study* 1-8; WWF and AfDB *African Ecological Footprint Report*.

74 UNEP Date Unknown <http://www.unep.org>; IUCN 2011 <http://www.iucn.org>. See also: Preamble of the *Earth Charter*, 2000 - "The Global Situation"; Millennium Ecosystem Assessment Date Unknown <http://www.millenniumassessment.org>; UNEP 2011 <http://www.unep.org>.

75 ECI 2011 www.earthcharterinaction.org.

76 Tienhaara 2010 *Environmental Policy and Governance* 205.

77 Tienhaara 2010 *Environmental Policy and Governance* 197-208.

78 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 15-16 available at <http://www.unep.org>.

79 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 15-16 available at <http://www.unep.org>.

80 Proposed by economists Grossman and Krueger. See Grossman and Krueger *Environmental impacts of a North American Free Trade Agreement in the US–Mexico Free Trade Agreement* 13–56; Grossman and Krueger 1995 *Quarterly Journal of Economics* 110 353–377; Tienhaara 2010 *Environmental Policy and Governance* 204-205.

81 Tienhaara 2010 *Environmental Policy and Governance* 204-205.

82 Tienhaara 2010 *Environmental Policy and Governance* 204-205.

However, the reality is that, placing economic growth above the environment as a priority is mostly only profitable over the short term.⁸³ There is a need for a long term approach – one where the environment is appreciated, protected and maintained for its anthropocentric benefits as well as its intrinsic value, and where economic growth and a sustainable environment is regarded as equally and mutually important.⁸⁴ It has been argued by many that the economy and the environment are in fact mutually dependent on each other.⁸⁵ The following words spoken by the late Wangari Maathai, for example, was also quoted by South Africa's Minister of Water and Environmental Affairs when she delivered her 2012 budget vote speech for the DEA:⁸⁶

The environment and the economy are really both two sides of the same coin. You cannot sustain the economy if you don't take care of the environment because we know that the resources that we use whether it is oil, energy, land ... all of these are the basis in which development happens. And development is what we say generates a good economy and puts money in our pockets. If we cannot sustain the environment, we cannot sustain ourselves.

The above suggests therefore that investment in environmental initiatives can actually result in improvement of not only the economy, but also the environment.⁸⁷ The relevance of this at international, regional and national level is immense, not only due to the aforesaid environmental challenges that South Africa and the rest of the world face, but also because the world experienced a major financial collapse in 2008.⁸⁸ It has been depicted as "the world's first truly

83 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 118 available at <http://worldwildlife.org/publications/living-planet-report-2012-biodiversity-biocapacity-and-better-choices>.

84 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 118 available at <http://worldwildlife.org/publications/living-planet-report-2012-biodiversity-biocapacity-and-better-choices>; Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* iii available at <http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy-Report.pdf>.

85 Tienhaara 2010 *Environmental Policy and Governance* 197-208; Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* 1 available at <http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy-Report.pdf>.

86 CER 2012 <http://cer.org.za/news/minister-molewas-2012-budget-vote-speech-for-dea-climate-change-rio20-green-economy-jobs-eias-waste-strategy-and-rhino-poaching>.

87 Tienhaara 2010 *Environmental Policy and Governance* 197-198.

88 Tienhaara 2010 *Environmental Policy and Governance* 197-198.

global financial crisis"⁸⁹ and, although the global economy is now slowly recovering, some leading economists still remain concerned for the potential of a "double dip recession".⁹⁰

It must be emphasised, however, that the converse is also relevant – if this global financial crisis, or any other economic hardship, is used as an excuse not to invest in the environment, it will result in the downfall of both.⁹¹ For South Africa such an attitude is a big risk, due to the fact that the poor, especially those living in rural areas, are especially vulnerable to climate change and environmental degradation.⁹² South Africa is currently regarded as an upper-middle income country, but has struggled with poverty, a high rate of unemployment, and socio-economic inequality ever since its apartheid era.⁹³ The socio-economic disparities in South Africa are known to be among the highest in the world.⁹⁴ Currently thirty-nine per cent of South Africa's population lives in rural areas.⁹⁵ Many of these people are known to have a lack of income, adequate water, food and sanitation – they are mostly reliant on urban remittances and social welfare to sustain them.⁹⁶ As the WWF⁹⁷ puts it: "(w)ithout access to land, clean water, adequate food, fuel and materials; vulnerable people cannot break out of the poverty trap and prosper". In other words, these people's high dependency on ecosystem services keeps them in a

89 Omarova 2009 *North Carolina Banking Institute* 157; Tienhaara 2010 *Environmental Policy and Governance* 197.

90 Tienhaara 2010 *Environmental Policy and Governance* 197-198.

91 Tienhaara 2010 *Environmental Policy and Governance* 197-198.

92 GN 757 in GG 34695 of 19 October 2011; Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* 15-16 available at <http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy-Report.pdf>.

93 GN 757 in GG 34695 of 19 October 2011; NPC 2013 *National Development Plan 2030: Our Future – Make it Work*, available at www.info.gov.za/issues/national-development-plan/; UNEP *Green Economy Scoping Study* 1-8.

94 UNEP *Green Economy Scoping Study* 1-8.

95 GN 757 in GG 34695 of 19 October 2011.

96 GN 757 in GG 34695 of 19 October 2011.

97 WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* 57 available at <http://worldwildlife.org/publications/living-planet-report-2012-biodiversity-biocapacity-and-better-choices>.

vicious cycle of poverty, unemployment, and ecological scarcity.⁹⁸ It is clear that these domestic challenges, as well as the effects of the global financial crisis on South Africa, are a heavy burden to carry. Therefore it can be deduced that South Africa's investment in the environment is crucial.⁹⁹

In light of all of the above, at international and national level, many argue that; "every crisis is also an opportunity",¹⁰⁰ and that now is the perfect time to protect, maintain and invest in the environment so as to benefit not only our finite earth and its resources, but also the socio-economic well-being of humankind.¹⁰¹ It is this optimistic point of view that has given rise to the notion of a "green economy"; an approach that is designed to be a long term solution to the highly unsustainable economic and environmental practices we are dealing with today.¹⁰²

2.3 Understanding the notion of a green economy

Even though the notion of a green economy has only recently gained significant international attention, it has indirectly been a subject of research and discussion for many decades.¹⁰³ The term "green economy" was first introduced

98 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 20 available at <http://www.unep.org>; Barbier *A Global Green New Deal* 10-11.

99 UNEP *Green Economy Scoping Study* 1-8.

100 Tienhaara 2010 *Environmental Policy and Governance* 197-199.

101 Tienhaara 2010 *Environmental Policy and Governance* 197-208; Barbier *A Global Green New Deal* 10-11; WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* available at <http://worldwildlife.org/publications/living-planet-report-2012-biodiversity-biocapacity-and-better-choices>; Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* available at <http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy-Report.pdf>; UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* available at <http://www.unep.org>; Barbier *A Global Green New Deal* 10-11.

102 Tienhaara 2010 *Environmental Policy and Governance* 197-208; Barbier *A Global Green New Deal* 10-11; WWF 2012 *Living Planet Report 2012: Biodiversity, Biocapacity and Better Choices* available at <http://worldwildlife.org/publications/living-planet-report-2012-biodiversity-biocapacity-and-better-choices>; Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* available at <http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy-Report.pdf>; UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* available at <http://www.unep.org>; Barbier *A Global Green New Deal* 10-11.

103 UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

to the world in the 1989 Report *Blueprint for a Green Economy*¹⁰⁴ but, apart from the title, the publication made no other reference to the term "green economy".¹⁰⁵ This report, and its two sequels, appears to have established the idea behind a green economy.¹⁰⁶ It focused on how economics can and should be used in environmental policies, and in addressing environmental challenges.¹⁰⁷ Then, at the Earth Summit of 1992, certain principles¹⁰⁸ were laid down which entertained the same idea behind a green economy, without expressly naming it.¹⁰⁹ A series of other documents and debates followed the same path, until UNEP revived the use of the term "green economy" in 2008 when the global financial crisis struck.¹¹⁰ It appears it was at that stage that the green economy concept was finally coined as distinct concept in the international community.¹¹¹ In 2010 it was acknowledged that UNEP would have the lead role in defining and promoting this relatively novel concept, and subsequently, in 2011, UNEP published the flagship report; *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication*, which also proceeded to be one of the major topics that was addressed at Rio+20.¹¹²

Although there are many definitions of the concept "green economy", no single one has been agreed upon by the international community.¹¹³ As it was just stated, UNEP has had the renowned leading role in defining and promoting the

104 UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

105 UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

106 UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

107 UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

108 See Principles 8 and 16 of the 1992 *Rio Declaration on Environment and Development* and ch 8 of *Agenda 21*. UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

109 UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

110 UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

111 It must be pointed out at this stage that other terms have also been brought forward for the same concept, for example "Green Growth". Although some minor differences exist between these terms, it is accepted that they do have the same objective, namely; achieving sustainable development (as will be discussed shortly). Therefore, although some may argue against it, many believe the distinctions are of little relevance, and have started to use these terms interchangeably. UNDESA 2012 *A Guidebook to the Green Economy* 5-9, 60-64 available at www.uncsd2012.org.

112 UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

113 UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

green economy, and that is presumably also why its definition has been the most widely recognised up to date.¹¹⁴ UNEP defines a green economy as; "an economy that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities",¹¹⁵ or more simply "low-carbon, resource efficient and socially inclusive".¹¹⁶

South Africa has also tried its hand at putting forward a formal definition of a green economy. According to the DEA,¹¹⁷ a green economy is "a system of economic activities related to the production, distribution and consumption of goods and services that result in improved human well-being over the long term, while not exposing future generations to significant environmental risks or ecological scarcities". This definition appears to be in line with the one that was formulated by UNEP.

What is prevalent from these definitions, and the others which are not elaborated on in this study,¹¹⁸ is that a green economy does not only strive for economic and environmental development, but also for social development.¹¹⁹ It can therefore be deduced that, although a green economy conceptually focuses primarily on economic and environmental development, it also recognises social development to be equally important.¹²⁰ This means in effect that the notion of a green economy is consistent with the notion of sustainable development.¹²¹

114 UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

115 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 15-24 available at <http://www.unep.org>.

116 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 15-24 available at <http://www.unep.org>.

117 DEA Date Unknown www.environment.gov.za.

118 For more definitions of a green economy, see UNDESA 2012 *A Guidebook to the Green Economy* 63 available at www.uncsd2012.org.

119 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* available at <http://www.unep.org>; UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

120 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* available at <http://www.unep.org>; UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

121 Ocampo 2011 *The Transition to a Green Economy: Benefits, Challenges and Risks from a Sustainable Development Perspective* 4-5.

As was explained in section 1, sustainable development is regarded as "development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs".¹²² It also appears that development can only meet the needs of current and future generations, if a state of harmony exists between economic -, social -, and ecological development.¹²³ In light of all of the above, it can thus be deduced that the long term approach of a green economy is generally in line with the long term goal of sustainable development.¹²⁴

However, it is important to understand that the notion of a green economy does not replace the notion of sustainable development.¹²⁵ As UNEP¹²⁶ has clearly indicated; a green economy must rather be perceived as the pathway to ultimately achieve sustainable development. It should be kept in mind that the "green economy pathway" does not have a rigid design.¹²⁷ Naturally the pathway of each of the countries involved in the global transition to a green economy will differ depending on, *inter alia*, their respective natural capital, domestic context and socio-economic priorities.¹²⁸ It appears that South Africa's pathway will be unique in the sense that, for example; it not only has to deal with being one of the biggest emitters of greenhouse gases in the world, but also with being one of the most socio-economically unequal countries in the world.¹²⁹ On the other side of the spectrum, however, South Africa is fortunate to be the third most biologically diverse country in the world and can use it to its

122 Brundtland Report 1987 www.un-documents.net.

123 Kotzé "Towards a Tentative Legal Formulation of Environmental Governance" 19; Kidd *Environmental Law* 17-18.

124 Ocampo 2011 *The Transition to a Green Economy: Benefits, Challenges and Risks from a Sustainable Development Perspective* 4-5.

125 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* available at <http://www.unep.org>.

126 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* available at <http://www.unep.org>.

127 Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* iv available at <http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy-Report.pdf>.

128 Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* iv available at <http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy-Report.pdf>.

129 See 2.2.

advantage.¹³⁰ It must be noted that a green economy is not just about being low-carbon, but also about effective natural resource management.¹³¹ For this reason it is suggested that South Africa can rely, *inter alia*, on its ecotourism industry to be one of the key drivers in the transition to a green economy.¹³² This will be elaborated on in section 3 of this study.

2.4 South Africa's movement towards a green economy

South Africa has in recent times embraced the notion of a green economy for all of the reasons stated above.¹³³ It has even been said that South Africa has taken the continental lead in transitioning to a green economy.¹³⁴ The South African government's passion for this cause appears to have been indirectly sparked as early as 1997 when it ratified the *United Nations Framework Convention on Climate Change*, 1992.¹³⁵ Since then it is apparent that South Africa is really putting in an effort to follow a low-carbon approach, also publishing the *National Climate Change Response White Paper* of 2011 as proof of its commitment in that regard.¹³⁶

In May 2010 South Africa responded to UNEP's call for a *Global Green New Deal* by hosting the *Green Economy Summit*,¹³⁷ where nine priority sectors were identified and valuable insights gathered, to set the stage for the development of a South African green economy plan.¹³⁸ Then in 2011, at COP

130 See 1 and 2.2.

131 Maia *et al* *Green Jobs* 14.

132 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 418-419 available at <http://www.unep.org>; Chief Directorate of the DEA Date Unknown <http://www.enviropaedia.com>; SANBI 2012 <http://www.sanbi.org>; Vermeulen 2012 <http://www.engineeringnews.co.za>.

133 Vermeulen 2012 <http://www.engineeringnews.co.za>.

134 As stated in s 1 of this study. Vermeulen 2012 <http://www.engineeringnews.co.za>.

135 *The National Climate Change Response Strategy for South Africa*, 2004; Deloitte 2012 <http://deloitteblog.co.za/tag/green-economy/>; UNDESA 2012 *A Guidebook to the Green Economy* 5-9 available at www.uncsd2012.org.

136 Deloitte 2012 <http://deloitteblog.co.za/tag/green-economy/>; GN 757 in GG 34695 of 19 October 2011.

137 South African Government 2010: <http://www.environment.gov.za>.

138 UNEP Date Unknown <http://www.unep.org>; Chief Directorate of DEA Date Unknown <http://www.enviropaedia.com>.

17, South Africa signed the *Green Economy Accord* as part of its *New Growth Path*.¹³⁹ South Africa was subsequently also a participant in Rio+20.¹⁴⁰

According to Ten Brink *et al*, South Africa has also initiated various programmes that carry the green economy label, for example *Working for Water*, *Working on Fire*, *Working for Forests*, and *Working for Wetlands*, which have been very successful up to date.¹⁴¹ The National Treasury has also allocated R800-million to South Africa's Green Fund, to be used in support of green economy projects over the next two years.¹⁴² In view of all of this, it appears that the transition to a green economy is currently high on South Africa's list of priorities, and that South Africa is, as far as it concerns policy-making, well on its way in its transition to a green economy.

2.5 Conclusion

In view of the above, this section can be concluded with the understanding that the transition to a green economy is crucial for South Africa to be able to achieve the ultimate goal of sustainable development. It fortunately appears that, at least in theory, South Africa is already off to a flying start in this regard. However, the successful transition to a green economy requires effective "drivers" to be implemented. Ecotourism, if regulated effectively, is argued to be such a driver in section 3.

139 South African Government 2011 <http://www.info.gov.za>.

140 DEA 2012 www.environment.gov.za; UNEP 2011 <http://www.unep.org>.

141 Ten Brink *et al* 2012 *Nature and Its Role in the Transition to a Green Economy* available at <http://www.teebweb.org/wp-content/uploads/2012/10/Green-Economy-Report.pdf>;

Vecchiato 2013 <http://www.bdlive.co.za/business/2013/04/22/sa-must-use-limited-window-to-become-green-economy-leader-says-idc>.

142 SouthAfrica.info 2012 <http://www.southafrica.info/about/sustainable/green-fund>.

3 The nature and potential of ecotourism in the transition to a green economy

3.1 Introduction

"Tread lightly, take only photographs, and leave only footprints"¹⁴³ – this saying may come to mind when thinking about the meaning of ecotourism. However, the concept of ecotourism appears to be much more complex than that.¹⁴⁴ In fact, it consists of various components and is based on seven internationally established principles.¹⁴⁵ It is more than a mere recreational trend, - "it reflects a fundamental shift in the way human beings view and engage with nature and tourism".¹⁴⁶ The basis for this argument becomes apparent in 3.2, when the nature of ecotourism is investigated. The discussion then goes on to draw the link between ecotourism and a green economy; and ultimately establishes ecotourism as a key driver of a green economy. Finally the importance of the effective regulation of ecotourism in South Africa is stressed, by briefly considering the environmental impacts which ecotourism developments and - activities are likely to cause, and the threat that such environmental impacts hold for South Africa in particular.

143 Sirakaya, Sasidharan and Sönmez "Redefining Ecotourism: The Need for a Supply -side View" 620.

144 Björk "Definition Paradoxes: From Concept to Definition" 24-41.

145 Honey *Ecotourism and Sustainable Development* 28-33; Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 9-16.

146 Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1.

3.2 Understanding the nature of ecotourism

Over the past few years ecotourism has been grouped as part of various categories of tourism, which appears to have ultimately led to widespread confusion.¹⁴⁷ However, one of these categories which are safe, and rather important to mention, is sustainable tourism.¹⁴⁸ This is understood to be a form of tourism which aims to promote sustainable development in the host country/community.¹⁴⁹ From the discussion of sustainable development earlier in this study,¹⁵⁰ it can be deduced that tourism will promote sustainable development in the host country/community only if it benefits present and future generations by keeping its environmental -, social -, and economic development in balance.¹⁵¹ The United Nations World Tourism Organisation (hereafter UNWTO)¹⁵² has conceptualised sustainable tourism as a form of tourism which:

1. Makes optimal use of environmental resources that constitute a key element in tourism development, maintaining essential ecological processes, and helping to conserve natural heritage and biodiversity.
2. Respects the socio-cultural authenticity of host communities, conserve their built and living cultural heritage and traditional values, and contribute to inter-cultural understanding and tolerance.
3. Ensures viable, long term economic operations, providing socio-economic benefits to all stakeholders that are fairly distributed, including stable employment and income-earning opportunities and social services to host communities, and contributing to poverty alleviation.

147 Honey *Ecotourism and Sustainable Development* 28; Björk "Definition Paradoxes: From Concept to Definition" 35; Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 9-10.

148 Weaver *Ecotourism in the Less Developed World* 1-33; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14; Weaver and Opperman *Tourism Management* 353; Björk "Definition Paradoxes: From Concept to Definition" 35; Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 9-10.

149 Weaver *Ecotourism in the Less Developed World* 1-33; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14; Weaver and Opperman *Tourism Management* 353; Björk "Definition Paradoxes: From Concept to Definition" 35.

150 See s 1 of this study.

151 See 1 and 2.2-2.4. Weaver *Ecotourism in the Less Developed World* 1-33; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14; Weaver and Opperman *Tourism Management* 353; Björk "Definition Paradoxes: From Concept to Definition" 35.

152 Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 10, UNWTO 2004 <http://sdt.unwto.org/en/content/about-us-5>.

The reason why ecotourism is then regarded as a form of sustainable tourism is because it is premised on a set of principles¹⁵³ which reflect, and ultimately brings to pass, these goals of sustainable tourism and sustainable development.¹⁵⁴ In fact, it appears that the concept of ecotourism had actually evolved due to the need for sustainable nature-based tourism.¹⁵⁵

In the 1960s environmentalists, conservationists, scientists and park officials began reconsidering the "preservationist" conservation approach which had been applied since the earliest of times.¹⁵⁶ The preservationist conservation approach involved evicting, often forcibly, local communities from their land for conservation and tourism purposes.¹⁵⁷ These local communities were then often restricted to the use of unsustainable areas around the protected parks and had little or no share in the benefits that were generated by any tourism in that area.¹⁵⁸ The communities resented this, and eventually it resulted in an escalation of local hostility, poaching and environmental degradation.¹⁵⁹ Naturally some began to argue that the environment could only be conserved effectively if local communities were to start benefiting from it because "people will only protect what they receive value from".¹⁶⁰ Many economists also started to argue that "the road out of poverty must begin at, not simply trickle down to, the local community level".¹⁶¹

153 These principles will be discussed in detail later on in 3.2.

154 Honey *Ecotourism and Sustainable Development* 6-14, 28-33; TIES Date Unknown <http://www.ecotourism.org>; Björk "Definition Paradoxes: From Concept to Definition" 35; Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 9.

155 Honey *Ecotourism and Sustainable Development* 13-14; Björk "Definition Paradoxes: From Concept to Definition" 26.

156 Honey *Ecotourism and Sustainable Development* 13-14; Björk "Definition Paradoxes: From Concept to Definition" 26.

157 Honey *Ecotourism and Sustainable Development* 13-14.

158 Honey *Ecotourism and Sustainable Development* 13-14.

159 Honey *Ecotourism and Sustainable Development* 13-14.

160 Honey *Ecotourism and Sustainable Development* 13-14.

161 Honey *Ecotourism and Sustainable Development* 13-14.

Then, in 1969, the global environmental movement took off in response to the massive oil spill in Santa Barbara, California.¹⁶² Earth Day was subsequently held, for the first time ever, on 22 April 1970.¹⁶³ It established the beginning of an age where the world was not only made aware of the threats of environmental degradation, but as a result also acknowledged the importance of conservation as a priority.¹⁶⁴ Conservation efforts were thus elevated to a new level.¹⁶⁵ In the travel and tourism industry this new found awareness for the conservation of nature required a vision beyond what a mere authentic experience of nature could mean for the tourist.¹⁶⁶ On the other hand, the new found awareness for the socio-economic well-being of local communities required a vision beyond what tourism could mean for the conservation of nature.¹⁶⁷ Sustainable nature-based tourism was needed, and so ecotourism developed.¹⁶⁸

An important aspect to take note of here, is the fact that ecotourism is nature-based.¹⁶⁹ In fact, nature plays a primary role in ecotourism¹⁷⁰ and any form of sustainable tourism, which does not have nature as its primary motivation, cannot be said to be ecotourism.¹⁷¹ This is apparent even by only considering

162 Earth Day Network Date Unknown <http://www.earthday.org/earth-day-history-movement>; Honey *Ecotourism and Sustainable Development* 13-14.

163 Earth Day Network Date Unknown <http://www.earthday.org/earth-day-history-movement>.

164 Earth Day Network Date Unknown <http://www.earthday.org/earth-day-history-movement>.

165 Honey *Ecotourism and Sustainable Development* 1-33.

166 TIES Date Unknown <http://www.ecotourism.org>; Honey *Ecotourism and Sustainable Development* 6-14.

167 Honey *Ecotourism and Sustainable Development* 6-14; TIES Date Unknown <http://www.ecotourism.org>.

168 Weaver *Ecotourism in the Less Developed World* 1-3; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14; Weaver and Opperman *Tourism Management* 353; Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 9.

169 Björk "Definition Paradoxes: From Concept to Definition" 24; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 6-12; Weaver *Ecotourism in the Less Developed World* 15; Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 9.

170 Björk "Definition Paradoxes: From Concept to Definition" 24; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 6-12; Weaver *Ecotourism in the Less Developed World* 15.

171 Björk "Definition Paradoxes: From Concept to Definition" 24; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 6-12; Weaver *Ecotourism in the Less Developed World* 15.

term in itself.¹⁷² Although Björk argues that the prefix "eco" in "ecotourism" also refers to an economic dimension, it is undisputed that the prefix is indeed derived from the word "ecology".¹⁷³ Ecotourism also requires the natural destination to be as far as possible unspoiled with a profound natural, cultural, and historical richness.¹⁷⁴ For this reason it is no surprise that "ecotourism [typically] involves visits to areas that are under some form of environmental protection by governments, conservation - or scientific organisations; also private owners or entrepreneurs".¹⁷⁵

Keep in mind that, although nature forms an integral part of ecotourism, nature-based tourism in itself cannot necessarily be described as ecotourism.¹⁷⁶ This is very often misunderstood, and unfortunately results in the term "ecotourism" being incorrectly used for any form of tourism which has anything to do with nature.¹⁷⁷ Nature-based tourism has its own set of dimensions and, even though some may overlap with those of ecotourism, it is two entirely different concepts.¹⁷⁸ Similar to ecotourism nature-based tourism primarily involves travelling to natural, unspoiled places.¹⁷⁹ It is usually also defined further by the type of recreational activities it offers the tourist.¹⁸⁰ Wildlife tourism, as a form of nature-based tourism, for example involves bird-watching, fishing, safari's

172 Björk "Definition Paradoxes: From Concept to Definition" 24; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 6-12.

173 Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 11.

174 Weaver and Opperman *Tourism Management* 369-373; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 11.

175 Honey *Ecotourism and Sustainable Development* 13.

176 Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 6.

177 Honey *Ecotourism and Sustainable Development* 28.

178 Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 6-7; Björk "Definition Paradoxes: From Concept to Definition" 34-35.

179 Björk "Definition Paradoxes: From Concept to Definition" 34-35; Honey *Ecotourism and Sustainable Development* 7; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14.

180 Björk "Definition Paradoxes: From Concept to Definition" 34-35; Honey *Ecotourism and Sustainable Development* 7; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14.

etc.¹⁸¹ Adventure tourism, as a form of nature-based tourism, for example involves deep-sea diving, kayaking, mountain biking, abseiling etc.¹⁸²

However, as it was mentioned earlier, ecotourism forms part of the broader category of sustainable tourism.¹⁸³ Therefore, as Kutay¹⁸⁴ puts it: "[ecotourism] is more than travel to enjoy or appreciate nature" – it results in the host country/community benefiting environmentally, socially and economically.¹⁸⁵ It is thus a unique set of sustainability-driven principles which ultimately distinguishes ecotourism from nature-based tourism.¹⁸⁶ Due to the fact that the principles inherent to ecotourism depend to an extent on its definition,¹⁸⁷ it is important to focus on the latter first.

Since Ceballos-Lascuráin first coined the term "ecotourism" in 1983,¹⁸⁸ numerous other scholars, conservationists, organisations etc. has tried their hand at defining it.¹⁸⁹ It is, however, notorious for always having remained a

181 Björk "Definition Paradoxes: From Concept to Definition" 34-35; Honey *Ecotourism and Sustainable Development* 7; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14.

182 Björk "Definition Paradoxes: From Concept to Definition" 34-35; Honey *Ecotourism and Sustainable Development* 7; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14.

183 Björk "Definition Paradoxes: From Concept to Definition" 34-35; Honey *Ecotourism and Sustainable Development* 7; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14.

184 Kutay "Brave New Role: Ecotour Operators Take Center Stage in the Era of Green Travel" 80, as quoted by Honey *Ecotourism and Sustainable Development* 7.

185 Björk "Definition Paradoxes: From Concept to Definition" 34-35, Honey *Ecotourism and Sustainable Development* 7; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14.

186 Björk "Definition Paradoxes: From Concept to Definition" 34-35; Honey *Ecotourism and Sustainable Development* 7; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 1-14.

187 Björk "Definition Paradoxes: From Concept to Definition" 26-30.

188 Ceballos-Lascuráin 1987 *Mexico Journal* 14; Honey *Ecotourism and Sustainable Development* 15-16; Björk "Definition Paradoxes: From Concept to Definition" 26; Sirakaya, Sasidharan and Sönmez "Redefining Ecotourism: The Need for a Supply-side View" 617.

189 Sirakaya, Sasidharan and Sönmez "Redefining Ecotourism: The Need for a Supply-side View" 616-620; Björk "Definition Paradoxes: From Concept to Definition" 26 -32; Honey *Ecotourism and Sustainable Development* 28-33.

rather elusive concept.¹⁹⁰ Up to this day, there still is no consensus as to which definition of ecotourism constitutes the "correct" one.¹⁹¹

In 1987 Ceballos-Lascuráin¹⁹² defined ecotourism as:

Travelling to relatively undisturbed or uncontaminated natural areas, with the specific objective of studying, admiring and enjoying the scenery and its wild plants and animals, as well as any existing cultural manifestation (both past and present) found in these areas.

However, from what has been said it is clear that this initial definition of ecotourism was very narrow and inadequate.¹⁹³ As with the definition of nature-based tourism, Ceballos-Lascuráin only focused on the characteristics of the area and the behaviour of the tourists,¹⁹⁴ and not on the underlying principles that distinguish ecotourism conceptually from other forms of tourism.¹⁹⁵ In 1996 Ceballos-Lascuráin corrected this error by including sustainable development as the underlying theme, and published the revised definition as:¹⁹⁶

190 According to Björk this is because most existing definitions are criticised for being either too lofty, vague or hard to operationalise. See Björk "Definition Paradoxes: From Concept to Definition" 24-42; Honey *Ecotourism and Sustainable Development* 3-33.

191 According to Björk this is because most existing definitions are criticised for being either too lofty, vague or hard to operationalise. See Björk "Definition Paradoxes: From Concept to Definition" 26; Honey *Ecotourism and Sustainable Development* 28; Sirakaya, Sasidharan and Sönmez "Redefining Ecotourism: The Need for a Supply-side View" 616-620; ETC 2012 <http://www.etccorporate.org>.

192 Ceballos-Lascuráin 1987 *Mexico Journal* 14; Honey *Ecotourism and Sustainable Development* 15-16; Björk "Definition Paradoxes: From Concept to Definition" 26; Sirakaya, Sasidharan and Sönmez "Redefining Ecotourism: The Need for a Supply-side View" 617.

193 Honey *Ecotourism and Sustainable Development* 15-16; Björk "Definition Paradoxes: From Concept to Definition" 26 – 28; Sirakaya, Sasidharan and Sönmez "Redefining Ecotourism: The Need for a Supply-side View" 617-620.

194 Björk "Definition Paradoxes: From Concept to Definition" 26 -27; Sirakaya, Sasidharan and Sönmez "Redefining Ecotourism: The Need for a Supply-side View" 616-620; Honey *Ecotourism and Sustainable Development* 15.

195 Björk "Definition Paradoxes: From Concept to Definition" 24-42; Honey *Ecotourism and Sustainable Development* 3-33.

196 Definition published in by the IUCN in the book written by Ceballos-Lascuráin: *Tourism, Ecotourism and Protected Areas*; Björk "Definition Paradoxes: From Concept to Definition" 26-27.

Ecotourism is environmentally responsible travel and visitation to relatively undisturbed natural areas, in order to enjoy and appreciate nature (and any accompanying cultural features – both past and present) that promotes conservation, has low negative visitor impact, and provides beneficially active socio-economic involvement of local populations.

This definition was officially adopted by the International Union for Conservation of Nature (hereafter IUCN).¹⁹⁷

However, to date the most popular definition worldwide is the one that was coined by TIES, the world's largest, first non-governmental ecotourism organisation which was founded by Wood in 1990.¹⁹⁸ According to TIES,¹⁹⁹ ecotourism is the following: "Responsible travel to natural areas that conserves the environment and improves the well-being of local people".²⁰⁰ This definition is concise yet comprehensive and is backed with numerous sustainability-driven principles, which have been established over the years at various conferences and stakeholder meetings.²⁰¹ It is also supported by various authoritative scholars,²⁰² for example Honey, who has been dubbed as "one of the world's top ten eco-and sustainable-travel watchdogs",²⁰³ and numerous organisations around the world, as well as in South Africa.²⁰⁴ For this reason this study will, from here onwards, specifically focus on the principles which have been established from TIES' definition of ecotourism.²⁰⁵

197 Ceballos-Lascuráin Date Unknown

http://www.ceballos_lascurain.com/english%2004feb/ceballos.htm; Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 9.

198 Honey *Ecotourism and Sustainable Development* 6; EplerWood International Date Unknown http://www.eplerwood.com/eplerwood_international.php; TIES Date Unknown <http://www.ecotourism.org/ecotourism-society-launched-1990-assist-parks>.

199 TIES Date Unknown <http://www.ecotourism.org>.

200 TIES Date Unknown <http://www.ecotourism.org>.

201 Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 5-16.

202 TIES Date Unknown <http://www.ecotourism.org/membersearch>.

203 Anon Date Unknown <http://www.caribbeanstc.com/speaker-lineup/martha-honey/>.

204 TIES Date Unknown <http://www.ecotourism.org/membersearch>.

205 Note that the following seven principles may also be regarded as seven characteristics of ecotourism. However, this study refers to it as "principles", since this is the way it is established and referred to internationally. See for example; TIES Date Unknown <http://www.ecotourism.org>.

3.2.1 Principle 1

"Ecotourism involves travel to natural destinations".²⁰⁶ As it was discussed earlier in 3.2, nature must form an integral part of any ecotourism activity.²⁰⁷ The destinations are usually under environmental protection.²⁰⁸

3.2.2 Principle 2

"Ecotourism minimises impact".²⁰⁹ To minimise the negative impact which ecotourism may have on the environment, as well as on the culture of the local community, the number of eco-tourists must at any given time be limited to the carrying capacity of the destination.²¹⁰ Furthermore, the behaviour of eco-tourists must also be regulated.²¹¹

Apart from regulating the number of eco-tourists and their behaviour, the building and maintaining of infrastructure must also be regulated to minimise negative impacts on the host destination.²¹² Examples of this may be the use of renewable energy sources, instituting recycling efforts, and green building and construction.²¹³

3.2.3 Principle 3

"Ecotourism builds environmental awareness".²¹⁴ Honey recommends educating eco-tourists before an eco-tour begins by providing them with reading

206 Honey *Ecotourism and Sustainable Development* 28-33.

207 Honey *Ecotourism and Sustainable Development* 28-33.

208 Honey *Ecotourism and Sustainable Development* 28-33.

209 TIES Date Unknown <http://www.ecotourism.org>; Honey *Ecotourism and Sustainable Development* 28-33.

210 TIES Date Unknown <http://www.ecotourism.org>; Honey *Ecotourism and Sustainable Development* 28-33.

211 TIES Date Unknown <http://www.ecotourism.org>; Honey *Ecotourism and Sustainable Development* 28-33.

212 Honey *Ecotourism and Sustainable Development* 28-33.

213 Honey *Ecotourism and Sustainable Development* 28-33.

214 TIES Date Unknown <http://www.ecotourism.org>; Honey *Ecotourism and Sustainable Development* 28-33.

material which offers insight to the host destination and its people.²¹⁵ She also recommends providing them with a Code of Conduct, which informs them about their potential negative impact on the environment, and how to minimise it.²¹⁶ Moreover, she argues that the local communities and the broader public of the host country must also be educated, and that it can be done by reducing entrance fees to protected parks for nationals, and providing free entrance for the locals.²¹⁷

3.2.4 Principle 4

"Ecotourism provides direct financial benefits for conservation".²¹⁸ According to Wood, the idea of using tourism to fund protected parks took off in the 1980s.²¹⁹ A variety of tourism mechanisms can help finance environmental protection, environmental awareness campaigns and research, such as entrance fees, accommodation costs, airline costs, etc.²²⁰

3.2.5 Principle 5

"Ecotourism provides financial benefits and empowerment for local people".²²¹ As was seen earlier, the preservationist approach, and its negative impact on the local community, had initiated the development of the concept of ecotourism in the 1960s.²²² Since then it has apparently become a key ingredient to the concept of ecotourism.²²³ Many have been seen over the years, especially in

215 Honey *Ecotourism and Sustainable Development* 28-33.

216 Honey *Ecotourism and Sustainable Development* 28-33.

217 Honey *Ecotourism and Sustainable Development* 28-33.

218 TIES Date Unknown <http://www.ecotourism.org>; Honey *Ecotourism and Sustainable Development* 28-33.

219 TIES Date Unknown <http://www.ecotourism.org/ecotourism-society-launched-1990-assist-parks>.

220 Honey *Ecotourism and Sustainable Development* 28-33.

221 TIES Date Unknown <http://www.ecotourism.org>; Honey *Ecotourism and Sustainable Development* 28-33.

222 Honey *Ecotourism and Sustainable Development* 13-14; Björk "Definition Paradoxes: From Concept to Definition" 26.

223 Honey *Ecotourism and Sustainable Development* 3-33.

ecotourism's formative years, advocating for the empowerment of local communities through ecotourism.²²⁴

In the year 1980, for example, the IUCN published the *World Conservation Strategy* in which it argued that the management of protected parks must be linked with the economic activities of local communities, and in 1982 this concept was endorsed at the IUCN's World Congress on National Parks.²²⁵ Then in 2003, for example, at the Fifth World Parks Congress held in Durban, South Africa, former President Nelson Mandela referred to ecotourism in his opening speech as a solution to not only the unsustainable management of protected parks, but also the poverty in all surrounding rural communities.²²⁶

It is therefore crucial that local communities be benefitted financially through ecotourism.²²⁷ Honey also argues that local communities must receive more than mere financial benefits; they should also receive tangible benefits such as roads, healthcare and potable water.²²⁸ This is only possible if the host destination and all its tourist facilities are run by, or at least run in partnership with, the local communities.²²⁹

3.2.6 Principle 6

"Ecotourism respects local culture".²³⁰ Ecotourism is said to have a strong link with culture tourism.²³¹ This is apparent when looking again at Ceballos-

224 Honey *Ecotourism and Sustainable Development* 3-33.

225 Honey *Ecotourism and Sustainable Development* 16.

226 Honey *Ecotourism and Sustainable Development* 13, 16.

227 Honey *Ecotourism and Sustainable Development* 28-33.

228 Honey *Ecotourism and Sustainable Development* 28-33.

229 Honey *Ecotourism and Sustainable Development* 28-33.

230 TIES Date Unknown <http://www.ecotourism.org>; Honey *Ecotourism and Sustainable Development* 28-33.

231 Note that the definition of culture tourism can be found in a footnote of s 1 of this study. Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 5-16.

Lascuráin's²³² revised definition of ecotourism, in which he expressly states: "Ecotourism is environmentally responsible travel and visitation to relatively undisturbed natural areas in order to enjoy and appreciate nature (and any accompanying cultural features – both past and present)". Therefore ecotourism should be less culturally intrusive and exploitive than other forms of tourism.²³³ According to Honey this can be achieved if eco-tourists, for example, respect the host country's/ local community's customs, social norms and dress code.²³⁴

3.2.7 Principle 7

"Ecotourism supports human rights and democratic movements".²³⁵ According to TIES, ecotourism should also raise awareness in respect of host countries' political climate.²³⁶ On an eco-tour, for example, eco-tourists should be informed about the host country's political characteristics and challenges.²³⁷ It is said that this can also contribute in some way to international peace and prosperity.²³⁸

Against the backdrop of the above, there should now be an understanding of what ecotourism entails and how its principles ultimately act as guidelines in the quest to achieve sustainable development in the host country/-community.

In what follows, the focus shifts to ecotourism's potential in the transition to a green economy, especially in the South African context.

232 Definition published by the IUCN, in the book written by Ceballos-Lascuráin: *Tourism, Ecotourism and Protected Areas*; Björk "Definition Paradoxes: From Concept to Definition" 26 -27.

233 Honey *Ecotourism and Sustainable Development* 28-33.

234 Honey *Ecotourism and Sustainable Development* 28-33.

235 TIES Date Unknown <http://www.ecotourism.org>; Honey *Ecotourism and Sustainable Development* 28-33.

236 TIES Date Unknown <http://www.ecotourism.org>.

237 Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 23.

238 Honey *Ecotourism and Sustainable Development* 31.

3.3 Ecotourism and its potential in the transition to a green economy

Against the backdrop of the above it is argued that ecotourism can be an effective tool for South Africa for, *inter alia*, investing in the environment.²³⁹ As it was shown earlier in 3.2, ecotourism is primarily nature-based²⁴⁰ and it requires that the natural destination be as far as possible unspoiled, with a profound natural -, cultural -, and historical richness.²⁴¹

South Africa is fortunate to have such an abundance of natural wealth to invest in.²⁴² South Africa also boasts with approximately twenty-one national parks and six hundred protected areas²⁴³ of which nine are world heritage sites.²⁴⁴ More importantly however, ecotourism seems to promote sound investment in these areas by minimising the impact on the environment,²⁴⁵ by building environmental awareness,²⁴⁶ and by helping finance environmental

239 UNEP 2013 *Green Economy and Trade - Trends, Challenges and Opportunities Report* 263-284 available at <http://unep.org/greeneconomy/GreenEconomyandTrade/GreenEconomyandTradeReort/ta/bid/106194/language/en-US/Default.aspx>.

240 Björk "Definition Paradoxes: From Concept to Definition" 24; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 6-12; Weaver *Ecotourism in the Less Developed World* 15; Wood *Ecotourism: Principles, Practices and Policies for Sustainability* 9.

241 Weaver and Opperman *Tourism Management* 369-373; Wearing and Neil *Ecotourism: Impacts, Potentials and Possibilities* 11.

242 See 1 and 2.2.

243 See 2.2, 4.4, and 4.6. Department of Tourism 2012 <http://www.tourism.gov.za/AboutNDT/Ministry/News/Pages/Pan-African-Conference-on-Sustainable-Tourism-Management-.aspx>; NPC 2013 *National Development Plan 2030: Our Future – Make it Work* available at www.info.gov.za/issues/nationaldevelopment-plan/.

244 NPC 2013 *National Development Plan 2030: Our Future – Make it Work* available at www.info.gov.za/issues/national-development-plan/. See also Kidd *Environmental Law* 121.

245 See 3.2.2.

246 See 3.2.3.

conservation efforts.²⁴⁷ This is especially relevant due the accelerating pace to which South African natural resources are deteriorating.²⁴⁸

It is also argued that ecotourism can be an effective tool for South Africa to, *inter alia*, "break out of the poverty trap and prosper".²⁴⁹ Tourism is said to be a leading contributor to the world's economy.²⁵⁰ Ecotourism, in particular, is a very popular, lucrative and rapidly expanding industry.²⁵¹ In fact, it has even been said that ecotourism is currently the fastest growing sector of the tourism industry.²⁵² Moreover, it is acclaimed for being an effective transferor of wealth between nations.²⁵³ Studies have shown that lately tourists have become especially interested in ecotourism, and are now prepared to pay much more for the experience due to their increasing environmental and social awareness.²⁵⁴

Developing nations, such as South Africa, can thus benefit greatly from this, especially due to the fact that it has become popular amongst wealthy international tourists to travel to remote, naturally unspoiled and economically

247 See 3.2.4.

248 See 2.2.

249 See 2.2.

250 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* available at <http://www.unep.org>; UNEP 2013 *Green Economy and Trade - Trends, Challenges and Opportunities Report* 263-284, available at <http://unep.org/greeneconomy/GreenEconomyandTrade/GreenEconomyandTradeReport/tabid/106194/language/en-US/Default.aspx>.

251 UNEP 2013 *Green Economy and Trade - Trends, Challenges and Opportunities Report* 263-284 available at <http://unep.org/greeneconomy/GreenEconomyandTrade/GreenEconomyandTradeReport/tabid/106194/language/en-US/Default.aspx>.

252 UNEP 2013 *Green Economy and Trade - Trends, Challenges and Opportunities Report* 263-284 available at <http://unep.org/greeneconomy/GreenEconomyandTrade/GreenEconomyandTradeReport/abid/106194/language/en-US/Default.aspx>.

253 UNEP 2013 *Green Economy and Trade - Trends, Challenges and Opportunities Report* 263-284 available at <http://unep.org/greeneconomy/GreenEconomyandTrade/GreenEconomyandTradeReport/abid/106194/language/en-US/Default.aspx>.

254 UNEP 2013 *Green Economy and Trade - Trends, Challenges and Opportunities Report* 263-284 available at <http://unep.org/greeneconomy/GreenEconomyandTrade/GreenEconomyandTradeReport/abid/106194/language/en-US/Default.aspx>.

disadvantaged countries.²⁵⁵ Keep in mind, though, that ecotourism strives to benefit and empower not only the host country, but also the local communities, financially.²⁵⁶ It was mentioned in 2.2 that, currently, thirty-nine per cent of South Africa's population lives in rural areas,²⁵⁷ and many of them are unemployed.²⁵⁸ However, ecotourism has the potential to create and sustain numerous job opportunities for the local rural communities.²⁵⁹

Finally it is believed that ecotourism can also be an effective tool for South Africa to uplift its communities socially.²⁶⁰ In South Africa the social welfare of local rural communities is especially influenced by the state of the natural environment.²⁶¹ It is argued that, due to the fact that ecotourism minimises the impact on the environment,²⁶² it potentially leads to a healthier environment as provided for by section 24 of the Constitution, and ultimately promotes the welfare of the people who are generally impacted directly by environmental degradation.²⁶³ It was also shown earlier that ecotourism "provides financial benefits and empowerment for local people", which also promotes their social welfare.²⁶⁴ Many of the people living in the local rural communities are also known to have a lack of adequate potable water, food, sanitation, healthcare etc.²⁶⁵ It was argued in 3.2.5 that ecotourism has the potential to provide them with these basic human needs.²⁶⁶ Note that ecotourism also respects local

255 UNEP 2013 *Green Economy and Trade - Trends, Challenges and Opportunities Report* 263-284 available at <http://unep.org/greeneconomy/GreenEconomyandTrade/GreenEconomyandTradeReport/tabid/106194/language/en-US/Default.aspx>.

256 See 3.2.5.

257 See 2.2.

258 See 2.2.

259 See 3.2, UNEP 2013 *Green Economy and Trade - Trends, Challenges and Opportunities Report* 263-284 available at

<http://unep.org/greeneconomy/GreenEconomyandTrade/GreenEconomyandTradeReport/tabid/106194/language/en-US/Default.aspx>.

260 Honey *Ecotourism and Sustainable Development* 3-33.

261 See 2.2.

262 See 3.2.2.

263 Honey *Ecotourism and Sustainable Development* 3-33.

264 See 3.2.5.

265 See 2.2 and 3.2.

266 See 3.2.5.

culture,²⁶⁷ and supports human rights,²⁶⁸ which generally has a positive impact on the social climate of the host country and the local rural communities.²⁶⁹

From the above it is clear that both ecotourism and the notion of a green economy focus on environmental -, economic -, and social development.²⁷⁰ This means that both ultimately aim to achieve the same goal, which is; sustainable development.²⁷¹

It can be deduced that, since the notion of a green economy has been identified as the pathway to sustainable development,²⁷² ecotourism which is in accordance with it, can be a key driver thereof.²⁷³ This means in effect that ecotourism can promote the transition to a green economy by contributing to the effective pursuit of sustainable development.²⁷⁴ It appears that section 130 of the Rio+20 Declaration: *The Future We Want*,²⁷⁵ recognises this:

We emphasize that well designed and managed tourism can make a significant contribution to the three dimensions of sustainable development, has close linkages to other sectors, and can create decent jobs and generate trade opportunities. We recognize the need to support sustainable tourism activities and relevant capacity building that promote environmental awareness, conserve and protect the environment, respect wildlife, flora, biodiversity and ecosystems and cultural diversity, and improve the welfare and livelihoods of local communities by supporting their local economies and the human and natural environment as a whole. We call for enhanced support for sustainable tourism activities and relevant capacity building in

267 See 3.2.6.

268 See 3.2.7.

269 Honey *Ecotourism and Sustainable Development* 3-33.

270 See ss 2 and 3.2 of this study.

271 See ss 2 and 3.2 of this study.

272 See 1 and 2.2-2.3.

273 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* available at <http://www.unep.org>; Chief Directorate of the DEA Date Unknown <http://www.enviroaedia.com>.

274 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* available at <http://www.unep.org>; Chief Directorate of the DEA Date Unknown <http://www.enviroaedia.com>; UNEP 2013 *Green Economy and Trade, Trends, Challenges and Opportunities Report* 263-284 available at <http://unep.org/greeneconomy/GreenEconomyandTrade/GreenEconomyandTradeReport/tabid/106194/language/en-US/Default.aspx>.

275 S 130 of the Declaration: *The Future We Want*, available at UN, Date Unknown, <http://www.uncsd2012.org/thefuturewewant.html>.

developing countries in order to contribute to the achievement of sustainable development.

3.4 The necessity of effective regulation of ecotourism in South Africa's transition to a green economy

Section 131 of the Rio+20 Declaration: *The Future We Want*,²⁷⁶ states that:

We encourage the promotion of investment in sustainable tourism, including eco-tourism and cultural tourism,.....in areas with high eco-tourism potential. In this regard, we underline the importance of establishing, where necessary, appropriate guidelines and regulations in accordance with national priorities and legislation for promoting and supporting sustainable tourism.

The importance of the effective regulation of ecotourism is thus internationally recognised.²⁷⁷ The reason for this is that, ecotourism inevitably has an impact on the environment.²⁷⁸ In fact, the contention that ecotourism does not impact on the environment at all, is a myth.²⁷⁹ All forms of tourism, even if it is sustainable, have an impact, to some extent, on the environment.²⁸⁰ Due to the fact that ecotourism *inter alia* involves travelling to remote naturally unspoiled areas, which are usually under some form of environmental protection, the risks are particularly high and the adverse impacts particularly great, if it is not regulated effectively.²⁸¹

276 S 131 of the Declaration: *The Future We Want*, available at UN, Date Unknown <http://www.uncsd2012.org/thefuturewewant.html>.

277 S 131 of the Declaration: *The Future We Want*, available at UN, Date Unknown, <http://www.uncsd2012.org/thefuturewewant.html>.

278 McCool and Moisey "Introduction: Pathways and Pitfalls in the Search for Sustainable Tourism" 9; Buckley "Impacts Positive and Negative: Links between Ecotourism and Environment" 11-12.

279 McCool and Moisey "Introduction: Pathways and Pitfalls in the Search for Sustainable Tourism" 9; Buckley "Impacts Positive and Negative: Links between Ecotourism and Environment" 11-12.

280 McCool and Moisey "Introduction: Pathways and Pitfalls in the Search for Sustainable Tourism" 9; Buckley "Impacts Positive and Negative: Links between Ecotourism and Environment" 11-12.

281 Leung, Marion and Farrel "Recreation Ecology in Sustainable Tourism and Ecotourism: A Strengthening Role" 21-22; Buckley "Impacts Positive and Negative: Links between Ecotourism and Environment" 11-12.

Various factors influence the nature of the impacts, and the severity thereof, such as the types of tourist activities provided for, the number of tourists at the same location at any given time, the tourists' behaviour, and the type of environment and its resilience.²⁸² Although it may differ depending on the circumstances, a few examples of the adverse impacts which ecotourism may have on the environment, are the following.²⁸³

Firstly, construction of roads and tourist facilities alters not only the visual aesthetics of the natural environment; it also impacts adversely on the habitat and population of biological species.²⁸⁴ Secondly, the various tourist activities which may form part of an eco-tour, such as hiking, camping, hunting, horse riding, driving off-road vehicles etc,²⁸⁵ can easily damage and destroy ground vegetation and soil.²⁸⁶ It may also affect water quality and result in the disturbance and destruction of animal species.²⁸⁷ Thirdly, ecotourism naturally and inevitably also results in the generation of waste.²⁸⁸ For this reason, and under the circumstances; air -, water -, land -, and noise pollution are real

282 Leung, Marion and Farrel "Recreation Ecology in Sustainable Tourism and Ecotourism: A Strengthening Role" 20-25; Cole "Impacts of Hiking and Camping on Soils and Vegetation: A Review" 55; Buckley "Impacts Positive and Negative: Links between Ecotourism and Environment" 11-12.

283 Leung, Marion and Farrel "Recreation Ecology in Sustainable Tourism and Ecotourism: A Strengthening Role" 19-32.

284 Fennell *Ecotourism* 65; Pearce *International Journal of Environmental Studies* 25.

285 Leung, Marion and Farrel "Recreation Ecology in Sustainable Tourism and Ecotourism: A Strengthening Role" 23-24; Fennell *Ecotourism* 65; Pearce *International Journal of Environmental Studies* 25; Cole "Impacts of Hiking and Camping on Soils and Vegetation: A Review" 41-61; Newsome, Cole and Marion "Environmental Impacts Associated with Recreational Horse-riding" 61-83; Buckley "Environmental Impacts of Motorized Off-Highway Vehicles" 83-99.

286 Leung, Marion and Farrel "Recreation Ecology in Sustainable Tourism and Ecotourism: A Strengthening Role" 23-24; Fennell *Ecotourism* 65; Pearce *International Journal of Environmental Studies* 25; Cole "Impacts of Hiking and Camping on Soils and Vegetation: A Review" 41-61.

287 Fennell *Ecotourism* 65; Pearce *International Journal of Environmental Studies* 25; Leung, Marion and Farrel "Recreation Ecology in Sustainable Tourism and Ecotourism: A Strengthening Role" 23-24; Cole "Impacts of Hiking and Camping on Soils and Vegetation: A Review" 41-61; Newsome, Cole and Marion "Environmental Impacts Associated with Recreational Horse-riding" 61-83; Buckley "Environmental Impacts of Motorized Off-Highway Vehicles" 83-99.

288 Leung, Marion and Farrel "Recreation Ecology in Sustainable Tourism and Ecotourism: A Strengthening Role" 23-24; Simmons and Becken "The Cost of Getting There: Impacts of Travel to Ecotourism Destinations" 15-25; Fennell *Ecotourism* 65; Pearce *International Journal of Environmental Studies* 25.

concerns.²⁸⁹ Finally, as it was said in 3.2, the numbers of eco-tourists must be limited to the carrying capacity of the destination at any given time.²⁹⁰ This is due to the fact that eco-tourists' demand on land, water and energy can put significant stress on an environment.²⁹¹

As was stated in 2.2, environmental degradation remains a big concern in South Africa. It is thus argued that, to avoid aggravating the environmental degradation that has already manifested in South Africa, and to promote environmental conservation in the quest for the achievement of sustainable development, it is crucial that South Africa's ecotourism industry be regulated effectively.

3.5 Conclusion

In the foregoing discussion the need for ecotourism for economic -, social -, and environmental conservation purposes has been made clear.²⁹² It has also been made clear that ecotourism, if regulated effectively, can be a driver of a successful transition to a green economy, which in turn may contribute to the eventual achievement of sustainable development.²⁹³ It is finally argued that the effective regulation of the ecotourism industry requires that well-drafted legislation, ordinances, bylaws, policies etc. are in place with strict implementation thereof. Merely "greenwashing" the industry will only defeat the purpose of South Africa's transition to a green economy.²⁹⁴ Section 4 will now consider whether South Africa's national environmental law framework has indeed been developed in such a manner as to ensure the effective regulation of ecotourism in the transition to a green economy.

289 Leung, Marion and Farrel "Recreation Ecology in Sustainable Tourism and Ecotourism: A Strengthening Role" 23-24; Simmons and Becken "The Cost of Getting There: Impacts of Travel to Ecotourism Destinations" 15-25; Fennell *Ecotourism* 65, Pearce *International Journal of Environmental Studies* 25.

290 See 3.2.2, footnote 209, Fennell *Ecotourism* 65; Pearce *International Journal of Environmental Studies* 25.

291 Fennell *Ecotourism* 65; Pearce *International Journal of Environmental Studies* 25.

292 See 3.2.

293 See 3.2-3.3.

294 Honey *Ecotourism and Sustainable Development* 28.

4 Environmental law perspectives on the regulation of ecotourism in South Africa

4.1 Introduction

Ecotourism does not exist in a legal vacuum in South Africa.²⁹⁵ However, it was shown in 3.2 that the ecotourism industry is heavily dependent on the environment, it being the primary attraction. It follows that ecotourism may be expected to, *inter alia*, be regulated in line with the constitutional environmental right provided for in section 24 of the Constitution, as well as South Africa's framework of environmental laws.²⁹⁶

Section 24 provides that:

Everyone has the right;

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations through reasonable legislative and other measures that
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development.

Read in the context of the entire Constitution, it appears that this environmental right has three objectives – sustainable development, environmental

295 Van der Bank and Van der Bank 2012 *Business Management Dynamics* 1-9.

296 Van der Bank and Van der Bank 2012 *Business Management Dynamics* 1-9.

conservation,²⁹⁷ and co-operative governance in respect of matters concerning the conservation of the environment.²⁹⁸

The Constitution is regarded as the supreme law of South Africa; therefore all laws and conduct must be in accordance with it.²⁹⁹ Ecotourism, as was discussed in 3.2, strives for environmental conservation and ultimately sustainable development.³⁰⁰ At face value, the purpose behind the ecotourism industry appears to be complementary to the environmental law objectives that are apparent from section 24 of the Constitution.³⁰¹ South Africa's environmental laws applicable to ecotourism should also be consistent with the constitutional environmental law objectives.

Note that there are numerous environmental laws at national level which may regulate ecotourism to a certain extent. However, not all of them are discussed. This study only focuses on those pieces of legislation which seems to have the most relevance for the ecotourism industry, namely the NEMA, the NEMBA, the NEMPAA, the NEM:ICMA, the NHRA and the WHCA.³⁰²

297 Note that, in the context of this study, the objective of "environmental conservation" is inclusive of the notions of environmental protection, prevention of pollution and prevention of ecological degradation. See s 24(b)(i)-(iii).

298 The latter objective is deduced from the fact that s 8 of the Constitution states that the Bill of Rights, s 24 included, binds the legislature, the executive, the judiciary, all organs of state, as well as natural and juristic persons, as far as it applies to them. Furthermore: schedule 4A and 4B, read together with ss 152 and 156 of the Constitution, establishes the objective of co-operative governance between the three spheres of government concerning the regulation of environmental conservation (and ecotourism) in South Africa. See ss 7(2) and 24, read with ch 3. Van der Bank and Van der Bank 2012 *Business Management Dynamics* 1-9. For further reading on the constitutional environmental right, see Kidd *Environmental Law* 21-26.

299 S 2 of the Constitution.

300 See 3.2 and 3.3.

301 See 3.1-3.5. Against the backdrop of ss 2 and 3 of this study, the transition to a green economy can similarly be regarded as complementary to the constitutional environmental law objectives.

302 Note that it is acknowledged that environmental laws at provincial-, and municipal level, play a crucial role in regulating ecotourism, but due to the limited scope of this study no specific provincial environmental acts and regulations, or municipal bylaws will be discussed.

In order to be able to critically consider the current state of regulation of ecotourism in South African environmental law, regard will be given to the following in respect of each applicable act:

1. Does it make specific references to ecotourism?
2. Does it expressly regulate matters and/or activities relating to tourism/ecotourism?
3. Does it implicitly provide for the effective regulation of ecotourism?
4. Does it, in effect, regulate ecotourism in line with all three environmental law objectives, as derived from the constitutional environmental right?

4.2 The NEMA

The purpose of the NEMA, South Africa's framework environmental act,³⁰³ is to provide for co-operative environmental governance, to establish principles according to which the environment must be managed and conserved, and to provide for several sectoral environmental management acts which elaborate on and support its objectives.³⁰⁴ The NEMA in itself does not expressly refer to, or regulate, ecotourism. However, in light of its purpose and the critical consideration that will now follow, it can be said that the NEMA regulates ecotourism implicitly and promotes all three of the constitutional environmental law objectives.³⁰⁵

The first environmental law objective – sustainable development – is provided for in section 2 of the NEMA.³⁰⁶ It is regarded as a national environmental management principle.³⁰⁷ Section 2(3) states that development must be

303 S 2(1)(b) of NEMA; DEA Date Unknown
https://www.environment.gov.za/sites/default/files/docs/10yyearsreview_biodiversity_conservation.pdf

304 See the long title of the NEMA, ch 9, and schedule 3 of the NEMA; Van Wyk *Planning Law* 417-416; Kidd *Environmental Law* 35.

305 See NEMA's Preamble; and for further reading also see Kidd *Environmental Law* 35-44.

306 For further reading, see Kidd *Environmental Law* 36-40.

307 See ch 1 of the NEMA.

environmentally, socially and economically sustainable.³⁰⁸ Section 2(4)(a) of the NEMA further subdivides this principle into eight principles, which are to be applied in respect of environmental management in order to achieve sustainable development.³⁰⁹ Some of these are touched on in the course of this discussion on the NEMA.

The second constitutional environmental law objective – environmental conservation – is promoted in the following ways: Section 2(4)(o) recognises that the environment is held in public trust for the people of South Africa and must be protected as part of their common heritage.³¹⁰ It therefore also requires that renewable and non-renewable natural resources must be used and enjoyed responsibly,³¹¹ and that precaution must be taken in circumstances where there is uncertainty over the nature of the impact, or the severity of the impact, which certain practices or decisions may have on the environment.³¹²

To establish the nature of the impact of a specific tourism development, and the severity of its impact, the UNWTO recommends conducting an environmental impact assessment (hereafter EIA) during the planning phase of the project development.³¹³ Negative impacts can, in this way, be avoided or at least be minimised.³¹⁴

Chapter 5 of the NEMA, which provides for integrated environmental management, gives effect to this recommendation. Generally it provides that certain "listed activities" may not commence without obtaining an environmental authorisation, and/or without complying with prescribed norms and standards.³¹⁵ It also provides that certain "specified activities" in certain

308 S 2(3).

309 See also Kidd *Environmental Law* 36-40.

310 S 2(4)(o).

311 S 2(4)(a)(v)-(vi).

312 S 2(4)(a)(vii).

313 UNWTO *Guide for Local Authorities on Developing Sustainable Tourism* 55.

314 UNWTO *Guide for Local Authorities on Developing Sustainable Tourism* 55; Van Wyk *Planning Law* 424.

315 S 24(1) and (2).

geographical areas, with certain environmental attributes, may not commence without obtaining an environmental authorisation, and/or without complying with prescribed norms and standards.³¹⁶ These listed and specified activities can be found in NEMA's Regulations of 2010, namely GN R544 in GG 33306 of 18 June 2010 (hereafter Listing Notice 1), GN R545 in GG 33306 of 18 June 2010 (hereafter Listing Notice 2), and GN R546 in GG 33306 of 18 June 2010 (hereafter Listing Notice 3).³¹⁷

The first step for a developer in the ecotourism industry would be to establish under which of the three existing listing notices his specific development project falls.³¹⁸ The following example illustrates this:

It was seen in 3.2 that ecotourism [typically] involves visits to areas that are under some form of environmental protection by governments, conservation or scientific organisations, or private owners or entrepreneurs.³¹⁹ It can thus be assumed that listing notice 3 would be especially relevant for a developer in the ecotourism industry because listing notice 3, for example, requires that a basic assessment be done before authorisation can be obtained for construction of a resort, lodge, or other tourism accommodation facility that sleeps less than fifteen people and is situated in a protected area identified in terms of the NEMPAA.³²⁰

316 S 24(1) and (2).

317 Note that each different listing notice requires a different form of EIA to be conducted before an environmental authorisation can be obtained in respect of an activity listed/specified therein. The activities contained in listing notice 1, for example, only require a basic assessment to be done before an environmental authorisation can be acquired, because the negative impacts which it is typically deemed to have on the environment, are less severe. The activities contained in listing notice 2, for example, require scoping and an environment impact reporting process (hereafter S&EIR) because the negative impacts which it is typically deemed to have on the environment, are more severe. Listing notice 3 provides for certain activities, in specified geographical areas, with environmental attributes, for which basic assessments are required, and also lists the relevant competent authority. See Van Wyk *Planning Law* 426-437; and Mohamed and Toefy 2012 <http://www.consent.com/resources/DEADP%20NEMA%20EIA%20Circular%201%20%202012.pdf>.

318 Van Wyk *Planning Law* 426-437.

319 See 3.2.

320 See Specified Activity 5.

Listing notice 3 also requires for example, that a developer, who wants to expand a resort, lodge, hotel and tourism facility, as well as the development footprint in a World Heritage Site in the North West province, must conduct a basic assessment before authorisation can be obtained for it.³²¹ It is, however, believed that ecotourism development cannot be limited to a *status quo*, and therefore the type of EIA required will depend on each different activity/project intended for a specific area.

Chapter 5 further provides that the Minister, the Member of the Executive Council (hereafter MEC), or a competent authority, may require a [developer in the ecotourism industry] to submit an environmental management programme, before an application for an environmental authorisation will be considered.³²² Such an environmental management programme must contain information on, *inter alia*, the measures that will be taken to manage, mitigate and remedy any negative impacts on the environment, and the measures that will be taken to protect the environment against degradation.³²³

Take note that the NEMA considers the commencement or continuation of a listed/specified activity to be an offence if no environmental authorisation for it has been obtained.³²⁴ It also considers non-compliance with an environmental management programme to be an offence.³²⁵ A person convicted of either such an offence is liable "to a fine not exceeding R5 million, or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment".³²⁶ It follows that the NEMA, in its general application, protects the environment from the launching of potentially harmful ecotourism developments. Subsequently it must be considered how the NEMA promotes environmental conservation in respect of existing operational ecotourism enterprises.

321 See Specified Activity 18.

322 S 24N.

323 S 24N(2).

324 S 24F.

325 S 24F(2)(e).

326 S 24F(4).

Section 2(4)(a) of the NEMA sets the tone by stating that the environment must be protected by avoiding practices that result in the loss of biodiversity, disturbance of ecosystems and cultural heritage sites, generation of waste, pollution and, in general, the degradation of the environment.³²⁷ However, section 2(4)(a) also acknowledges that negative impacts cannot always be avoided altogether, as it has been seen in the case of ecotourism,³²⁸ and therefore it states that such negative impacts must then at least be minimised and remedied.³²⁹ Chapter 7, which deals with compliance, enforcement and protection, gives effect to these principles by bestowing a duty of care on whomever it may apply.³³⁰ It states specifically in section 28(1) that:

Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.

In the event of non-compliance with section 28(1), the Director-General or a provincial head of department may issue a directive to that person to do so.³³¹ A refusal to comply with such a directive is regarded as an offence.³³² An unlawful, intentional or negligent act or omission, which results in, or may likely result in, environmental degradation and/or significant environmental pollution, is also regarded as an offence.³³³ Both these offences are punishable in terms of section 28(15) with "a fine not exceeding R1 million or imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment".

327 S 2(4)(a)(i)-(viii). For further reading on all the principles of the NEMA, see Kidd *Environmental Law* 36-40.

328 S 2(4)(a)(i)-(viii), See 3.4. For further reading on all the principles of the NEMA see Kidd *Environmental Law* 36-40.

329 S 2(4)(a)(i)-(viii). For further reading on all the principles of the NEMA see Kidd *Environmental Law* 36-40.

330 S 28(2). For further reading see Kidd *Environmental Law* 42-43.

331 S 28(4).

332 S 28(14)(c).

333 S 28(14)(a) and (b). See 3.4.

Chapter 7 also provides that environmental management inspectors may enquire into cases where there are reasonable suspicions of non-compliance with the law, or non-compliance with the terms and conditions of an environmental authorisation.³³⁴ Environmental management inspectors have the power to issue compliance notices in such cases.³³⁵ Failure to comply therewith is also regarded as a punishable offence in terms of the NEMA.³³⁶ Apart from being liable to a fine and/or imprisonment upon conviction of any offence in terms of the NEMA, an offender also runs the risk of his environmental authorisation(s) being revoked.³³⁷ In the light of this it thus appears that the NEMA also provides for, and promotes, environmental conservation in respect of existing operational ecotourism enterprises, by bestowing a duty of care on whomever it may apply to, and punishing any offenders who don't live up to it.

In section 2(4)(l) the NEMA states that "there must be intergovernmental coordination and harmonisation of policies, legislation and actions relating to the environment".³³⁸ Chapter 3 further requires that those national departments listed in schedule 1,³³⁹ as well as every province, must prepare an environmental implementation plan (hereafter EIP) at least every four years.³⁴⁰ An EIP must contain a description of the various plans, policies and programmes which may affect the environment,³⁴¹ the manner in which the

334 Ss 31G-31H.

335 Ss 31L and 31N.

336 Ss 31L and 31N.

337 S 34C.

338 For further reading see Kidd *Environmental Law* 35-44.

339 Note that the national departments listed in schedule 1 refer to those national departments whose functions may affect the environment in some way or another. However, this list appears to be outdated – it refers to the Department of Environmental Affairs and Tourism when, in fact, the Department of Tourism has been a separate national department since 2010. Nonetheless, in light of s 3 of this study, and the memorandum of understanding which has been entered into between the Department of Tourism and the DEA, it can be presumed that the Department of Tourism's functions indeed affect the environment, and that it is therefore required to prepare an EIP. See National Parliament 2011 www.parliament.gov.za/live/commonrepository/.../366082_1.doc; PMG 2012 <http://www.pmg.org.za/report/20120911-national-department-tourism-existing-memoranda-understanding-other-si>, PMG 2012. www.pmg.org.za/files/doc/2012/120911mou.ppt.

340 S 11(1).

341 S 13(1)(a).

national department/province will ensure their alignment with NEMA's principles, and any existing environmental norms and standards,³⁴² as well as the manner in which the respective national department/province will ensure the alignment of its functions with NEMA's principles, and any existing environmental norms and standards.³⁴³

Chapter 3 also requires that the national departments which are listed in schedule 2³⁴⁴ must prepare an environmental management plan (hereafter EMP) at least every four years.³⁴⁵ It is argued that those national departments which may be involved, in one way or another, in managing the environment, should give consideration to ecotourism developments and - operations in the EMP of the specific area to which the EMP applies.

The NEMA provides that all adopted EIPs and EMPs must be considered when preparing, and before submitting, an EIP/EMP, to ensure they are consistent with each other.³⁴⁶ Furthermore, every organ of state, whether national, provincial or local, must act in accordance with the adopted EIP and/or EMP.³⁴⁷ It is argued that EIPs and EMPs can play a great part in the effective regulation of ecotourism in South Africa,³⁴⁸ especially since it requires co-operative governance.

It is believed that environmental management co-operation agreements (hereafter EMCAs) are also very relevant for co-operative governance in the ecotourism industry.³⁴⁹ South Africa's private sector is known to be very

342 S 13(1)(b).

343 S 13(1)(c).

344 The national departments listed in terms of schedule 2 refer to those national departments whose functions involve the management of the environment. Although schedule 2 is similarly outdated to schedule 1, in light of s 3 of this study, it is presumed that the Department of Tourism is also involved in managing the environment, especially where it concerns ecotourism, and for that reason it is also required to prepare an EMP.

345 S 11(2).

346 S 11(4).

347 S 16.

348 Mhlongo *Environmental Management Plan as a Tool for Tourism Development* 104-106.

349 S 35; TIES Date Unknown http://www.ecotourism.org/ecotourism_society-launched-1990-assist-parks; Kidd *Environmental Law* 43.

involved in the ecotourism industry, for example; since 1994 a public/private partnership approach, also known as concession, has been applied in South African National Parks (hereafter SANParks).³⁵⁰ An EMCA is an agreement between the Minister, the MEC or a municipality and a private person or community.³⁵¹ Its purpose is to ensure that the private person or community complies with the principles of the NEMA, or in effect, promotes the three environmental law objectives.³⁵²

4.3 The NEMBA

South Africa's ecotourism industry is dependent on South Africa's richness in biodiversity; however, the country's biodiversity has unfortunately also been declining.³⁵³ It was also seen in 3.4 that ecotourism has a contributing negative affect on South Africa's biodiversity.³⁵⁴

The NEMBA provides for the sustainable management and conservation of South Africa's biodiversity, as well as co-operative governance in its management and conservation of biodiversity.³⁵⁵ However, it does not make any specific references to ecotourism, and it has no provisions relating specifically to the management of ecotourism. Similarly to the NEMA, it appears to regulate ecotourism implicitly as a collective range of activities, which can be managed in line with any other applicable acts, regulations, plans and bylaws.³⁵⁶ The NEMBA also promotes all three objectives of constitutional environmental law in its regulation of ecotourism.³⁵⁷

350 This means that the private sector is allowed to legally operate in protected parks. See TIES Date Unknown <http://www.ecotourism.org/ecotourism-society-launched-1990-assist-parks>.

351 S 35; Kidd *Environmental Law* 43.

352 S 35.

353 See 2.2 and 3.2-3.4.

354 See 3.4.

355 See the long title of NEMBA. For further reading, also see Kidd *Environmental Law* 102-103.

356 See ch 3 and 8 of NEMBA.

357 For further reading see Kidd *Environmental Law* 102-114.

Sustainable development, the first environmental law objective, is not explicitly mentioned in the NEMBA. Nonetheless, it is evident from section 7 that the NEMBA does indeed promote sustainable development. Section 7 provides that the NEMA's principles, which include sustainable development,³⁵⁸ must guide the application of the NEMBA. Note that the National Biodiversity Framework (hereafter NBF), Biodiversity Management Plans (hereafter BMPs) and Bioregional Plans (hereafter BRPs) provided for in terms of the NEMBA, are also required to promote sustainable development.³⁵⁹

The NEMBA secondly promotes environmental conservation in ecotourism developments by requiring that an EIA be done in terms of NEMA before an environmental authorisation can be obtained in respect of certain activities in certain areas.³⁶⁰ Section 53(2) of NEMBA for example, directs a person, an organisation, or an organ of state involved in the ecotourism industry, who wants to manage an ecosystem which is either listed in terms of GN 1002 in GG 34809 of 9 December 2011,³⁶¹ or in need of special conservation attention, to listing notice 3.³⁶² Listing notice 3 provides that, for example, a basic assessment must be done before an authorisation can be obtained for construction of a resort, lodge, or other tourism accommodation facility that sleeps less than fifteen people and which is located within a critical biodiversity area identified in terms of a BMP³⁶³ or BRP.³⁶⁴

The NEMBA also stipulates that a permit is required for carrying out any restricted activity which involves a specimen listed as a threatened or protected species (hereafter ToPS), or an activity which may impact negatively on such a

358 Ss 2(3) and (4) of the NEMA.

359 See Ss 39(1)(b)(ii), 41(c)(ii) and 45(c)(ii).

360 S 53(2). See also: listing notice 1, activity 26 and listing notice 3.

361 This is a "National List of Ecosystems that are Threatened and in Need of Protection".

362 See also: S 43(1)(a) and (b).

363 S 43(1)(a) and (b). Note that a biodiversity management plan is usually applicable to either a specific ecosystem listed in terms of GN 1002 in GG 34809 of 9 December 2011, or an ecosystem in need of special conservation attention.

364 Note that this applies in the Eastern Cape, Free State, KwaZulu-Natal, Limpopo, Mpumalanga, and Northern Cape provinces. See Activity 5.

listed ToPS' survival.³⁶⁵ On 16 April 2013 the Minister of Water and Environmental Affairs gave notice of her intention to – after the public participation process has been followed – amend the regulations and the lists relating to ToPS.³⁶⁶ If it goes as planned, it will include the restricted activities which require a permit in respect of each specific ToPS, as well as the exempted and prohibited activities in respect of each specific ToPS.³⁶⁷

Note that section 24L of the NEMA, and section 92 of the NEMBA, make provision for the alignment of authorisations and the integration of permits. This means that the authorisations in terms of the NEMA must be obtained in addition to, or in conjunction with, those permits required in respect of the NEMBA; and those permits required in terms of the NEMBA must be obtained in addition to, or in conjunction with, those permits/licences required in respect of any other relevant legislation.³⁶⁸ Chapter 9 of the NEMBA states that failure to obtain or comply with a permit is regarded as an offence for which a hefty fine and/or imprisonment may be imposed.³⁶⁹

The NEMBA also promotes environmental conservation in respect of the regulation of existing operational ecotourism enterprises. Section 3 of the NEMBA provides that management and conservation of South Africa's biodiversity must take place within the framework of the NEMA. It was also shown in 4.2 that section 2 of the NEMA contains numerous principles that promote environmental conservation, and which appear to be applicable to

365 The said restricted activities are listed in s 1 of the NEMBA, whilst the ToPS list is published in GN 151 in GG 29657 of 23 February 2007. See also ss 57 and 87 of the NEMBA.

366 GN 389 in GG 36375 of 16 April 2013; South African Government 2013 <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=35809&tid=104817>.

367 GN 389 in GG 36375 of 16 April 2013; South African Government 2013 <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=35809&tid=104817>.

368 For example, in the event that an ecotourism development, such as the construction of a lodge, it requires that a listed ToPS specie in the area be uprooted, chopped off or destroyed, a permit must be obtained in terms of the NEMBA for the latter, in conjunction/addition to the environmental authorisation in terms of the NEMA, which is required for the construction of the lodge. S 24L of the NEMA and ss 1, 53(2) and 92 of the NEMBA. See also GN 151 in GG 29657 of 23 February 2007.

369 Ss 101-102.

existing operational ecotourism enterprises.³⁷⁰ Moreover, it is believed that chapter 7 of the NEMA, which bestows a duty of care on whomever it may apply, is also applicable to all ecotourism operations that have an impact on South Africa's biodiversity.³⁷¹

It is argued that the BMPs,³⁷² as well as a BRPs³⁷³ and the NBF,³⁷⁴ which the Minister must publish in accordance with the NEMBA, also promotes environmental conservation in ecotourism operations because all these instruments are aimed at the effective management of natural resources.³⁷⁵

With regard to the third environmental law objective – section 2(c) of the NEMBA expressly establishes co-operative governance as one of its objectives. It is also reflected in section 48 which states that the NBF, BMPs and BRPs must be in accordance with any EIPs, EMPs, integrated development plans (hereafter IDPs), spatial development frameworks (SDFs), and other national and provincial plans that are affected.

4.4 The NEMPAA

Ecotourism destinations are usually located within an area which is under some sort of protection.³⁷⁶ It is estimated that approximately 7,2 million hectares of South Africa's land surface is made up of declared protected areas³⁷⁷ which consist of a variety of different types of protected areas such as national parks, world heritage sites, nature reserves and marine protected areas, to name just a few.³⁷⁸ The primary purpose of these protected areas appears to be environmental conservation and sustainable development.³⁷⁹ The NEMPAA has

370 S 2(4)(a).

371 S 3 of the NEMBA.

372 Ss 43-46.

373 Ss 40-42.

374 Ss 38 and 39.

375 Ss 2(a)(i) and 38-46.

376 See 3.2.

377 GN 106 in GG 35020 of 8 February 2012.

378 S 9 of NEMPAA.

379 S 17 of NEMPAA.

been instituted to regulate the declaration and management of protected areas in South Africa, in conjunction with the NEMBA.³⁸⁰

Similar to the NEMA and the NEMBA, it can be deduced from the NEMPAA's purpose that it regulates ecotourism implicitly. The NEMPAA in itself does not make any specific reference to ecotourism, or explicitly provide for its regulation. However, the NEMPAA does expressly provide for tourism, in general, to be allowed in certain protected areas.³⁸¹ Furthermore it also seems to promote all three constitutional environmental law objectives.

Regarding the first environmental law objective - sustainable development, the NEMPAA does not expressly promote it. Nonetheless, just as with the NEMBA, the NEMPAA should also be interpreted and applied in accordance with the NEMA's principles, which include sustainable development.³⁸²

The NEMPAA also promotes the environmental conservation objective by requiring that management authorities prepare management plans relating to the conservation of the biodiversity of the respective protected areas under their control.³⁸³ They must furthermore manage these protected areas in accordance with those plans, any other applicable environmental legislation at national, provincial or local level, and any norms and standards which the Minister may have prescribed.³⁸⁴ Management authorities are also required to report on their performance in terms of these plans to the Minister or MEC, and in the event that a management authority fails to manage the protected area's biodiversity properly, its mandate may be terminated.³⁸⁵

380 Ss 2(a) and 6. For further reading, see Kidd *Environmental Law* 115-120; Van Wyk *Planning Law* 257-268.

381 Ss 17(i), 20 (2)(c), 23(2)(e).

382 S 5(1)(a).

383 Ss 39(2) and 41(1).

384 Ss 40 and 11(1)(a).

385 Ss 43-44.

Furthermore the NEMPAA prohibits anyone from entering -, residing in -, developing in -, and constructing in certain protected areas unless prior written approval has been obtained from the management authority.³⁸⁶ Also, no commercial activity, or any activity aimed at raising revenue - as in the case of ecotourism, which has been allowed by a management authority, may negatively impact on any species or ecosystem in the protected area.³⁸⁷ Such activities and their impact on the environment must be monitored, and must comply with any norms and standards which the management authority may prescribe.³⁸⁸

Note that this is as much detail as the NEMPAA provides in respect of the regulation of activities in protected areas, including those activities involved in ecotourism. It appears to be mostly the content of management plans, internal rules, bylaws and any applicable national, provincial and local regulations that make provision for it.³⁸⁹ The regulations contained in, for example; GN R1061 in GG 28181 of 28 October 2005, and GN R99 in GG 35021 of 8 February 2012, provide that an EIA must be done in respect of certain activities in certain protected areas.³⁹⁰ They also provide that certain activities, for example the conducting of tours, may not be carried out without a permit/ licence/ authorisation and, in some instances, without paying a fee.³⁹¹

Many activities which may pose a threat to the environment in ecotourism operations, are also prohibited entirely. GN R99 in GG 35021 of 8 February 2012 for example, provides for prohibitions expressly relating to development, pollution and littering, and the use of vehicles in nature reserves.³⁹² GN R1061 in GG 28181 of 28 October 2005 for example, provides for prohibitions relating

386 Ss 46(1) and 50(5).

387 S 50(2).

388 Ss 50(1)(c) and 50(3).

389 Ss 49, 50(1) and 86(1)(c)(iv).

390 Regulation 19 of GN R1061 in GG 28181 of 28 October 2005; and Regulation 50 of GN R99 in GG 35021 of 8 February 2012.

391 See also, for example; Regulations 4, 5, 20, 31, 32, and 35 of GN R1061 in GG 28181 of 28 October 2005; and Regulations 4, 16, 18, 19, 25, 33, 34, 39, 43 and 47 of GNR99 in GG 35021 of 8 February 2012.

392 Ch 9.

to land use, use of biological resources, and activities which affect the environment negatively in national parks, world heritage sites, and special nature reserves.³⁹³ Both also prescribe how, when and where activities relating to ecotourism in these areas may take place, and the powers which the management authority has in that regard.³⁹⁴

Finally, non-compliance with anything which is stipulated in either the NEMPAA, or its regulations, is regarded as an offence punishable with a fine and/or imprisonment.³⁹⁵ In light of this it can be confirmed that, despite the fact that tourism is allowed in protected areas, one of the primary objectives in these areas is still environmental conservation.

In section 2(b) of the NEMPAA, the third constitutional environmental law objective, namely co-operative governance, is established as one of the act's inherent objectives. Managing authorities for example, are required to take into account all planning and development plans when preparing a management plan.³⁹⁶ That means, not only the planning and development plans at national -, provincial -, or local level, but also those at regional level, and those implemented by other managing authorities.³⁹⁷

Furthermore, the NEMPAA binds all organs of state,³⁹⁸ and all three spheres of government should be involved in the regulation of the management of protected areas.³⁹⁹ The minister and MEC for example, have the power to make regulations in respect of matters provided for in the NEMPAA, municipalities have the power to make bylaws in respect of matters relating to local protected areas, and managing authorities have the power to make rules inherent to the

393 Ch 4.

394 See, for example; ch 3, parts 3 and 6 of GN R1061 in GG 28181 of 28 October 2005; and Regulations 6 and 7, and ch 6 and 7 of GN R99 in GG 35021 of 8 February 2012.

395 S 89 of NEMPAA, ch 8 of GN R1061 in GG 28181 of 28 October 2005; ch 10 of GN R99 in GG 35021 of 8 February 2012.

396 S 39(3) of NEMPAA; Regulation 57(1)(a)-(e) of GN R1061 in GG 28181 of 28 October 2005.

397 Regulation 57(1)(a)-(e) of GN R1061 in GG 28181 of 28 October 2005.

398 S 4(2).

399 Ss 40, 49 and 86-88.

specific protected area under its control.⁴⁰⁰ Managing authorities may also enter into co-management agreements with organs of state, individuals or communities, as long as it does not result in fragmentation or duplication of its functions.⁴⁰¹

4.5 The NEM:ICMA

South Africa's coastal areas are said to be extremely rich in biodiversity.⁴⁰² However, according to Bernard, the biodiversity of South Africa's coastal areas are even more threatened than the biodiversity of other areas.⁴⁰³ Apart from climate change,⁴⁰⁴ easy access to the public and inappropriate development along the coast appears to be the reasons for this.⁴⁰⁵

With regard to tourism UNEP has reported that:⁴⁰⁶

The maximum monetary value of ecosystem services for tourism, per hectare per year, has been estimated for coastal systems (US\$41,416), coastal wetlands (US\$2,904), inland wetlands (US\$3,700), rivers and lakes (US\$2,733) and tropical forests (US\$1,426).

This suggests that; globally, the benefits which the tourism industry gains from the resources and processes that is supplied by ecosystems in coastal areas, are more than the benefits which the tourism industry gains from other areas.⁴⁰⁷

400 Ss 49 and 86-88.

401 S 42(1)(a)-(b). It is argued that co-management agreements can be useful instruments in the effective regulation of ecotourism due to the fact that they provide for, *inter alia*, "the use of biological resources in the area", and "the development of economic opportunities within and adjacent to the protected area". S 42(2).

402 Bernard 2013 <http://www.sarva.org.za/enews/issues/05/08.php>.

403 Bernard 2013 <http://www.sarva.org.za/enews/issues/05/08.php>.

404 Bernard 2013 <http://www.sarva.org.za/enews/issues/05/08.php>; Government of the RSA Date Unknown <http://www.climatechange.co.za/home/gp/5.8.2>.

405 Bernard 2013 <http://www.sarva.org.za/enews/issues/05/08.php>; Government of the RSA Date Unknown <http://www.climatechange.co.za/home/gp/5.8.2>.

406 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 421, available at <http://www.unep.org>.

407 UNEP 2011 *Towards a Green Economy – Pathways to Sustainable Development and Poverty Eradication* 421 available at <http://www.unep.org>.

To balance this against the threats to the coastal areas' biodiversity, effective regulation of ecotourism is crucial.

The purpose of the NEM:ICMA is to provide for integrated coastal management in South Africa, to promote conservation of the coastal environment and, ultimately, to achieve sustainable development.⁴⁰⁸ It neither makes any references to ecotourism, nor provides expressly for its regulation. However, in the light of its purpose, it is deemed to be unnecessary. The NEM:ICMA regulates ecotourism implicitly. The NEM:ICMA also promotes all three of the constitutional environmental law objectives.

Similarly to the NEMBA and the NEMPAA, the NEM:ICMA makes no express referral to the term "sustainable development". However, it still appears to promote sustainable development through various other provisions. Some of those provisions for example, refer to the "interests of the whole community". Note that section 1 of the NEM:ICMA describes the "interests of the whole community", in context, as:

The collective interests of the community determined by
(a) prioritising the collective interests in coastal public property of *all persons living in the Republic* over the interests of a particular group or sector of society;
(b) adopting *a long-term perspective that takes into account the interests of future generations* in inheriting coastal public property and a coastal environment characterised by *healthy and productive ecosystems and economic activities that are ecologically and socially sustainable*; and
(c) taking into account the interests of other living organisms that are dependent on the coastal environment.⁴⁰⁹

It follows that many of the provisions applicable to the regulation of ecotourism require – whatever it may be referring to – to be in the interest of the whole

408 See the long title of the NEM:ICMA. For further reading, see also Van Wyk *Planning Law* 266-267.

409 Own emphasis added.

community, or at least not contrary to it.⁴¹⁰ One of these provisions is, for example, section 63 which states that a competent authority must take into account the socio-economic impacts of an activity, and may subsequently not grant an environmental authorisation if it would be contrary to the interests of the whole community.⁴¹¹ Also note that coastal management programmes are required to be consistent with plans and policies which aim to promote sustainable development.⁴¹² Furthermore section 5(1) states that the NEM:ICMA must be read, interpreted and applied in accordance with the NEMA. It is thus deduced that it is also intended that the NEMA's principles, including sustainable development, must be read, interpreted and applied as inherent to the provisions of the NEM:ICMA.

With regard to promoting environmental conservation in ecotourism developments, the NEM:ICMA provides for an EIA to be done and an environmental authorisation to be obtained in terms of the NEMA, as the first steps towards development in a coastal area.⁴¹³ This means that an ecotourism developer in a coastal area will have to consider whether his development project falls under either listing notices 1, 2 or 3.

Listing notice 3, and consequently a basic assessment, would be applicable if the construction of a resort, lodge, or other tourism accommodation facility that sleeps less than fifteen people, is situated in an "area seawards of the development setback line or within 1 kilometre from the high-water mark of the sea, if no such development setback line is determined".⁴¹⁴ A competent authority must also consider whether an ecotourism development project, which is to be situated within a coastal public property, coastal access land or coastal protection zone, will defeat the purpose for which the area was declared, and if

410 Ss 12, 13, 21, 63, 64, 69, 71.

411 Ss 63(1)(e) and 63 (2)(g).

412 S 52(1)(e).

413 Ss 62 and 63.

414 Activity 5(h)(iii).

it does, an environmental authorisation may not be granted unless certain circumstances justify it.⁴¹⁵

In the event that an environmental authorisation is granted, chapter 7 applies. Chapter 7 of the NEM:ICMA provides that section 28 of the NEMA applies to any person who causes a negative impact on a coastal environment.⁴¹⁶ Such a person therefore has a duty of care, or a duty to avoid causing a negative impact on the coastal environment.⁴¹⁷ The Minister, or his/her delegate, may issue a coastal protection notice in the event that an activity is causing, or may likely cause, harm to the environment.⁴¹⁸ The Minister, or his/her delegate may also issue repair or removal notices in respect of structures that is causing, or may likely cause, harm to the environment.⁴¹⁹ A variety of directives may be given in terms of such notices depending on the circumstances,⁴²⁰ and the Minister or his/her delegates may recover costs for instituting action in the event of non-compliance with such notices.⁴²¹

Note that the NEM:ICMA also provides for marine - and coastal pollution control in respect of ecotourism developments and - operations.⁴²² In chapter 8 it states that effluent may not be discharged into coastal waters without either a general authorisation, or a permit.⁴²³ Dumping at sea is also not allowed without a permit.⁴²⁴

Any non-compliance with the NEM:ICMA, a notice issued in terms of it, or an authorisation, is regarded as an offence.⁴²⁵ The penalty that may be imposed upon conviction, depends on which category the offence falls under in terms of

415 S 63(2) and ch 2.

416 S 58.

417 S 58 of NEM:ICMA and s 28 of NEMA.

418 S 59.

419 S 60.

420 Ss 59-60.

421 S 61.

422 Ch 8.

423 S 69.

424 Ss 70-72.

425 Ss 68 and 79-80.

the NEM:ICMA.⁴²⁶ Potential penalties may include one, or a combination of more of the following: a fine, imprisonment, community service, together with suspension, revocation or cancellation of an authorisation.⁴²⁷

Section 2(b) provides that coastal areas must be managed in accordance with the NEMA's principles of co-operative governance. Thus all spheres of government, together, must play a role in the integrated management of coastal areas. This is reflected in chapters 5 and 6 of the NEM:ICMA. Chapter 6 provides for the preparation and adoption of a national coastal management programme,⁴²⁸ as well as provincial -,⁴²⁹ and municipal coastal management programmes.⁴³⁰ These programmes must be designed within four years after commencement of the NEM:ICMA, as policy directives which provide for the effective management of coastal areas in an integrated, co-ordinated and uniform way.⁴³¹

Note that the national coastal management programme is still being developed at this stage.⁴³² The NEM:ICMA, however, provides that it must at least include a vision and objectives, priorities and strategies, performance indicators and norms and standards, relating to the coastal areas of South Africa and its management.⁴³³ Provincial -, and municipal coastal management programmes appear to require more or less the same content.⁴³⁴

It is argued that it would be extremely beneficial if these programmes were to also contain provisions which relate expressly to the management of ecotourism developments and activities in coastal areas. Note that the content of all these programmes, and any other statutory plans that may be applicable to a coastal

426 Ss 68 and 79-80.

427 Ss 68 and 79-80.

428 Ss 44-45.

429 Ss 46-47.

430 Ss 48-49.

431 Ss 44-49.

432 DEA 2013 https://www.environment.gov.za/ncmp_workshop2013.

433 S 45.

434 See ss 47 and 49.

area, for example EIPs, EMPs, IDPs, etc, must be aligned and consistent with each other.⁴³⁵ Municipalities are also empowered to create bylaws for the implementation, administration, and enforcement of their municipal coastal management programmes.⁴³⁶ This means in effect that, if these programmes were to expressly make provision for the management of ecotourism developments and activities in coastal areas, and bylaws were to be created for their subsequent enforcement, ecotourism could be regulated more effectively in coastal areas.

Chapter 5 of the NEM:ICMA provides for the establishment of a national coastal committee, as well as provincial -, and municipal coastal committees.⁴³⁷ These committees, in all three spheres of government, have a duty to promote integrated management and co-operative governance in coastal areas.⁴³⁸ The provincial and municipal coastal committees also have, amongst others, an advising role in respect of matters relating to coastal management and coastal management programmes.⁴³⁹ Provision is also made for the designation of provincial lead agencies.⁴⁴⁰ These agencies have numerous functions, for example monitoring integrated and co-operative coastal management, monitoring the state of the coastal environment, and monitoring compliance with the NEM:ICMA.⁴⁴¹ In light of their various duties, it is therefore argued that the said committees, as well as the provincial lead agencies, can also play an important role in ensuring that ecotourism in particular is regulated effectively.

4.6 The NHRA and the WHCA

Heritage resources have lasting value in their own right and provide evidence of the origins of South African society and as they are

435 Ss 51-53.

436 S 50.

437 Ss 35, 39, 42.

438 Ss 2(b), 35(3), 39(2)(a), (d) and (e), 42(2)(a), (d) and (e).

439 Ss 39(2)(b) and (c), 42(2)(b) and (c).

440 S 38.

441 S 38(2).

valuable, finite, non-renewable and irreplaceable they must be carefully managed to ensure their survival.⁴⁴²

According to section 3 of the NHRA, South Africa's heritage resources can be regarded as places and objects with natural and/or cultural significance.⁴⁴³ As it was seen in section 3 of this study, ecotourism appears to be a hybrid form of tourism which combines nature-based tourism with culture tourism and usually takes place in protected areas with a "profound natural, cultural, and historical richness".⁴⁴⁴ However, it was also made apparent that, even though ecotourism aims to minimise negative impacts on the environment, it inevitably still results in negative impacts, at least to a certain degree.⁴⁴⁵

Note that both the NHRA and the WHCA acknowledge that South Africa's heritage resources should be involved in the growth of the tourism industry.⁴⁴⁶ Therefore, also in light of the quote above, it can be deduced that the effective regulation of ecotourism in South Africa's national -, provincial -, and world heritage sites is crucial.

It is argued that the NHRA, which provides for the integrated and interactive management of South Africa's heritage resources,⁴⁴⁷ and the WHCA, which provides for the integrated management of South Africa's world heritage sites,⁴⁴⁸ are thus implicitly applicable to the regulation of ecotourism in South Africa's national -, provincial -, and world heritage sites. As will be seen in due course, these acts make provision for regulations, bylaws and plans to regulate ecotourism, and/or matters pertaining to ecotourism directly.⁴⁴⁹ Furthermore, even though both allow for tourism in heritage sites, neither makes express

442 S 5(a) of the NHRA.

443 S 3(1)-(3).

444 See 3.2.

445 See 3.2 and 3.4.

446 Ss 5(5) and 44(1) of the NHRA; Ss 3(c) and 13(2)(b), 17(3)(e), 24(e) of the WHCA.

447 See the long title of the NHRA. For further reading, also see Kidd *Environmental Law* 121-125; Van Wyk *Planning Law* 257-265.

448 See the long title of the WHCA. For further reading, also see Kidd *Environmental Law* 121-125; Van Wyk *Planning Law* 257-265.

449 S 13(2)(b).

references to ecotourism. It appears, however, that both do promote all three objectives of environmental law in their regulation of ecotourism.⁴⁵⁰

The first environmental law objective – sustainable development, is promoted by both the NHRA and the WHCA in the regulation of ecotourism. This is reflected in section 5(7) of the NHRA, which recognises that:

- The identification, assessment and management of the heritage resources of South Africa must
- (c) Promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs;
 - (d) Contribute to social and economic development; and
 - (e) Safeguard the options of present and future generations.

It is also reflected in sections 3 and 4 of the WHCA, which establishes sustainable development as both an objective and a fundamental principle in the management of world heritage sites.⁴⁵¹

With regard to environmental conservation, the NHRA provides for the following: A developer, who wants to undertake a project that is prescribed by either section 38, or any regulation, must first notify the responsible heritage resources authority (hereafter HRA).⁴⁵² In the event that the HRA is of the opinion that such a development would negatively impact on the heritage resources of that area, it will require an EIA to be done.⁴⁵³ A developer in the ecotourism industry will thus have to consider whether his project falls under the said prescribed criteria. It appears that such a developer will also have to consider whether his project requires a permit.⁴⁵⁴ The NHRA provides that a permit must be obtained from the responsible HRA or local authority, as the case may be, for the following:

450 See the long title of the NHRA. For further reading, also see Kidd *Environmental Law* 121-125; Van Wyk *Planning Law* 257-265.

451 Ss 3(a)(i) and (e)-(j), 4(1)(b) and (2).

452 S 38(1).

453 S 38(2)(a).

454 Ss 27(18), 29(10), 35(4), 36(3); GN 548 of GG 21239 of 2 June 2000.

- To "destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site."⁴⁵⁵
- To "damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of a provisionally protected place or object."⁴⁵⁶
- To undertake certain specified activities within an archaeological or paleontological site.⁴⁵⁷
- To undertake certain specified activities that will have an impact on burial grounds and graves.⁴⁵⁸

It appears that, for the sake of environmental conservation, the NHRA also provides for a procedure to be followed in the event that a developer discovers archaeological or paleontological material, a meteorite, burial grounds or graves in the course of the development.⁴⁵⁹

The NHRA stipulates further that the owner of a heritage site must manage the site in accordance with any procedure prescribed by the responsible HRA and any applicable minimum standard.⁴⁶⁰ It thus appears that the NHRA in itself does not elaborate on such aspects. Instead, the NHRA makes provision for heritage sites, and in effect ecotourism operations, to be managed in accordance with any applicable regulations and bylaws.⁴⁶¹ Regulations and bylaws may for example, provide for the prohibition and control of specified activities, the monitoring of activities, the conditions of use and development of

455 S 27(18).

456 S 29(10).

457 S 35(4).

458 S 36(3); *Van Wyk Planning Law* 257-265.

459 Ss 35(3) and 36(6). See also *Van Wyk Planning Law* 257-265.

460 S 27(20).

461 S 51(2).

specified heritage sites, the control of public admission to specified heritage sites, and financial incentives for conservation in the area.⁴⁶²

Apart from regulations and bylaws, conservation management plans (hereafter CMPs) also have a role to play in the management of heritage sites and ecotourism operations.⁴⁶³ Section 47 provides that each HRA must adopt a CMP for every protected area that is under its control.⁴⁶⁴ Such a plan must be in accordance with "the best environmental, heritage conservation, scientific and educational principles that can reasonably be applied".⁴⁶⁵

It is argued that the mandate of heritage inspectors, and the possibility of conviction under the NHRA, also promotes environmental conservation in ecotourism operations and - developments.⁴⁶⁶ Heritage inspectors have the power to inspect heritage sites, as well as any developments and activities that is believed to have an impact on it.⁴⁶⁷ These heritage inspectors may then act in accordance with section 50 if they have a reasonable suspicion that an offence has been committed, will be committed, or is being committed in terms of the NHRA.⁴⁶⁸ The offences that a person can be convicted of in terms of the NHRA, and the penalties which may be imposed in respect of each of them, is listed in section 51 and the Schedule.

The WHCA also promotes environmental conservation in ecotourism operations in world heritage sites by acknowledging it as both an objective and a regulatory principle.⁴⁶⁹ It also provides for it through the mandate of the regulating authority and the content of the prescribed integrated management plan (hereafter IMP), which each regulating authority must prepare.⁴⁷⁰

462 Ss 54, 59, 25(2)(h), 27(19), 28(5)-(6) and 43.

463 S 47.

464 S 47(2).

465 S 47(2).

466 Ss 50, 51, and the Schedule.

467 S 50(7)-(8).

468 S 50(9)-(10).

469 Ss 3 and 4.

470 Ss 23, 24(f) and (g), 13(2).

With regard to co-operative governance in respect of heritage sites and ecotourism operations; the NHRA in effect makes provision for a three-tiered management system.⁴⁷¹ At national level, it provides for the establishment of the South African Heritage Resources Authority (hereafter SAHRA), and at provincial level it provides for the establishment of provincial HRA's.⁴⁷² At local level it provides for local authorities to perform those functions that are within their competence.⁴⁷³

Moreover, the state, and all other supportive bodies, is also required to assist the HRA's in their duties as far as possible.⁴⁷⁴ HRA's may enter into heritage agreements with other HRA's, local authorities, individuals, communities, or conservation bodies, for the sake of creating binding obligations in respect of conservation, improvement and presentation matters.⁴⁷⁵ HRA's may also, at their discretion, execute a CMP in conjunction with a tourism authority.⁴⁷⁶ In appropriate cases, HRA's and local authorities must also "co-ordinate and promote the use and presentation" of heritage sites and resources for tourism purposes.⁴⁷⁷

The WHCA also promotes co-operative governance in ecotourism operations. In section 4 it expressly acknowledges co-operative governance as a fundamental principle in the management of world heritage sites.⁴⁷⁸ It further promotes this objective by providing that the regulating authority of a specific world heritage site must:⁴⁷⁹

471 S 8(1).

472 S 8(1)-(3).

473 S 8(1) and (4).

474 S 9(1).

475 S 42.

476 S 47(3).

477 S 44(1).

478 S 4(k)-(m).

479 Ss 13(1)(c) and 13(1)(l).

Liaise with relevant cultural, nature conservation and similar authorities on a local, provincial, national and, with the consent of the Department, international level

and

Co-ordinate with;
the relevant tribunals under the Development Facilitation Act, 1995 (Act 67 of 1995), if applicable; or
similar bodies or relevant planning authorities, on a national, provincial and local level, in order to expedite sustainable development in World Heritage Sites and to ensure that development takes place in accordance with all applicable laws and procedures.

4.7 Conclusion

In critically considering the current state of regulation of ecotourism in South Africa from an environmental law perspective, the following came to light:

Firstly, none of the acts at hand refer expressly to ecotourism. In fact, only the NEMPAA, the NHRA and the WHCA make any reference at all to tourism. Secondly, none of the acts at hand expressly provide for the regulation of ecotourism. It can be said, however, that they do effectively regulate ecotourism implicitly.

Throughout 4.2 – 4.6 it became apparent that all the acts at hand promote three of the objectives of environmental law in their regulation of ecotourism, and are thus in line with section 24 of the Constitution. All of the said acts also make provision for ecotourism to be regulated by means of other applicable rules, regulations, plans, programmes, policies and bylaws. Section 5 of this study will now elaborate on the implications of these findings, and provide recommendations where appropriate.

5 Conclusion and recommendations: Proposals for legal reform

At the commencement of this study it was shown that the world, including South Africa, is currently facing an exacerbating threat of environmental degradation, which can be partly ascribed to humanity's relentless pursuit of economic growth.⁴⁸⁰ It was also shown that, pursuing economic growth at the cost of environmental conservation is not profitable in the long run.⁴⁸¹ It was then argued that investment in the environment can benefit both the environment, and the economy, and lack of it can result in the downfall of both.⁴⁸² For South Africa – a country rich in natural resources, but unfortunate in its high rate of socio-economic disparities – investment in the environment was argued to be crucial.⁴⁸³

It was subsequently shown that the notion of a green economy had actually developed from the view that the economy can be improved through investment in the environment.⁴⁸⁴ However, it was also found that, although a green economy focuses primarily on environmental - and economic development, it also acknowledges that social development is just as important.⁴⁸⁵ For this reason it was said to be consistent with the universal goal of sustainable development.⁴⁸⁶ To prevent any subsequent confusion, it was also made clear that a green economy does not replace sustainable development, but rather provides a pathway for the ultimate achievement thereof.⁴⁸⁷

Sub-section 2.4 of this study proceeded to give a detailed report on what South Africa has been doing over the years in an effort to effect the transition to a

480 See 1 and 2.2.

481 See 2.2.

482 See 2.2.

483 See 2.2.

484 See 2.2 and 2.3.

485 See 2.2.

486 See 2.2.

487 See 2.2.

green economy. It was noted that South Africa has taken the lead in Africa in transitioning to a green economy.⁴⁸⁸

The focus then shifted to ecotourism and the role it can play in the transition to a green economy.⁴⁸⁹ It was found that ecotourism is a unique form of nature-based tourism, due to it being characterised by seven established principles that promote it as a form of sustainable tourism.⁴⁹⁰ It was seen that sustainable tourism ultimately leads to the achievement of sustainable development.⁴⁹¹ It was subsequently argued that, as ecotourism contributes to the achievement of sustainable development, it can be regarded as a key driver in the transition to a green economy.⁴⁹² The relevance of ecotourism as a driver in the transition to a green economy in South Africa was highlighted in 2.4 and 3.3.

Finally it was also acknowledged that, although ecotourism can greatly benefit South Africa and its transition to a green economy – similar to any human activity and development – it inevitably always results in a certain extent of negative impact on the natural environment.⁴⁹³ It was therefore argued that, for South Africa's transition to a green economy to be successful, ecotourism needs to be regulated effectively.⁴⁹⁴

This study focused on the regulation of ecotourism from a national environmental law perspective, and therefore concentrated on those national environmental laws and regulations that seems to have the greatest bearing on the ecotourism industry.⁴⁹⁵ Although it is recognised as very relevant, no provincial – and municipal legislation were discussed.⁴⁹⁶

488 See 1 and 2.4.

489 See 3.

490 See 3.2.

491 See 3.2.

492 See 2.2 and 3.2.

493 See 3.4.

494 See 3.4.

495 See 1 and 4.

496 See 1 and 4.

Section 4 of this study critically considered six national pieces of legislation: The NEMA, the NEMBA, the NEMPAA, the NEM:ICMA, the NHRA and the WHCA.⁴⁹⁷ In the critical consideration of each, regard was given to certain criteria.⁴⁹⁸

In the end it was found that none of the said acts make specific references to ecotourism.⁴⁹⁹ However, the NEMPAA, the NHRA, and the WHCA do refer to tourism in general, by way of their acknowledgement of the importance of ecotourism in protected areas.⁵⁰⁰ Although the other acts at hand need not refer expressly to ecotourism in light of their respective purposes and objectives, it may be necessary in case of these three acts. The NEMPAA, the NHRA and the WHCA deal specifically with areas and resources that require special protection.⁵⁰¹ It is argued that it must therefore be established in terms of these laws that, even though tourism is allowed in such areas, unsustainable tourism practices will not be tolerated. Due to the fact that ecotourism is inherently sustainable, and is in fact designed to take place in protected areas, it is recommended that these three acts be amended to be more specific. By providing for ecotourism, rather than tourism in general, the legislature may ensure the recognition of the role of ecotourism in the achievement of sustainable development and, in the smooth transition to a green economy. It is also recommended that a system of ecotourism accreditation is implemented in conjunction with the above, to ensure that tourism operations are not merely green-washed in order to comply with the acts.⁵⁰²

497 See 4.2-4.6.

498 See 4.1.

499 See 4.2-4.7.

500 See 4.4 and 4.6.

501 See 4.4-4.6.

502 Fair Trade Tourism, Date Unknown

<http://www.fairtradetourism.org.za/content/page/becoming-certified>; South African Venues Date Unknown <http://blog.sa-venues.com/provinces/eco-tourism/>; SATSA Date Unknown, <http://www.satsa.com/pages/About.asp>.

It was also found that none of the said acts contain provisions pertaining directly to the regulation of ecotourism.⁵⁰³ However, two arguments are put forward that prove this to be unnecessary. Firstly, it is argued that ecotourism is no more than a collective range of principled activities which can be evaluated first and foremost by means of an EIA, controlled by means of authorisations and permits, and managed by means of a variety of national -, provincial -, and municipal legislation, regulations, plans, policies and programmes.⁵⁰⁴ Secondly, it is argued that the respective purposes and objectives of each of the said acts are adequate in providing for the pro-active and reactive means to which ecotourism should be regulated in South Africa, and therefore they need not necessarily contain specific provisions pertaining to it.⁵⁰⁵

It also was shown that the six said acts provide for a variety of additional instruments through which ecotourism can be regulated, for example; regulations, plans, policies, programmes and bylaws.⁵⁰⁶ It is recommended that these instruments should in fact be expanded and improved as far as possible, in order to provide the means to which matters pertaining to ecotourism can be addressed directly. Even though the NEMA, the NEMBA, the NEMPAA, the NEM:ICMA, the NHRA and the WHCA implicitly regulate ecotourism, why should South Africa stop there? Why be satisfied with achieving the bare minimum for which ecotourism was developed? It is argued that these instruments have the potential to help South Africa, not only effectively regulate ecotourism in general, but also achieve more in respect of environmental conservation [and a green economy], by regulating it first-hand.

Finally, it was argued that, for the regulation of ecotourism to be effective in South Africa, it should be in line with the environmental right provided for in section 24 of the Constitution.⁵⁰⁷ It was argued further that this environmental

503 See 4.2-4.7.

504 See 4.2-4.7.

505 See 4.2-4.7.

506 See 4.2-4.7.

507 See 1 and 4.

right has three objectives, namely; environmental conservation, co-operative governance and sustainable development.⁵⁰⁸ Each of the said acts was measured against their ability to promote these three objectives of environmental law in the regulation of ecotourism.⁵⁰⁹ It was finally found that all six of the said acts do indeed promote all three of the said objectives in the regulation of ecotourism.⁵¹⁰

It has come to light that some argue for ecotourism to have its own legal framework in South Africa.⁵¹¹ It is, however, concluded that, from an environmental law perspective, and to the extent that this study looked into the existing legal framework, ecotourism is, in principle, well-regulated in South Africa. Through the promotion of the three objectives of constitutional environmental law, and by providing for means in terms of which ecotourism and its underpinning activities are regulated, the laws that were discussed in this study negate the need for an entirely separate legal framework exclusively applicable to ecotourism. Consideration and application of the recommendations made above will arguably go a long way in seeing to it that South Africa smoothly makes the transition to a green economy - through ecotourism as a key driver and with responsible consideration of the abundance of the country's tourism potential, generally.

508 See 4.1.

509 See 4.2-4.7

510 See 4.2-4.7.

511 Van der Bank and Van der Bank 2012 *Business Management Dynamics* 1-9.

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