Reflections on Establishing South Africa’s Ecotourism legislative System
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Abstract
Ecotourism has developed extensively in recent years. Ecotourism is the developing direction of tourism industry in our country. Irrational exploitation has devastated the ecotourism resources. Confronted with the up surging ecotourism market, we are lacking in corresponding legislative control and legislative link. Forming the legal system of ecotourism as soon as possible and having laws to abide by can ensure the sustainable development of ecotourism in our country.

Section 24 of the Constitution attempts to achieve two objectives. The first objective of this section is to guarantee that everyone has the right to an environment that is not harmful to their health and well-being. Secondly in subsection 24(b) it is presumed that there is a specific mandate placed on the State (including municipalities) to take the necessary steps to consummate the aim in subsection 24(a).

In this context aiming to reach sustainability means an integrated holistic effort in which all participants are present: hosts, government, business entrepreneurs, natural resources and environment in a related equal importance in which all human groups think, decide, compromise, act assume related responsibilities.

Key words: Ecotourism, sustainability, environmental rights and regulations.

INTRODUCTION
Ecotourism has developed extensively in recent years in South Africa. To further develop an industry, priority must be given to the construction of relevant laws and regulations. Thus, it is extremely urgent to legally regularize the ecotourism. Irrational exploitation has devastated the ecotourism resources. Confronted with the up surging ecotourism market we have to look at corresponding legislative control and legislative links. Therefore, forming a legal system for ecotourism as soon as possible and having laws to abide by can ensure the sustainable development of ecotourism in our country.

Ecotourism has become a trend globally. At the same time, ecotourism is also the developing direction of tourism industry in our country. It is expected that ecotourism is becoming one of the most favourite holiday modes of South African citizens and international tourists. However, facing the flourishing ecotourism, we are lacking in corresponding laws and regulations, which will hinder the sustainable development of ecotourism in the long run.

MEETING THE NEED OF THE RAPID DEVELOPMENT OF ECOTOURISM IN SOUTH AFRICA FOR RELEVANT LEGISLATION
The Constitution of the Republic of South Africa provides in sections 24 and 152(1) (Constitution, 1996) that local government is co-responsible with other government spheres (which are distinctive, interdependent and interrelated) for fulfilling the duties of local government as entrenched in inter alia section 156 of the Constitution. A common constitutional objective and duty of the three spheres is to protect the environment and the securing of an environment that is not detrimental to the health or well-being of people, both the present and the future generations. This objective and duty is most prominently entrenched in section 24, the environmental right (Bill of Rights, Chapter 2).

Firstly tourism laws and regulations of South Africa fail to form a complete system in the framework. The existing longitudinal tourism laws and regulations are mainly provisions of the government departments concerning the establishment, operation and management of tourism enterprises, without mentioning or just skimming over the environmental protection duty of governments, tourism enterprises and tourists in the process of ecotourism. For example there are no specific provisions

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involving ecotourism, such as concluding special “ecotourism contracts” to stipulate the environmental rights and obligations of the tourism enterprises and tourists.

Second is the lack of organic connection between tourism law and environmental law. In the Report of the World Commission on Environmental and Development: Our Common future (WCED), widely known as the Brundtland Report (WCED Our Common future 1987) suggests that the impact of development on the natural environment should be established and that a limit should be put on further development in order to ensure that the environment is able to sustain the survival of present and future generations. The Millennium Ecosystem Assessment claimed that human activity is putting a strain on the environment and the natural ecosystem and that such sustainability can therefore no longer be taken for granted (Richardson and Wood, 2007). Human economic, social and environmental systems are inextricably linked, and their development should be controlled and monitored simultaneously (Kidd, 2011). These systems are referred to as the three pillars of sustainable development (Kidd, 2011). Sustainable development should be understood in two different contexts. The first addresses the people’s needs and the second is dealing with technology and social organization which will ensure the environment’s ability to meet the needs of present and future generations (Bouillon, 2003).

Existing laws and regulations seldom regulate the environmental protection problems which may arise from ecotourism. The environmental legislation usually regulates single environmental factor, without considering the unity of ecological environment. Currently the special regulation of ecotourism management has not yet been put forward, which constitutes a great hidden danger to the sustainable and healthy development of ecotourism.

To sum up, meeting the need of the rapid development of ecotourism in South Africa for relevant legislation, it is necessary to establish a relatively independent, complete and characteristically South African ecotourism legislative system, which is also important step to perfect our tourism legal system.

THE NEED TO PROTECT THE ECOLOGICAL ENVIRONMENT IN SOUTH AFRICA FROM BEING FURTHER DESTROYED

The original ecological natural and cultural environment is the root of ecotourism. Therefore, ecotourism should be aimed at ecological protection and education, capable of sustainable development. Their negative impacts on the natural environment are: deterioration of air quality, reduction in water clarity, accumulation of decomposition products and garbage, decrease in biodiversity, acid water and decline in ecological landscape quality. The reasons are mainly as follows:

Firstly, some leadership of local governments and tourism management departments were eager for quick success and illustrious achievements. They went one-sidedly after instant economic benefits, lacking in-depth investigation, argumentation, and assessment and planning. Their blind exploitation of ecological resources destroyed the local natural ecological environment.

The need for sustainable development globally and in Africa is also taken seriously within South Africa. South Africa’s National Strategy and Action Plan for Sustainable Development of 2010 for example provide that two main categories of intervention are proposed (http://www.environment.gov.za/Services/documents/PublicParticipation/NSSD) in order to support the new social goals that are based on sustainability. There are two main categories, firstly the introduction of incentives/disincentives and fiscal measures and the second category is education and awareness-raising programs which foster a better understanding of the relationship between human well-being, biodiversity and ecosystems (Van der Bank, 2011).

Secondly, some developers of ecotourism projects lacked corresponding qualifications, risk awareness and a sense of responsibility. Hotels, tourism attractions and entertainment facilities were blindly built in many ecotourism areas for example hotels in the Kruger National Park. The control of tourism carrying capacity and the monitoring of ecological environment were disregarded. The short-sighted behavior of development without protection led to the imbalance of ecotourism.

Thirdly, some planners of ecotourism projects were not ecologists, lacking in corresponding qualifications. Unreasonable planning turned natural landscape into artificial landscape, causing serious damage to the ecological environment.
Fourthly, planning and development had no connections with operation, management and protection after the completion of ecotourism areas. Some ecotourism operators with weak ecological consciousness solicited tourists under the fashionable “ecological” banner. They were simply in pursuit of a number of tourists without considering the environment carrying capacity, and the consequences of which soil compaction, landscape destruction and ecosystem degradation.

Lastly, the uncivilized behavior of some visitors such as trampling and picking wildflowers, caused soil erosion and affected the growth of plant in the ecotourism zone. Many animals and vegetation were on the brink of extinction.

Ecological environment may be destroyed overnight for a variety of reasons, imagine how many years would its rehabilitation and reconstruction will take. It’s almost non-renewable and non-returnable. Presently the global climate changes rapidly as a result of global warming, the melting of polar and glacier ice, sea levels are rising, ocean acidification, changes in rainfall and snowfall patterns, frequent floods and droughts and also the increased extreme weather events. Therefore we must regulate the behavior of various subjects of ecotourism through strict legislation as soon as possible in order to protect the ecological environment in South Africa from being further destroyed.

MEETING THE NEED OF SOUTH AFRICA’S ECOTOURISM LEGISLATION TO BE GEARED TO INTERNATIONAL STANDARDS

It has been an issue of great concern to all governments and the whole world to regularize the sustainable, healthy and steady development of ecotourism through legislation. Firstly, some international tourism conventions and agreements are concerned with ecotourism. For example the “World Summit on Sustainable Development, WSSD or Earth Summit” signed in August, 2002 in Johannesburg put forward the sustainable development strategy adapted to the environment. The convention is to ensure sustainable and equitable use of resources without degrading the environment or risking health or safety; to prevent and control degrading of land, water and air which constitutes the essential life support system; to conserve and enhance natural and man-made heritage, including the biological diversity of the unique ecosystem. There are also institutions devoted to ecotourism, including: The International Ecotourism Society (TIES). TIES is a non-profit organization based in Washington, DC and is committed to raising awareness of the environmental impact of travel. TIES is dedicated to making tourism a tool for environmental conservation and sustainable community worldwide. They created a network of participating members in over 90 countries, including tourists and tourism professionals who cater to environmentally conscious travelers. South Africa is also a participating member.

Secondly, most tourism-developed countries attach great importance to the legislation related to ecotourism. Besides tourism basic laws, many countries have formulated detailed specific law and regulations concerning ecotourism management.

THE OVERALL FRAMEWORK OF SOUTH AFRICA’S ECOTOURISM LEGISLATIVE SYSTEM

Establishing South Africa’s ecotourism legislative system as soon as possible and having relevant laws as support can ensure the sustainable development of ecotourism in South Africa. South Africa’s ecotourism legislative system should include the following two levels:

6.1 Constitution

The Constitution and chapter 2, the Bill of Rights is the fundamental law of our country, with the highest legal effect. Section 24 of the Bill of Rights must accordingly be respected, protected and promoted to fulfill the environmental right of all people in South Africa (section 24 of the Constitution, 1996). Section 24 of the Constitution attempts to achieve two objectives. The first objective of this section is to guarantee that everyone has the right to an environment that is not harmful to their health and well-being. Secondly in subsection 24(b) it is presumed that there is a specific mandate placed on the State (including municipalities) to take the necessary steps to consummate the aim in subsection 24(a). Furthermore subsection (b) assumes that there is a negative obligation on the State to withdraw from measures that may cause environmental degradation or that may generally impair the right guaranteed in subsection (a) (Brand and Heyns, 2005). Section 8 of the Constitution stipulates that the Bill of Rights, which includes section 24, applies to the legislature, the executive, the judiciary and all organs of state (Section 8 of the Constitution, 1996). Therefore there is an obligation on the State (including municipalities) as well as
natural and juristic persons to protect the environment in such a way that the condition of the environment is not detrimental to the health of the well-being of present and future generations (Brand and Heyns, 2005).

The South African government comprises of national, provincial and local spheres. Each of these three spheres has its own constitutional powers, duties and responsibilities that must be exercised in accordance with the Constitution (Bekink, 2008). The Constitution provides in section 24 and 152(1) that local government is co-responsible with other government spheres (which are interdependent, distinctive and interrelated) for fulfilling the duties of local government as entrenched in inter alia section 156 of the Constitution (Section 40(1) of the Constitution, 1996). A common constitutional objective and duty of the three spheres is environmental protection and the securing of an environment that is not detrimental to the health or well-being of people (section 24(1)(b) of the Constitution, 1996). This objective and duty is most prominently entrenched in section 24, the environmental right.

6.2 Law

The importance of the right of access to information in the environmental context is further seen in the fact that the National Environmental Management Act (NEMA)(107 of 1998) includes provisions to that effect (Mubangizizi, 2004). NEMA aims to promote certainty in decision-making by organs of state on matters that are concerned with the environment, and establishes principles that guide the exercising of the functions that affects the environment (Preamble of NEMA). Municipalities are bound to NEMA and must adhere to the principles therein. “Green building” and “green design” will be promoted since before the erection of a building, the ecosystem and the natural biodiversity of the specific premises will be research and if there is disturbance to the biodiversity of an ecosystem, the project must be reconsidered.

Negative impacts on the environment and on people’s environmental needs must be anticipated and prevented, and where they cannot be altogether prevented need to be minimized and remedied (section 2(4)(a)(vii) of NEMA). Municipalities have a direct duty in fulfilling the principles listed in NEMA (Van der Bank, 2011).

The White Paper on Local Government, 1998 states that a local government is responsible for the provision of household infrastructure and services, the creation of livable, integrated cities, town and rural areas (White Paper on Local Government, 1998). This directly links to sustainable development of which social and economic development are two of the three categories. Municipalities, according to the White Paper, can do integrated development planning, budgeting and performance monitoring in order to fulfill the component of developmental and sustainability, generally.


Every country will have to develop its own adaptive responses to the effects of climate change, mitigating climate change to ensure the disruption caused to human and natural systems is within the manageable parameters. Furthermore, responding to climate change is a cross-generational challenge. It is within this context, and informed by an appropriate sense of urgency, that the South African government has developed a National Climate Change Response Policy. The current plan represents the first iteration of South Africa’s ongoing efforts to adapt to climate change and contribute to the global mitigation effort. The decision to institute sectoral desired emissions reproduction outcomes and carbon budgets is momentous and it represents a concrete and practical commitment by South Africa.

The Systems Act is the act that regulates municipalities in South Africa (Municipal Systems Act 32 of 2000). The new system of local government requires an efficient, effective and transparent local public administration that conforms to the principles that is set out in the Constitution, and includes section 24 of the Constitution namely the environmental right. In promoting a safe and healthy environment, the municipalities are realizing the environmental right in section 24 of the Bill of Rights. In the new local governmental dispensation there is a focus on the development of IDP’s (integrated development plans), which appear to be a key mechanism in the System Act to achieve developmental local government. The
planning process must be integrated, which means that all social, economic, environmental, spatial, cultural and political and any other relevant considerations must be taken into account to ensure that the development of a consolidated, strategic, long-term developmental plan will result. The IDP binds the municipality in exercising its executive authority and also other persons to the extent that those parts of the IDP that impose duties or affect the rights of those persons have been passed as a by-law. An IDP can therefore in principle be used to foster “green” environment in the interests of current and future generations by including objectives, strategies and timeframes for the promotion and realization of green environment in a specific municipality.

In the particular context of environmental protection, this is very important, as many decisions taken by government or private companies regarding environmental projects usually directly or indirectly affect people’s rights (Mubangizi, 2004). The case of Van Huyssteen v Minister of Environmental Affairs and Tourism (1996 (1) SA 283 (C)) is particular pertinent here. The applicants were opposing the proposed construction of a large steel mill near their property. The relief sought included an application for an order compelling the respondent minister to furnish all available documentation concerning the project. The court held that the applicants were entitled to the documentation in terms of the right of access to information, given that the applicants reasonably required the documents to exercise their rights to object to the proposed construction.

THE MAIN CONTENTS OF SOUTH AFRICA’S ECOTOURISM LEGISLATIVE

7.1 Defining the Connotation and Denotation of Ecotourism

Many scholars and organizations in the world have defined ecotourism from different angles, yet so far they have not yet reached a textual unity. It is recommended that a precise and universally accepted concept of ecotourism be defined through legislation and its connotation should include the following layers of meaning:

Firstly, the main tourist attractions of ecotourism are nature and ecological resources, while the major activities are people’s appreciation and experiencing the natural scenery.

Secondly, ecotourism protects biodiversity, and its impact on environment is minimized. Man and nature live in complete harmony, reflecting the concept of the unity of heaven and man, without depriving future generations of their chances to enjoy equal tourism resources.

Ecotourism can also bring benefits for community residents.

Ecotourism should therefore be defined in the broad and scientific sense as: Ecotourism refers to the tourist activities in which man and nature interact with each other for mutual benefit. Ecotourism is defined as “responsible travel to natural areas that conserves the environment and improves the well-being of local people” (TIES,1990).

In the meantime, the denotation of ecotourism should be defined. In South Africa, the extension of ecotourism area covers landscape and famous scenery, nature reserves, National Kruger Park, national parks, etc.

7.2 Establishing the Basic Principles of Ecotourism Legislation

The basic principles of ecotourism legislation in South Africa must be sustainable development. Sustainable development is required for both tourist industry and environmental protection enterprise. The unity of ecology and the dynamic nature of tourism put forward higher requirements for ecotourism legislation. Only by adhering to the basic principle of sustainable development, can we improve the natural environment and human environment while making scientific and effective use of tourism resources, minimize the negative impact of tourism industry on the environment as far as possible, and maintain the natural and biological diversity through proactive human activities, thus ensuring that the resources and environment meet the needs of contemporary people without jeopardizing the needs of future generations.

7.3 Realizing the separation of proprietary, administrative and operational rights of Ecotourism resources through legislation.

It is recommended that the separation of proprietary, administrative and operational right of ecotourism resources be realized through legislation. All kinds of profit making business activities in ecotourism attractions such as accommodation, catering and entertainment are undertaken by various operators. The
operators are administered by regulatory agencies, but they can operate independently not subject to regulatory agencies.

7.4 Standardizing and controlling the whole process of ecotourism activities through legislation.
Firstly, establishing strict ecotourism market access system. Clarify the competency assessment and approval procedure of various market players before they enter the market. Governments are expected to make strict checks at all three levels of Government, so as to control ecotourism activities in advance, nipping troubles in the bud.

To planners, establishing ecotourism planning environmental impact assessment system. It is necessary to regulate their qualification and behavior through legislation, and define their legal obligations. There must be a certain proportion of ecologists in the team of planners. The planners will be held accountable under the law if their blind planning has caused serious damage to the ecological environment.

To developers, establishing ecotourism project development approval system. It is necessary to check their qualification of exploiting ecotourism resources on a regular basis. Ecotourism projects of different scales should be exploited by developers with corresponding qualifications. Blind exploitation of ecotourism may cause irreparable ecological disasters. Therefore, ecotourism project development approval system must be established for risk control in advance. Prior to the development of each ecotourism project, the government and developers must have legally qualified environmental assessment agency evaluate its possible environmental impacts. The assessment of the environmental of ecotourism project development includes the threat to local biodiversity and the risk of ecosystem damage for example. Development permission is only given to those projects which, according to assessment, will not do harm to the local ecosystem and have been approved by administrative authorities.

To operators, establishing a ecotourism accreditation system. Authentication institutions are expected to recognize their corresponding legal qualification, and clarify that the products and services they provide conform to industry standards, and that the operators no longer legally qualified after entering the market should withdraw from the market and bear corresponding responsibility, hereby stimulating operators to deliver high quality products consistently and continue to perfect their products.

To tourists, establishing ecological education system. Managers should be held responsible for the ecotourism education of tourists through legislation. Managers are obliged to set up educational training bases in ecotourism scenic spots and offer various ways of commentary, enabling the tourists to accept ecological education before travelling. Visitor centers may be regarded as the first station of environmental education, providing complete information on ecotourism and correcting improper behaviors of tourists. At the same time, it is recommended to regulate the behavior of ecological tourists through legislation, and expressly inform the tourists of their duty to protect natural resources. The tourists in ecotourism scenic spots listen to the commentary of the tour guides with a certain ecological expertise, and learn and experience and understand on the premise of protecting natural resources.

Secondly, establishing scientific environmental monitoring system on a regular basis to keep concurrent control of ecotourism activities. Equipped with scientific measuring instruments, regularly check the condition of ecotourism resources and stop in time the behavior which may pollute the environment and destroy the biodiversity. For example, control the number of tourists according to scientific detection, so that the passenger volume does not exceed the carrying capacity of attractions, thus minimizing the adverse impacts of ecotourism on the environment.

Thirdly, establishing systematic and comprehensive ecological accountability system for post-control of ecotourism activities. This kind of ecological accountability system should be able to standardise all relevant liable persons, including government officials, planners, developers, operators and tourists. The troublemakers having caused serious damage to the ecological environment for a variety of reasons should be investigated for civil liability, administrative liability and even criminal liability according to different situations. It is recommended to increase punishment in the penalty provision, so as to play the role of reprimand and deterrence. For example rhino poachers may be sent to jail for life.

Fourthly, civil society experiences significant barriers to accessing information on environmental regulation and performance (http://www.ngopulse.org/article/centre-environmental-rights-profile).
The Centre for Environmental Rights, regularly request environmental information on behalf of clients from a range of sources using the Promotion of Access to Information Act, and thus having thus far twice brought legal proceedings to enforce disclosure of key information. Poor regulation of the mining sector has resulted in severe detrimental impacts on the environment and the communities reliant on it. The Centre for Environmental Rights works to hold both mining authorities and companies to account, and to take legal action where non-compliance is found. It also works to ensure that civil society and communities concerns are taken into account in decisions about mining. It has led to joint submissions to the Minister of Mineral Resources about weaknesses in mining legislation, and the need for the declaration of no-go zones for prospecting and mining to protect areas of crucial hydrological and biodiversity importance.

7.5 Giving full consideration to the Welfare of Local Communities and Residents in the Legislation
The first and foremost goal of local people is survival and not environmental protection. Therefore, it is necessary to find a way for the local people to shake off poverty as well as protect the environment in the form of ecotourism. Herewith a schematic representation of the links proposed under item 7

Insert figure 2 here

CONCLUSION
Quality ecotourism can be described as the one developed in an integrated area where ecosystems, cultural expressions services and tourism entrepreneurships positive experiences among tourists and local residents, result in shared prosperity, higher levels of satisfaction of visitors and more income for those involved in tourism activities and in a significant way of host communities to take better advantage of ecotourism in their ongoing fight against poverty, generating conditions to develop permanent assessment, rational use and conservation awareness of existing resources. Thus, ecotourism development involves changes of attitude, responsibility and awareness, new lifestyles and human advancement.

Sustainable ecotourism development is identified as a quality change process resulting from the local people, it takes the institutional and legal framework as well as the planning and management tools, to a ecotourism development based upon a balance between the conservation of the natural and cultural heritage, and the economic viability of tourism and the social development equity.

Transforming ecotourism into an economic, prioritized and strategic activity for our nation, through actions in regions and localities; a legal framework is a must, because some legislative blanks exist. In this context aiming to reach sustainability means an integrated holistic effort in which all participants are present: hosts, government, business entrepreneurs, natural resources and environment in a related equal importance in which all human groups think, decide, compromise, act assume related responsibilities. Such is the essence of ecotourism sustainable development. Municipalities can adopt/adjust(to include the environment) and implement by-laws. All municipalities can further the objective of this by-law to include green building and green design. Municipalities can use their legislative power in additional in making IDP’s and programs to achieve sustainable objectives and ultimately promoting ecotourism that is not harmful to the health and well-being of present and future generations.

REFERENCES
Constitutions
Constitution of the Republic of South Africa, 1994

International instruments
International Ecotourism Society (TIES) 1990
World Commission on Environment and Development: Our Common Future 1987
World Summit on Sustainable Development, WSSD or Earth Summit 2002

Literature
Bouillon, S. GeintegreerdeVolhoubareGrondontwikkeling in Suid Afrika met spesifieke verwysing na Gauteng LLD Thesis North-West University 2003
Brand D and Heyns, C. Socio Economic Rights in South Africa, PULP, Pretoria, 2005
Kidd, M. Environmental law 2nd edition Juta Cape Town 2011
Mubangizi, JC. The Protection of Human Rights In South Africa Juta, Landdowne, 2004
Richardson, BJ and Wood S. Environmental law for sustainability, Hart publishing USA 2007
Van der Bank, M. The role of building regulations in sustainable local governance LLM Dissertation North-West University 2011

Internet resources
http://www.environment.gov.za/Services/documents/PublicParticipation/NSSD
http://www.ngopulse.org/article/centre-environmental-rights-profile

Legislation
Municipal Systems Act 32 of 2000
National Environmental Management Act 107 of 1998

Cases
Van Huyssteen v Minister of Environmental Affairs and Tourism 1996 (1) SA 283 (C)

The necessity of Establishing South Africa’s Ecotourism Legislative System

Meeting the need for relevant legislation of the rapid development of Ecotourism in SA

The need to protect the ecological environment in SA To be protected and from being further destroyed

Meeting the need of SA’s Ecotourism legislation to be geared to international standards

Fig 1. The necessity of Establishing South Africa’s Ecotourism Legislative System
The main contents of SA’s ecotourism legislative system

- Defining the connotation and denotation of Ecotourism
- Establishing the basic principles of Ecotourism legislation
- Realizing the separation of propriety, administrative and operational rights of Ecotourism Resources through legislation
- Standardizing and controlling the whole process of Ecotourism activities through legislation
- Giving full consideration to the welfare of local communities and residents in the legislation

Fig. 2 The main contents of South Africa’s Ecotourism Legislative