

Harmonizing Biodiversity Conservation and the Human Right to Livelihood: Towards a Viable Model for Sustainable Community-Based Ecotourism Using Lessons from the Donsol Whale Shark Project

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I. PREFACE

The uncomfortable and awkward friction between the people's right to livelihood and the imperative to preserve biodiversity is an emerging controversy in theory and in practice in both international human rights law and international environmental law.¹ Even while the world has seen a

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progressively elevated consciousness of the significance of biodiversity conservation, much discord has been spurred by different measures proposed to achieve it — from protected areas to state regulations to total trade prohibitions.² In all of these measures, the common element is the calibrated removal of human interaction with, and access to, protected species essential to the area's biodiversity.³

This is where the friction comes in.⁴ Tensions inevitably arise when communities who have historically exploited and utilized certain animal and plant species for purposes of livelihood are suddenly restricted or even absolutely precluded from doing so in the pursuit of environmental goals.⁵ Among others, communities bring to the fore the question of whether livelihoods dependent on the environment could validly be taken away even for such lofty purposes as biodiversity conservation when doing so would effectively amount to the deprivation of their only means of subsistence and to the diminution of their chances of survival.⁶

Among the many proposals advanced to bridge this seemingly irreconcilable gap is the adoption of the ecotourism model.⁷ Ecotourism has been defined as “low impact nature tourism which contributes to the maintenance of species and habitats either directly through a contribution to conservation and/or indirectly by providing revenue to the local

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1. See generally Peter G. Veit & Catherine Benson, *When Parks and People Collide*, HUM. RTS. DIALOGUE, Spring 2004, at 13-14; Kelly D. Alley & Daniel Meadows, *Workers' Rights and Pollution Control in Delhi*, HUM. RTS. DIALOGUE, Spring 2004, at 15-16; & Alison Dundes Renteln, *Environmental Rights vs. Cultural Rights*, HUM. RTS. DIALOGUE, Spring 2004, at 17-18.
2. Veit & Benson, *supra* note 1, at 14.
3. *Id.*
4. *Id.*
5. *Id.*
6. Joanne Bauer, *Commentary*, HUM. RTS. DIALOGUE, Spring 2004, at 36.
7. Munyaradzi Mawere & Tapiwa R. Mubaya, *The Role of Ecotourism in the Struggles for Environmental Conservation and Development of Host Communities in Developing Economies: The Case of Mtema Ecotourism Center in South-Eastern Zimbabwe*, 1 INT'L J. OF ENV'T. & SUSTAINABILITY 16, 17 (2012).

community, sufficient for local people to value and, therefore, protect their wildlife heritage area as a source of income.”⁸

On paper, the philosophy behind this model is logically sound and intuitively rational: since livelihoods cannot be suffered to be lost and biodiversity cannot be suffered to collapse without causing serious harm both to communities and to the environment,⁹ the best way forward is to *make the conservation of biodiversity a form of, or at least integral to, livelihood*. This way: (a) communities will continue to have a source of livelihood and, at the same time, (b) the biodiversity integral to the same livelihood is conserved and protected.

More than theoretical viability, however, there is a need to examine if the ecotourism concept can live up in practice to its promise of harmonizing the seemingly inconsistent demands of protecting biodiversity and ensuring that the people will not be deprived of their chief means of survival. As the two imperatives are equally essential and fundamental to human survival, the balance that will have to be struck between them is inevitably delicate.¹⁰ For such a sensitive pursuit, there is a need to fashion a mechanism that will leave as little room as possible for errors that will only exacerbate an already volatile situation.

This Article will attempt to undertake a modest appraisal along this line, by proffering the following focal research questions: *What are the points of tension between the human right to livelihood and biodiversity conservation? Can the ecotourism model be a viable mechanism to address this tension? Assuming it can, what are some of the inherent dangers of the ecotourism model and how can they be effectively addressed?*

Aware that ecotourism is but one of many recent attempts to harmonize a fundamental right with an equally fundamental environmental need,¹¹ this Article will first provide, in Part II, the study’s theoretical framework based on the theories and principles in the field of Human Rights and the Environment (HRE). This Part will seek to contextualize the scope of this Article by demonstrating that scholars are beginning to recognize that the pursuit of environmental target is not necessarily inconsistent with the fulfillment of human rights and that environmental protection can be

8. Allison Alberts, *Education and Ecotourism*, in WEST INDIAN IGUANAS: STATUS SURVEY AND CONSERVATION ACTION PLAN 96 (Allison Alberts ed., 1999) (citing Harold Goodwin, *In Pursuit of Ecotourism*, 5 BIODIVERSITY & CONSERVATION 275, 288 (1996)).

9. Bauer, *supra* note 6, at 19.

10. *Id.* at 36.

11. Mawere & Mubaya, *supra* note 7, at 17.

achieved alongside, and not as a mere consequence of, human development.¹²

Once the theoretical affinity between human rights and the environment has been laid out, Part III will validate the same by isolating and juxtaposing a particular human right — the right to livelihood — with a particular environmental interest — biodiversity conservation. This Article will demonstrate that there is a marked tension in the interface between the two — a tension, which the ecotourism model seemingly eases. To illustrate this, the various experiences of different countries with ecotourism ventures will be examined to determine the current state of the implementation and practical execution of the principles of ecotourism.

A cursory survey of the literature, however, will reveal that the ecotourism model is far from perfect.¹³ It is not invulnerable to perils inherent to any venture of its kind (i.e., environment-based activities with close and heavy exposure to human traffic).¹⁴ This Article will focus on one such peril — the potential for an ecotourism venture to be operated in an unsustainable manner.¹⁵

In the context of ecotourism, the balance between biodiversity conservation and the stability of the livelihood of the host community is very precarious.¹⁶ If left unchecked, the said balance has a tendency to preponderate in favor of the community's livelihood, leading to the destruction of the biodiversity on which it is based.¹⁷ It is when this delicate balance is disturbed that the ecotourism venture ceases to be sustainable and eventually collapses.¹⁸

12. See generally Dinah Shelton, Human Rights and Environment: Past, Present and Future Linkages and the Value of a Declaration (A Draft Paper for High Level Expert Meeting on the New Future of Human Rights and Environment: Moving the Global Agenda Forward Co-organized by United Nations (U.N.) Environment Program and the Office of the U.N. High Commissioner for Human Rights), available at <http://www.unep.org/environmentalgovernance/Portals/8/documents/draftpaper%20Humanrightsnenvironment%20pastpresentandfuturelinkages.pdf> (last accessed Sep. 6, 2012).

13. See generally Mike Merg, Tourism, Globalization, and Sustainable Development, available at <http://www.untamedpath.com/Ecotourism/globalisation.html> (last accessed Sep. 6, 2012).

14. *Id.*

15. *Id.*

16. Mawere & Mubaya, *supra* note 7, at 17.

17. See DEBORAH McLAREN, RETHINKING TOURISM AND ECOTRAVEL: THE PAVING OF PARADISE AND WHAT YOU CAN DO TO STOP IT 9-10 (2d ed. 2003).

18. See generally Bauer, *supra* note 6, at 36.

In Part IV, this Article will argue that an ecotourism venture can be rendered sustainable if all stakeholders subscribe to a fundamental tenet of HRE — the heavy premium and emphasis on the participatory democracy approach. By involving the community in the conceptualization, administration, and monitoring of an ecotourism project, there is a high likelihood that income security for community beneficiaries *and* biodiversity conservation can both be adequately secured in the long run, thereby ensuring the project's sustainability.¹⁹ To support this argument, this Article will use the Donsol Whale Shark Ecotourism Project as an illustrative case study. The proposition is that, following the community-based ecotourism model put in place in Donsol, an ecotourism project has an increased likelihood of achieving long-term sustainability. This Article will conclude by advancing proposals on how the successes of the Donsol experiment can be replicated in other ecotourism ventures.

II. THEORETICAL FRAMEWORK: CURRENT DISCOURSE ON HUMAN RIGHTS AND THE ENVIRONMENT

The field of HRE has not assumed an existence as an independent field of inquiry until lately in recent years.²⁰ Prior to this development, the relationship between human rights and the environment are treated as more or less tenuous, with issues in one area being addressed largely independent of those in the other.²¹

19. Veit & Benson, *supra* note 1, at 14.

20. On the one hand, Greg Maggio and Owen Lynch proffer that the relationship between human rights and the environment can be further extended to include the concept of economic development, which according to them is very closely related to the first two. Hence, they identify the “tripartite approach” to sustainable development, which integrates human rights, environment, and economic development. See Greg Maggio & Owen Lynch, Human Rights, Environment, and Economic Development: Existing and Emerging Standards in International Law and Global Society, *available at* <http://www.ciel.org/Publications/olp3i.html> (last accessed Sep. 6, 2012). On the other hand, Perez points out that human rights and the environment are closely related to another key concept — that of state sovereignty — because human rights and environmental rights are commonly seen as expressions of the limitations on the traditionally autonomous exercise of state sovereignty within its territorial jurisdiction. See generally FRANZ XAVIER PEREZ, COOPERATIVE SOVEREIGNTY: FROM INDEPENDENCE TO INTERDEPENDENCE IN THE STRUCTURE OF INTERNATIONAL ENVIRONMENTAL LAW 46-64 (2000). See also W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT’L L. 866, 866-76 (1990).

21. Stefano Sensi, *Human Rights and the Environment — A Practical Guide for Environmental Activists*, 57 POL’Y MATTERS 27, 27 (2007).

Nevertheless, the recent incorporation of HRE in mainstream legal literature can be treated as a development long overdue, especially since the link between environmental protection and human rights has already been recognized as early as 1968 when the United Nations (U.N.) General Assembly adopted a Resolution recognizing that the degradation of the quality of the human environment has an adverse effect on the condition of man and woman and, therefore, affects the enjoyment of basic human rights.²²

The first and still most authoritative statement of the link between human rights and the environment was made in 1972 during the U.N. Conference on the Human Environment held in Stockholm, Sweden.²³ In the Stockholm Declaration,²⁴ the relationship between the environment, man or woman, and their basic rights had been explicitly recognized. According to the Declaration, both the natural and man-made aspects of the human environment are essential to every human being's well-being and to his or her enjoyment of basic human rights, even the right to life itself.²⁵

A. Special Rapporteur Ksentini's Report: Establishing the Conceptual Link Between Human Rights and the Environment

In 1989, the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities asked Fatma Zohra Ksentini to prepare a note on how to go about studying the relationship between human rights and the environment.²⁶ This move is historical because it represented the very first attempt to conduct a systematic and scientific study of the link between the two concepts.

The request to Ksentini was concurred in by the U.N. Commission on Human Rights which itself issued a Resolution recognizing that environmental preservation has a direct link to the promotion of human

22. G.A. Res. 2398 (XXIII), at 2, U.N. Doc. A/RES/2398/(XXIII) (Dec. 3, 1968).

23. Günther Handl, Declaration of the United Nations (U.N.) Conference on the Human Environment, available at <http://untreaty.un.org/cod/avl/ha/dunche/dunche.html> (last accessed Sep. 6, 2012).

24. Declaration of the U.N. Conference on the Human Environment, Stockholm, Swed., June 5-16, 1972, *Stockholm Declaration*, U.N. Doc. A/CONF.48/14/Rev.1.

25. *Id.* ¶ 1.

26. U.N. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Review of Further Developments in Fields with which the Sub-Commission Has Been Concerned, Human Rights and the Environment*, ¶ 8, U.N. Doc. E/CN.4/Sub.2/1994/9 (Sep. 13, 1994) (by Fatma Zohra Ksentini) [hereinafter *Ksentini Report*].

rights.²⁷ Ksentini submitted a list of study proposals, which the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights, and the Economic and Social Council approved.²⁸ At this point, Ksentini was already appointed as U.N. Special Rapporteur on Human Rights and the Environment. She submitted her Final Report in 6 July 1994, pursuant to the resolutions passed by the Sub-Commission and the Commission on Human Rights, which both requested the Special Rapporteur's final output following approval of two previous progress reports.²⁹

The Review of Further Developments in Fields with which the Sub-Commission Has Been Concerned, Human Rights and the Environment (Ksentini Report) laid down the legal foundations of the conceptual link between human rights and the environment.³⁰ Aside from the Stockholm Declaration, Ksentini pointed out that the interface between the two concepts is apparent, among others, in the provisions of the primary international human rights texts:³¹ the Universal Declaration of Human Rights (UDHR),³² the International Covenant on Economic, Social, and Cultural Rights (ICESCR),³³ and the International Covenant on Civil and Political Rights (ICCPR).³⁴

27. *Id.* ¶ 9.

28. *Id.* ¶ 12.

29. *Id.*

30. *Id.* ¶¶ 21-46.

31. *Id.* ¶¶ 34, 42, & 43.

32. Article 25, Paragraph 1 of the Universal Declaration of Human Rights provides:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Universal Declaration of Human Rights, G.A. Res. 217A (III) A, U.N. Doc. A/RES/217(A)III (Dec. 10, 1948) [hereinafter UDHR].

33. Among others, Article 11 of the International Covenant on Economic, Social and Cultural Rights dwells on the right to an adequate standard of living, whereas Article 12 of the same dwells on the right to health and to improvement of all aspects of environmental and industrial hygiene, which both contemplate the maintenance of a living environment that is conducive to the fulfilment of basic rights. International Covenant on Economic, Social, and Cultural Rights, arts. 11-12, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

34. Article 6, Paragraph 1 provides that “[e]very human being has the inherent right to life. The right shall be protected by law. No one shall be arbitrarily deprived

It is therefore clear that the interest in having a healthy living environment is embedded in the normative content of several recognized fundamental human rights as enunciated in basic authoritative documents.³⁵ As an integral component of these human rights, the preservation of the environment becomes a chief concern not only *per se* but also in conjunction with other fundamental rights because it is a pre-requisite to the latter's progressive realization.³⁶ Given that there is an established and demonstrable inter-relation between human rights and the environment, how can one describe the precise nature of their relationship?

1. The Right to Development Paradigm

Ksentini highlights the concept of "development" in this regard. Under the Right to Development Paradigm, given that a healthy environment is ubiquitous in several other fundamental human rights, there can be no basis for an argument that environmental concerns must "take a backseat" while economic development is being pursued or that interests in environmental conservation occupy a lower hierarchy relative to fundamental rights like the right to life, to livelihood or to health.³⁷ Human rights have to be pursued simultaneously with a healthy environment, because the two are inherently inseparable and the right to a healthy environment is necessarily included and incorporated into, as a constitutive element of, other human rights.³⁸

Ksentini points out that the U.N. Declaration on the Right to Development,³⁹ which authoritatively pronounced that development is a human right, spells out the basic principles of the indivisibility and interdependence of human rights.⁴⁰ Under this paradigm, States have the obligation to respect, protect, and fulfill all human rights,⁴¹ without consciously sacrificing one for another. Under this Declaration, States have recognized that there can be no genuine and meaningful development in a regime where only certain rights are fulfilled, and certain others are

of his life." International Covenant on Civil and Political Rights, art. 6, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

35. See, e.g., UDHR, *supra* note 32; ICESCR, *supra* note 33; & ICCPR, *supra* note 34.

36. Shelton, *supra* note 12, at 2-3.

37. *Ksentini Report*, *supra* note 26, ¶ 47.

38. *Id.* ¶ 49.

39. G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986).

40. *Ksentini Report*, *supra* note 26, ¶ 48.

41. See U.N. Committee on Economic, Social, and Cultural Rights, *General Comment No. 3 (1990): The Nature of States Parties' Obligations (Art. 2, Para. 1 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/1991/23 (Dec. 14, 1990).

neglected.⁴² In this context, therefore, it can be readily seen that the relationship between human rights and the environment is not tenuous at all, since there are too many points of overlap between the two, such that the satisfaction of one necessarily impacts the satisfaction of the other.⁴³

2. The Participatory Democracy Approach

On another point, the Declaration on the Right to Development also presents another dimension of human rights other than the concepts of indivisibility and interdependence. Participation, according to the Declaration, is an overarching theme of human rights that need to inform and guide all actions by states in the pursuit of national development and welfare.⁴⁴ “All peoples,” according to the Declaration, “are entitled to participate in, contribute to, and enjoy economic, social, cultural[,] and political development[.]”⁴⁵ This notion of participatory democracy is a recurring theme in the philosophy of human rights.⁴⁶ But how can it be relevant to the environment? Is there a point of convergence that may be drawn between them?

The ultimate fulfillment of all human rights, as outlined in the Right to Development Paradigm, is the end-goal of every State.⁴⁷ In the furtherance of this objective, policies will be adopted and programs and projects will be implemented towards the realization of development targets calculated to elevate the levels of human welfare. If these strategies will be crafted without considering the totality of relevant human, social, and cultural dimensions, they can only have adverse repercussions on the environment.⁴⁸ The underlying presupposition is that peoples and communities directly affected by proposed development agenda are in a better position to determine how best to effectuate development plans with conscious regard to their localities’ peculiar contexts and circumstances.⁴⁹

42. See G.A. Res. 41/128, *supra* note 39.

43. *Ksentini Report*, *supra* note 26, ¶¶ 47-49.

44. *Id.* ¶ 70.

45. G.A. Res. 41/128, *supra* note 39, art. I, ¶ I.

46. JIM IFE, HUMAN RIGHTS AND SOCIAL WORK TOWARDS RIGHTS-BASED PRACTICE 154 (2001 ed.).

47. *Ksentini Report*, *supra* note 26, ¶ 48.

48. *Id.* ¶ 68.

49. During the Global Consultation on the Right to Development as a Human Right, it was said that development strategies must be determined by the people themselves and adapted to their particular conditions and needs. See *Ksentini Report*, *supra* note 26, ¶ 69.

This assumes further that communities will not consent to any development effort that would amount to a degradation of the environment in which entire localities depend for their well-being, livelihood, and very survival.⁵⁰ In any case, all factors that need to be considered to ensure that development — in the concept of the full realization of all human rights — is achieved without detriment to the environment (environmental protection arguably being a human right in itself) can only be threshed out completely and holistically through the medium of participatory democracy.⁵¹

It is therefore clear at this stage that two general themes, as outlined in the Ksentini Report, serve as the common thread that runs through the HRE discourse. The point of convergence lies in the acknowledgement that human rights and the environment occupy the same space in the agenda of human development; since the two cannot be treated independent of the other because they overlap in several major development objectives (e.g., right to life, right to adequate standard of living),⁵² they must necessarily be pursued simultaneously.

In addition, in the pursuit of such goal, *there must be a conscious effort to subscribe to the tenets of participatory democracy, a principle which empowers people to contribute to the furtherance of development by bringing into the planning equation their peculiar knowledge and experience from the grassroots.*⁵³ In this *modus operandi*, there is a presupposition that all relevant human and social factors will be taken into account when adopting development policies.⁵⁴ This faculty of participation and self-determination forms the bedrock for the full and effective fulfillment of all human rights in a manner that does not compromise the health of the environment and does not endanger the overall welfare of communities.⁵⁵

B. Current HRE Literature: Progressively Identifying Specific Points of Convergence Between Human Rights and the Environment

50. The Rio Declaration on Environment and Development, which is a product of the U.N. Conference on Environment and Development, is more explicit in its pronouncement that participatory decision-making should be applied especially in terms of the participation of citizens (Principle 10), of women (Principle 20), and of indigenous peoples (Principle 22). See *Ksentini Report*, *supra* note 26, ¶ 71 (citing Rio Declaration on Environment and Development, June 3-13, 1992, Report of the U.N. Conference on Environment and Development, ch. 23, ¶¶ 23.1-23.2, U.N. Doc. A/CONF.151/4 (Part III)).

51. *Ksentini Report*, *supra* note 26, ¶ 70.

52. See generally *Ksentini Report*, *supra* note 26, ¶ 49.

53. *Id.* ¶¶ 67-73.

54. G.A. Res. 41/128, *supra* note 39, art. 2, ¶ 3.

55. *Ksentini Report*, *supra* note 26, ¶ 70.

Aside from the two general themes (right to development and participatory democracy) pointed out by Ksentini in her pioneering study, current scholarship on HRE has also progressively identified many specific points of convergence between human rights and the environment.⁵⁶

Gregory F. Maggio and Owen J. Lynch pointed out that the principles of inter- and intra-generational equity, common but differentiated responsibilities, equitable sharing, permanent sovereignty of a State over natural resources, the principle against trans-boundary harm, and the precautionary principle, all find their origins in international environmental law but also have fundamental affinities with basic human rights themes because they reflect ideals of justice and equality.⁵⁷ Meanwhile, the former Chief Justice of India, Yogesh K. Sabharwal, recognized that environmental degradation contributes to the worsening of poverty situations and human rights abuses.⁵⁸ According to him, exhaustion of natural resources leads to chronic employment insecurity and massive urban emigration; unsound environments, particularly in urban areas, account for the spread of infectious diseases and other serious health problems; and environmental degradation has made possible the creation of a new class of internally-displaced persons called environmental refugees, who flee from their communities when the latter have become inhospitable and disaster-prone because of massive damage to nature and habitats.⁵⁹

During the 60th Session of the U.N. Commission on Human Rights, Earthjustice, an international public interest law firm for the environment, submitted an instructive Issue Paper,⁶⁰ which identified several human rights that are directly affected by environmental harms. The Issue Paper discussed how environmental harms (from those created by nuclear disasters to those resulting from operations of extractive industries like mining, logging, and oil production) pose an immediate threat to the people's right to life and right to health.⁶¹ There is also a direct link between water pollution and the people's right to access to clean and safe water,⁶² a right which has recently been recognized as a vital component of the right to an adequate standard of

56. See generally Maggio & Lynch, *supra* note 20 & Yogesh Kumar Sabharwal, Human Rights and the Environment, available at http://www.supremecourtindia.nic.in/speeches/speeches_2005/humanrights.doc (last accessed Sep. 6, 2012).

57. Maggio & Lynch, *supra* note 20.

58. Sabharwal, *supra* note 56.

59. *Id.*

60. J. MARTIN WAGNER, ISSUE PAPER — HUMAN RIGHTS AND THE ENVIRONMENT: MATERIALS FOR THE 60TH SESSION OF THE U.N. COMMISSION ON HUMAN RIGHTS, GENEVA (2004).

61. *Id.* at 6.

62. *Id.*

living under the ICESCR.⁶³ When environmental harm befalls a particular local community (e.g., toxic waste dumping, mining disasters), the people's right to livelihood is affected, along with their right to culture, especially when the community is one of indigenous peoples, whose traditions and ways of life are intricately intertwined with their surrounding nature.⁶⁴ There had already been reported cases, also cited in the Issue Paper, where it can be illustrated how illicit dumping of toxic wastes in Russia was not averted because of the state's denial of the people's right to information⁶⁵ and how a potentially ecologically damaging dam project in China was undertaken in violation of the people's right to participation and consent.⁶⁶

In an experts' roundtable discussion organized by the Geneva Environment Network, Professor Philippe Sands pointed out that certain human rights are particularly relevant to environmental issues: the entitlement to realization of economic, social, and cultural rights indispensable for dignity; the right to a standard of living adequate for health and well-being; the right to the highest attainable standard of health (including improvement of all aspects of environmental and industrial hygiene); the right of all peoples to freely dispose of their natural wealth and resources; safe and healthy working conditions; protection of children against social exploitation; right to enjoy benefits of scientific progress and its applications; and the right of peoples to self-determination and pursuit of chosen economic and social development.⁶⁷ He points out, however, that the recognition of the inherent link of these rights to environmental concerns is still a matter that largely depends on the receptiveness of courts, tribunals, and policy-making bodies, because the only express recognition of environmental rights to date can be found in the 1981 African Charter and the 1988 San Salvador Protocol to the 1969 American Court of Human Rights Charter.⁶⁸

C. Laws and Jurisprudence on HRE: Incongruence Between Actual Practice and International Law

63. See U.N. Commission on Economic, Social, and Cultural Rights, *General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter *General Comment No. 15: The Right to Water*].

64. WAGNER, *supra* note 60, at 7.

65. *Id.* at 43.

66. *Id.* at 7.

67. Philippe Sands, *Human Rights and the Environment*, in HUMAN RIGHTS AND THE ENVIRONMENT: PROCEEDINGS OF A GENEVA ENVIRONMENT NETWORK ROUNDTABLE 22 (2004).

68. *Id.* at 22-23.

The emergence of HRE discourse in the larger international environmental law literature can be attributed to the fact that scholars have begun to recognize in recent years that environmental issues have taken on a more fundamental and urgent character.⁶⁹ The magnitude and gravity of the consequences of recent environmental disasters threw in stark and bold relief the direct interconnection between acts that would constitute human rights violations and acts that would amount to an environmental harm relative to a particular community.⁷⁰ Parallel to this newfound scholarly interest is the dynamic development of HRE discourse in international jurisprudence.⁷¹

Professor Dinah L. Shelton provides a comprehensive survey of the recent status of HRE in the jurisprudence of international and regional human rights bodies.⁷² As she explains, the lack of adequate petition procedures at the national level to vindicate violations of human rights in the context of environmental harms, caused citizens and non-governmental organizations to increasingly bring actions before human rights mechanisms at the international and regional levels.⁷³ The Issue Paper presented by Earthjustice in the Geneva Environment Network Roundtable Discussion provides a survey that includes HRE developments in international treaty bodies (not necessarily possessed of a human rights mandate like the World Health Organization and the Organization for Economic Cooperation and Development), in the domestic level (constitutions, courts, and governments), as well as in case studies spanning all the continents.⁷⁴

While these surveys present a far from unanimous decisional trend, they illustrate a progressive tendency for courts, tribunals, and other state bodies to recognize and acknowledge the inherent link between human rights and the environment. As a point of observation, however, it is noteworthy that comparatively, international fora have been more receptive of the idea of a

69. See, e.g., Marc Limon, Key Issues Arising from Human Rights Council Resolution 10/4 and the June 2009 Council Debate on the Relationship between Human Rights and Climate Change (A Background Paper on Linking Human Rights and Environment), available at <http://www.unep.org/environmentalgovernance/Portals/8/documents/Background%20Paper.pdf> (last accessed Sep. 6, 2012).

70. *Id.*

71. See, e.g., Dinah L. Shelton, Background Paper No. 2: Human Rights and the Environment: Jurisprudence of Human Rights Bodies (A Paper Presented during the Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment), available at <http://www2.ohchr.org/english/issues/environment/environ/bp2.htm> (last accessed Sep. 6, 2012).

72. *Id.*

73. *Id.*

74. WAGNER, *supra* note 60.

human rights-environment connection than their domestic counterparts.⁷⁵ This may be attributed to the fact that a domestic forum is constrained to adjudicate disputes using a more defined and structured legal regime, while international bodies operate on sources of laws, which are, by their nature, more flexible and more susceptible of progressive interpretation.⁷⁶

It is therefore regarded as an unfortunate circumstance that the chief contribution of the Ksentini Report to the international law of HRE has been largely ignored over the past decade.⁷⁷ The Ksentini Report, aided by inputs culled from the Earthjustice Roundtable Discussion in Geneva, recommended the adoption of a Draft Declaration of Principles on Human Rights and the Environment, a document that would have articulated along more definite lines the nature and extent of the interface between human rights and the environment.⁷⁸

The Draft Declaration is composed of 27 principles,⁷⁹ which spell out basic human rights as integrated into the principles of environmental protection and redress from environmental harms.⁸⁰ This Document would have been invaluable in guiding international and regional bodies in the adjudication of cases involving environmental harms whose consequences take the form of violations of human rights. Unfortunately, neither the Ksentini Report nor its recommendations and proposed Draft Declaration merited substantive discussion within the U.N.⁸¹ While Karrie A. Wolfe criticizes the contents of the Draft Declaration because they merely echo, in general, existing principles of human rights,⁸² even she admitted that the

75. See generally Eyal Benvenisti & George W. Downs, *National Courts, Domestic Democracy, and the Evolution of International Law*, 20 EUR. J. INT'L. L. 59, 59-72 (2009).

76. *Id.*

77. The Editors, *Introduction*, HUM. RTS. DIALOGUE 2 (Spring 2004).

78. *Ksentini Report*, *supra* note 26, ¶ 20.

79. U.N. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Draft Principles on Human Rights and the Environment*, U.N. Doc. E/CN.4/Sub.2/1994/9, Annex I (Sep. 13, 1994) (by Fatma Zohra Ksentini).

80. Neil Popovic provides a critical and in-depth discussion of the contents of the Draft Declaration, complete with a chronological and textual analysis of each of the 27 Principles. See Neil A. F. Popovic, *In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment*, 27 COLUM. HUM. RTS. L. REV. 487 (1996).

81. Caroline Dommen, *Claiming Environmental Rights: Some Possibilities Offered by the United Nations' Human Rights Mechanisms*, 11 GEO. INT'L ENVTL. L. REV. 1, 33 (1998).

82. Wolfe observes —

connection between these principles and the environment, is something that is in dire need of authoritative and straightforward articulation.⁸³

The Draft Declaration may indeed be a mere restatement of the obvious, or a simple step-by-step and mechanical application of existing human rights principles in a particular milieu (i.e., the environmental context), but it is nonetheless a restatement that would produce both substantive guidance for those who have yet to fully understand the intricacies of HRE and a symbolic vindication for environmental advocates that, indeed, the link that they have been proposing for far too long now between human rights and the environment is real and not contrived. As discussed above, scholarly consensus, as well as progressive practice of international and regional bodies, already point to a general and increasing tendency to recognize HRE. This trend will not likely be hampered or reversed simply because there is a paucity of hard or soft law authoritatively stating HRE principles, but it will surely be facilitated if norm-creating texts such as the Draft Declaration are given official *imprimatur* by the international community.

III. PROBLEMATIQUE BIODIVERSITY CONSERVATION, RIGHT TO LIVELIHOOD, AND THE PROMISE OF ECOTOURISM

In Part II, it was made clear that as far as conceptual congruence is concerned, human rights and environmental issues are so intertwined and intricately connected that the affinity between them is already indubitable.⁸⁴ Further, such relationship is not tenuous and artificial; the points of

Principle 14 addresses [the] indigenous peoples' rights to control their own lands and resources and their right to protection from impairment of those resources. The same sentiment is captured by the Draft Declaration on the Rights of Indigenous Peoples. In a similar vein, Principle 11 speaks to a qualified right not to be evicted as a result of decisions affecting the environment. General freedom from eviction is covered by an International Labor Organization Convention. The remainder of the Draft Declaration is directed at everything from cultural rights (Principle 13), to participatory rights (Part III), to the duty of state governments to control trans-national corporations (Principle 22). The result is a document that reads like a 'kitchen-sink' approach to environmental human rights, rather than a focused attempt to solidify the linkage between human rights and environmental protection.

Karrie A. Wolfe, *Greening the International Human Rights Sphere? An Examination of Environmental Rights and the Draft Declaration of Principles on Human Rights and the Environment*, 13 J. ENVTL. L. & PRAC. 109, 118 (2003).

83. *Id.*

84. *Ksentini Report*, *supra* note 26.

convergence are many and substantial.⁸⁵ This proposition is supported by persuasive scholarly opinion, as well as progressively favorable jurisprudential pronouncements on the issue.⁸⁶ The only fact that militates against the proposition is the admittedly lethargic pace of the development of authoritative international law on HRE.⁸⁷

This, however, remains a proposition or premise advanced in general terms. How will this fare when analyzed using more specific variables? Will this proposition hold true if a particular human right, like the right to livelihood, is sought to be harmonized with a particular environmental imperative, like the interest of biodiversity conservation?

A. The Gap: Biodiversity Conservation and the Human Right to Livelihood

I. The Human Right to Livelihood

The human right to livelihood is recognized as one of the constitutive elements of the human right to life,⁸⁸ as well as the human right to a standard of living adequate for the health and well-being of himself or herself and his or her family,⁸⁹ and the human right to work.⁹⁰ Since livelihood is regarded as one's property that is an integral part of human survival, there should be no arbitrary deprivation thereof,⁹¹ and the people have the right to be protected against unemployment,⁹² as well as the right to security against unemployment and other lack of livelihood in circumstances beyond one's control.⁹³

The right to livelihood has been identified as a necessary condition for the fulfillment of the right to food security and freedom from hunger and malnutrition;⁹⁴ upon States was imposed the positive duty to fulfill the right to food by providing people with assured access to means of livelihood.⁹⁵ In

85. *Id.*

86. *See, e.g.,* Shelton, *supra* note 12.

87. *See* The Editors, *supra* note 77.

88. UDHR, *supra* note 32.

89. *Id.* art. 25, ¶ 1.

90. *Id.* art. 23, ¶ 1.

91. *Id.* art. 17, ¶ 2.

92. *Id.* art. 23, ¶ 1.

93. *Id.* art. 25, ¶ 1.

94. U.N. Commission on Economic, Social, and Cultural Rights, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, ¶ 1, U.N. Doc. E/C.12/1999/5 (May 12, 1999).

95. *Id.* ¶ 15.

enunciating the normative content of the human right to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses,⁹⁶ the U.N. Committee on Economic, Social, and Cultural Rights recognized that access to water is itself instrumental in the fulfillment of the right to livelihood, particularly in the context of subsistence farming and in indigenous peoples' communities.⁹⁷

Indeed, when one speaks of livelihood, the inevitable link is established with a person's capacity to survive. Livelihood is the most stable guarantee for a person's continued access to and provision of the most basic necessities of life — food, clothing, shelter, and medical and social services. The fundamental nature of the right to livelihood can best be illustrated when one considers that the alternatives to the lack thereof are regarded as social anomalies — perpetrating crimes and other breaches of the public order, being permanent wards of States, or living in conditions of abject poverty and deplorable human conditions.

2. Biodiversity Conservation

The Convention on Biological Diversity defines “biodiversity” as “the variability among living organisms from all sources, including, *inter alia*, terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species, and of ecosystems.”⁹⁸ Biodiversity refers to the totality of the species that comprise every ecosystem, how each one relates to each other and to the ecosystem as a whole, and how every such ecosystem in turn relate to another ecosystem, both in relation to the whole and to its constitutive parts.⁹⁹

This resulting complex of inter-relationships forms the foundation of life on earth — the survival and viability of one species is directly affected and affects the survival and viability of another, such that when this delicate balance is disrupted, the impact is felt not only within the immediate ecosystem but in others, as well.¹⁰⁰ The biodiversity and ecosystem view of nature is essential in understanding the underpinnings of conservation. While

96. *General Comment No. 15: The Right to Water*, *supra* note 63.

97. *Id.* ¶ 7.

98. U.N. Conference on Environment and Development: Convention on Biological Diversity, art. 2, *opened for signature* June 5, 1992, 31 I.L.M. 842.

99. The Natural Heritage Department, What is Biodiversity?, *available at* <http://heritage.gov.bb/biodiversity.html> (last accessed Sep. 6, 2012).

100. Arun Agrawal & Kent Redford, Poverty, Development, and Biodiversity Conservation: Shooting in the Dark? (Wildlife Conservation Society Working Paper No. 26), *available at* http://siteresources.worldbank.org/INTPOVERTYNET/Resources/Agrawal_Redford_WP26.pdf (last accessed Sep. 6, 2012).

the constitutive elements of biodiversity, in the form of various species and other natural resources, are in themselves valuable directly as objects of subsistence and trade, the other dimensions of biodiversity (as a whole rather than as disaggregated in distinct parts) are equally important.¹⁰¹ The “multiple values” of biodiversity can be seen both in its indirect use¹⁰² and its non-use values.¹⁰³

As a consequence of the growing awareness of the populace, supported by progressively sophisticated scientific evidence, with regard to the value of biodiversity, it can no longer be seriously doubted that biodiversity conservation has become an imperative not only of environmental interest but also of human survival.¹⁰⁴

3. Tensions in Theory and Practice

What would account, then, for the tension and friction between the two overridingly important objectives of securing livelihood and protecting biodiversity? Why is it difficult to harmonize the two, notwithstanding that under the HRE paradigm, as explained fully above, they ought to be pursued in tandem, because human rights and environmental protection are parallel and not contradictory value systems?

It is easy to see the connection between, for example, the prevention of an environmental harm brought by a mining operation and the protection of the human rights to culture and self-determination of affected indigenous peoples communities in the area.¹⁰⁵ It is also easy to see the interface

101. IZABELLA KOZIELL, *DIVERSITY NOT ADVERSITY: SUSTAINING LIVELIHOODS WITH BIODIVERSITY* 2 (2001).

102. Indirect use can either be through “ecosystem services,” such as watershed protection, carbon storage, and pest and disease control or through “informational and evolutionary diversity,” which refers to the wide menu of options available for natural selection and for enhancing agricultural and pharmaceutical products through utilization of new plant and animal varieties. *Id.* at 22.

103. Non-use values include “future options” for succeeding generations because the variety of species would provide a stable pool of resources that may be used to combat new diseases or to ensure adaptability to changed climatic conditions. Another aspect of non-use values, however, is the fact that biodiversity in itself possesses an intrinsic worth, such that its very existence is in itself valuable in whatever intangible and inestimable terms — cultural, aesthetic, philosophical, religious, etc. *Id.*

104. See generally Judith I. McGeary, *A Scientific Approach to Protecting Biodiversity*, 14 J. NAT. RESOURCES & ENVTL. L. 85 (1999).

105. See, e.g., Abigail Abrash Walton, *Mining a Sacred Land*, HUM. RTS. DIALOGUE, Spring 2004, at 24-25.

between the exercise of free speech and the right to information and the application thereof in the context of holding publicly accountable a commercial entity that poses serious threats to the environment.¹⁰⁶ When it comes to human right to livelihood and biodiversity conservation, however, the hypothesized harmony is substantially diluted.

Livelihoods directly affected by biodiversity conservation efforts are those, which directly utilize animal and plant species either through direct consumption (as food, materials for shelter and clothing, etc.) or as sources of indirect benefits (i.e., income from trade in plant and animal species).¹⁰⁷ Small- or commercial-scale producers share the biodiversity pie along with other sectors and groups, which are also dependent on biodiversity for their livelihoods.¹⁰⁸

At the outset, it can readily be seen that there is an almost inevitable incompatibility between sustaining these livelihoods and engaging in biodiversity conservation efforts. Livelihoods are directly or indirectly consumptive and extractive.¹⁰⁹ The paramount objective of conservation is to insulate plant and animal species from the strains and burdens caused by direct human contact and other unregulated activities that interfere with the delicate balance in place within ecosystems.¹¹⁰ When conservation efforts are implemented, one of the first objectives pursued is the restriction, or even total prohibition, of human access to species being targeted for protection.¹¹¹ Restricted or prohibited access is obviously not consistent with the primordial objectives of livelihood (i.e., the optimization of economic benefits through consumption or trade, with an inherent bias on surplus rather than shortage).¹¹²

106. See, e.g., Michael Kilburn & Miroslav Vanek, *The Ecological Roots of a Democracy Movement*, HUM. RTS. DIALOGUE, Spring 2004, at 8-9.

107. See also Craig Leisher & Joe Peters, Direct Benefits to Poor People from Biodiversity Conservation (A Study Conducted for The Nature Conservancy) 2-3, available at http://www.natureandpoverty.net/find/?eID=dam_frontend_push&docID=274 (last accessed Sep. 6, 2012).

108. See KOZIELL, *supra* note 101, at 24. The graph identifies small- and commercial-scale producers, indigenous peoples, the landless, artisans and traders, scientists and researchers, and artists and photographers, as the groups and sectors primarily dependent on biodiversity for their livelihoods, although between and among them, they vary in terms of the level of their direct dependency and proximity to biodiversity. *Id.*

109. See Leisher & Peters, *supra* note 107.

110. See Veit & Benson, *supra* note 1, at 14.

111. *Id.*

112. *Id.*

This tension between livelihood and biodiversity conservation is rendered most apparent in the most restrictive form of conservation — the creation of protected areas.¹¹³ Through the creation of protected areas, entire communities are precluded from gaining access to protected plant and animal species or at least prevented from doing so, in the same prior levels, traditional and historical livelihoods, notwithstanding.¹¹⁴ Protected areas cover large spaces, because they seek to give as wide a latitude as possible for animal species within them to roam around unrestricted in simulation of their pre-human natural habitats.¹¹⁵ However, because of the extent of the area protected and the almost complete and unqualified appropriation thereof under the auspices of States, protected areas have been touted as “the greatest biodiversity conservation planning exercise and the largest illegitimate taking of private property and resources in the history of the world.”¹¹⁶

This observation finds support in numerous studies which find that, although in some cases, protected area management has been able to effectively address the consequent loss of livelihoods and interference with indigenous culture, some cases also report conclusively that protected areas have been responsible for diminishing the livelihood prospects of people living in or near them.¹¹⁷ General findings based on case studies and experience were less than encouraging: there are fixed ecological limits to the sustainability of livelihoods operating within a protected area system; livelihoods can be improved by natural systems only in some cases; exposing protected areas to market systems sometimes provides the solution for local deprivation caused by loss of livelihoods, but in some cases, benefits can only be limited and short-term.¹¹⁸ That protected areas undermine human rights in terms of loss of livelihood (as well as forced evictions, displacement of indigenous cultural communities, disrespect for bio-cultural heritage, etc.) is the general finding of scholars who have conducted more recent (2007) case

113. *Id.*

114. Phillipa Holden, *Conservation and human rights — the ǀKhomani San (bushmen) and Kgalagadi Transfrontier Park, South Africa*, 15 POL’Y MATTERS 57, 59 (2007).

115. Lisa Naughton-Treves, Margaret Buck Holland, & Katrina Brandon, *The Role of Protected Areas in Conserving Biodiversity and Sustaining Local Livelihoods*, 30 ANN. REV. ENV. RESOURCES 219, 225 (2005).

116. Kent Redford & Eva Fearn, *Protected Areas and Human Livelihoods* (Wildlife Conservation Society Working Paper No. 32) 2, available at http://s3.amazonaws.com/WCSResources/file_20110518_073523_WCSwp32++Protected+Areas+and+Human+Livelihoods_vOgWx.pdf (last accessed Sep. 6, 2012).

117. *Id.* at 3.

118. *Id.* at 4.

studies under the auspices of the International Union for the Conservation of Nature.¹¹⁹

By and large, the marked incompatibility of biodiversity conservation through protected area management and the right to livelihood is a phenomenon that is replicated, although in lesser degrees, in less exclusionary conservation strategies like trade regulation, criminalization of hunting and gathering of protected species, or imposition of precautionary consumption quotas.¹²⁰ In all these instances, however, traditional and historical human access to plant and animal species in the concept of the exercise of the right to livelihood are being restricted within limits that already diminish and impair the subsistence and profit rationale of engaging in a livelihood.¹²¹ This gap, needless to say, is one that would inevitably undermine the integrity of the global conservation movement. While no one would argue that biodiversity is essential to human existence, many would also think twice about accepting a proposed conservation strategy that would operate to substantially deprive peoples of access to livelihoods. Conservation efforts that result in the collapse of livelihood systems would inevitably suffer from a crisis of legitimacy and acceptability. It is in the eye of this raging whirlpool of policy dilemmas that a new conservation strategy purporting to bridge the gap between biodiversity conservation and the right to livelihood — ecotourism — came into existence.¹²²

B. The Bridge (?): Ecotourism and its Promise

In 1990, The International Ecotourism Society (TIES) provided for one of the first definitions of “ecotourism,” which is “the responsible travel to

119. See, e.g., Holden, *supra* note 114; Lapologang Magole, *The History of Conservation Evictions in Botswana — The Struggle Continues ... With New Hope*, 15 POL’Y MATTERS 68 (2007); Andreas Wilkes & Shen Shicai, *Is Biocultural Heritage a Right? Conflicting Priorities in China*, 15 POL’Y MATTERS 76 (2007); Frankie Abreu, *Where There is No Room for Local People in Conservation ... Reflections from Northern Thailand*, 15 POL’Y MATTERS 84 (2007); Sudeep Jana, *Voices From the Margins — Human Rights Crises Around Protected Areas in Nepal*, 15 POL’Y MATTERS 87 (2007); Milind Wani & Ashish Kothari, *Protected Areas and Human Rights in India*, 15 POL’Y MATTERS 100 (2007); & Janis Bristol Alcorn & Antoinette Royo, *Conservation’s Engagement with Human Rights — “Traction,” “Slippage,” or Avoidance?*, 15 POL’Y MATTERS 115 (2007).

120. Holden, *supra* note 114.

121. See Veit & Benson, *supra* note 1, at 14.

122. Mawere & Mubaya, *supra* note 7, at 17.

natural areas that *conserves the environment and sustains the well-being of local people.*"¹²³

Clearly, from this definition, it can be gleaned that ecotourism as a concept does not derive its existence solely from the business plane. True, at first blush, ecotourism can be regarded as a business model.¹²⁴ It operates on the premise that a production input should be able to gain enough income to finance its own maintenance and that every person engaged in the business should conduct it in a manner that would ensure not only short-term income but also the long-term and sustained flow thereof (hence, the term "sustainability").¹²⁵

However, as can be inferred from the way the term was defined, ecotourism, more than a business model, is a framework for sustainable natural resources management.¹²⁶ As long as the well-being of local people are ensured as a consequence of the continued viability of the ecotourist environment, the system will support itself both ecologically and economically and all environmental concerns will be managed not only in the interest of conservation, but also in the interest of livelihood.¹²⁷ In this regard, and at least conceptually, ecotourism promises to be the bridge that would harmonize the conflicting interests of livelihood and biodiversity conservation, consistent with the postulate of the HRE paradigm.¹²⁸

I. Benefits of Ecotourism

By sheer volume of activity alone, tourism in the world today comes in as one of the largest and fastest-growing industries.¹²⁹ From 664 million tourist arrivals per annum in 1999, the numbers were expected to balloon to one billion by 2010.¹³⁰ The ecotourism industry is no different. As early as 1988, records show that there were around 236 million ecotourists worldwide, making it a \$233-million industry, and the growth rate of 30% annually is

123. The International Ecotourism Society, *What is Ecotourism?* available at <http://www.ecotourism.org/what-is-ecotourism> (last accessed Sep. 6, 2012) (emphasis supplied).

124. MEGAN EPLER WOOD, *ECOTOURISM: PRINCIPLES, PRACTICES AND POLICIES FOR SUSTAINABILITY 10* (1st ed. 2002).

125. *Id.*

126. See, e.g., WOOD, *supra* note 124, at 27.

127. MICHAEL P. WELLS, *ECONOMIC PERSPECTIVES ON NATURE TOURISM, CONSERVATION AND DEVELOPMENT* (World Bank Environmental Economics Series Paper No. 55) 43-44 (1997).

128. See Mawere & Mubaya, *supra* note 7, at 17.

129. Merg, *supra* note 13.

130. WOOD, *supra* note 124, at 7.

equally impressive.¹³¹ Ecotourism today is second only to the oil industry in terms of the amount of global aggregate receipts,¹³² and accounts for 25% of all leisure trips worldwide.¹³³ Ecotourists today spend around \$463 billion around the world every year, and the hope of ecotourism as a movement is that at least a fraction of this monolithic revenue will help tip the economic scales in favor of saving forests for wildlife, instead of using them for logging, farming, or mining.¹³⁴

Ecotourism's economic yield, more often than not, redound to the benefit of local communities who were absorbed into the venture by default and by way of set-off for the loss of livelihood that they experienced.¹³⁵ These communities, who used to make a living as fisherfolk, loggers, or hunters and who were deprived of their livelihood because of the conversion of their livelihood area into an ecotourist spot, found alternative gainful employment either directly as workers in the ecotourism venture or indirectly by taking advantage of the ecotourist traffic and providing allied and complementary services (e.g., accommodation and leisure facilities).¹³⁶

For example, villagers along the Madre de Dios River in Peru preserved 150 acres of prime rainforest to attract Americans and Europeans in a nature park where "a single wild macaw [can] generate between \$750.00 and \$4,700.00 in tourist income' for the people living in Peru's rainforests."¹³⁷

131. HÉCTOR CEBALLOS-LASCURÁIN, *TOURISM, ECOTOURISM, AND PROTECTED AREAS: THE STATE OF NATURE TOURISM AROUND THE WORLD AND GUIDELINES FOR ITS DEVELOPMENT* 46 (1996) & MARTHA HONEY, *ECOTOURISM AND SUSTAINABLE DEVELOPMENT: WHO OWNS PARADISE?* 64 (1999).

132. The International Ecotourism Society, Fact Sheet: Global Ecotourism 1, available at <http://mekongtourism.org/website/wp-content/uploads/downloads/2011/02/Fact-Sheet-Global-Ecotourism-IETS.pdf> (last accessed Sep. 6, 2012) & LISA MASTNY, *TRAVELING LIGHT: NEW PATHS FOR INTERNATIONAL TOURISM* 18 (Jane A. Peterson ed., 2001).

133. Maurice Malanes, Third World Network, *Tourism Killing World's Eighth Wonder*, available at <http://twinside.org.sg/title/mm-cn.htm> (last accessed Sep. 6, 2012).

134. Patrick Chalmers, *World's ecotourism promoters promise dollars, sense*, *TIMES OF MALTA*, Oct. 25, 2002, available at <http://www.timesofmalta.com/articles/view/20021025/business/worlds-ecotourism-promoters-promise-dollars-sense.164337> (last accessed Sep. 6, 2012).

135. Bhoj Raj Kanal & Jan Tahir Babar, *Community-Based Ecotourism for Sustainable Development in the Mekong Region*, *POLY BRIEF* 2 (2007).

136. *Id.*

137. Carla Gowen McClurg, *The International Year of Ecotourism: The Celebration of a New Form of Colonialism*, 34 *MCGEORGE L. REV.* 97, 105 (2002) (citing Amazon Quest, *Make A Difference: Rules of Ecotourism*, Update 10, available

Another example is San Nicolas Totolapan where —

[p]eople living in San Nicolas Totolapan in Mexico were likewise convinced to preserve the area for an ecotourism venture. '[I]llegal logging and urbanization could have destroyed as much as ... 2,304 acres of land in San Nicolas Totolapan.' However, 'two Mexican consultants [met with] communal landowners [in the area] and devised an ecotourism venture.' Now, the area is a widely respected ecotourist destination, which 'has a fish farm, plant nursery, and deer-breeding farm.'¹³⁸

This positive correlation between increased income of local communities and increased levels of environmental conservation in an ecotourist area is supported not only by anecdotal evidence. In a highly instructive case-based statistical study by Caroline J. Stem, et al., it was demonstrated that families and communities employed directly in, or deriving economic benefits from, four ecotourism sites in southern Costa Rica¹³⁹ (with two non-ecotourism areas used as control variables)¹⁴⁰ displayed significantly high tendencies to engage in behaviors supportive of conservation.¹⁴¹

Based on the findings of the study, in communities where ecotourism has been an economically viable alternative for local households, people have largely abandoned environmentally destructive practices.¹⁴² The same data set of respondents reports that they have voluntarily left their former settlements inside forest covers because they recognize their value to the area's ecotourism.¹⁴³ The presence of more disposable income induces 27%

at http://articles.cnn.com/2001-10-05/tech/amazon.quest.10_1_macaws-computers-flight?_s=PM:TECH (last accessed Sep. 6, 2012)).

138. McClurg, *supra* note 137, at 105 (citing Marnie Mitchell, *Respecting the 'Eco' in Tourism*, INT'L HERALD TRIB. (2001) (copy on file with the McGeorge Law Review)).

139. The experimental sites are: La Gamba community whose households are employed in the Esquinas Rainforest Lodge; Cerro De Oro community which depends on an ecotourism lodge built by Coopeunioro; and the ecotourism communities of Agujitas and Los Planes. Caroline J. Stem, et al., *Community Participation in Ecotourism Benefits: The Link to Conservation Practices and Perspectives*, 16 SOCY & NAT. RESOURCES 387, 392-93 (2003).

140. The control sites are Altamira and Biolley — communities, which are only on the planning stage of establishing ecotourism areas. *Id.* at 393.

141. *Id.* at 394.

142. *Id.* at 393.

143. *Id.* at 393-94.

of the respondents to totally disavow making any investments on resource-intensive practices.¹⁴⁴

In contrast, a significant segment of the sample size expressed their perception that a lack of employment might make hunting justifiable.¹⁴⁵ This finding supports the hypothesis that people still put a premium on livelihood rather than biodiversity conservation and that increased concern for the preservation of the environment can be facilitated when the people are engaged in livelihoods that are heavily dependent on the continued viability of the environment. As far as direct participation in income generated by ecotourism sites is concerned, the study by Stem, et al. found a direct and positive association between ecotourism employment and conservation practices.¹⁴⁶

Equally interesting is the finding of the study that tendencies toward conservation practices are also significantly and positively related to *indirect* ecotourism benefits being reaped by communities absorbed into the ecotourism labor force after their traditional livelihoods were taken away from them.¹⁴⁷ Livelihoods that were incorporated or absorbed into the ecotourism venture also operated to expose local communities to opportunities for an exchange of ideas and behavioral interaction with ecotourist guests.¹⁴⁸ To a significant extent, local communities who have benefited from ecotourism through this *indirect* educative and informational opportunity registered pro-environment and pro-conservation responses.¹⁴⁹

According to Stem, et al., “this direct interaction with tourists may be an important factor in building greater support for conservation.”¹⁵⁰ Indeed, the Stem, et al. study concluded that indirect tourism benefits such as this correlated more directly and more positively to increased conservation practices as compared to benefits measured in terms of generated income.¹⁵¹ This finding is consistent with an earlier study, which identified indirect ecotourism benefits such as infrastructure support, empowerment, and improved environmental conditions as more important than income benefits in terms of nurturing conservation consciousness among local communities

144. For those employed in non-ecotourism fields, only 14% displayed the same conservation-conscious tendencies. *Id.* at 396.

145. Stem, et al., *supra* note 139, at 396.

146. *Id.* at 394.

147. *Id.* at 405.

148. *Id.* at 409.

149. *Id.* at 405.

150. *Id.*

151. Stem, et al., *supra* note 139, at 406.

whose livelihoods (formerly in the form of direct utilization of plant and animal species in the area) are dependent on the environment.¹⁵²

2. Adverse Impact of Ecotourism

So far, there is a significant segment of the literature, which demonstrates a marked success in the fulfillment of the goals of ecotourism — livelihoods that were lost were replaced and local communities absorbed into the ecotourism venture whether as direct employees or as indirect beneficiaries in allied and complementary enterprises demonstrate a high tendency to attain the levels of income and imbibe the levels of biodiversity conservation consciousness necessary to sustain the viability of the ecotourism venture.¹⁵³

Ecotourism's role as a bridge that will harmonize the gap between biodiversity conservation and the right to livelihood is not, however, entirely unproblematic.¹⁵⁴ Owing to the fact that ecotourism areas, by their nature, occupy sensitive and fragile ecosystems, it is intuitive and logical to expect that it can potentially produce adverse impacts on the environment to which it owes its origin and continued viability.¹⁵⁵ While ecotourism may purport to be a bridge between biodiversity conservation and the right to livelihood, its self-destructive potential¹⁵⁶ makes it a frail and rickety bridge indeed.

For instance, the 10-per-day ecotourist traffic in Uganda is already sufficient to infect mountain gorillas with human diseases in such threat levels as would substantially imperil the survival of the 650 remaining mountain gorillas.¹⁵⁷ The chief disease to which the mountain gorilla was exposed was a skin infection called "mange," but wildlife scientists in the area are worried that, with continued human exposure, the mountain gorillas

152. *Id.* (citing NICK SALAFSKY, ET AL., EVALUATING LINKAGES BETWEEN BUSINESS, THE ENVIRONMENT, AND LOCAL COMMUNITIES: FINAL ANALYTICAL RESULTS FROM THE BIODIVERSITY CONSERVATION NETWORK (1999)).

153. See, e.g., Mawere & Mubaya, *supra* note 7, at 30.

154. See Merg, *supra* note 13.

155. McClurg, *supra* note 137, at 106.

156. Erlet Cater, *Ecotourism in the Third World: Problems and Prospects for Sustainability*, in ECOTOURISM: A SUSTAINABLE OPTION? 72 (Erlet Cater & Gwen Lowman eds., 1994).

157. See African Wildlife Foundation, et al., The Implications of Global Climate Change for Mountain Gorilla Conservation in the Albertine Rift (A White Paper), available at <http://www.igcp.org/wp-content/themes/igcp/docs/pdf/The-Implications-of-Global-Climate-Change-for-Mountain-Gorilla-Conservationin-Albertine-Rift.pdf> (last accessed Sep. 6, 2012).

might acquire more acute communicable diseases, such as measles or tuberculosis.¹⁵⁸

An oil tanker was on its way to the Galapagos Island to refuel an ecotourist ship when it ran aground in one of the many rocky atolls and spilled oil in the waters off the Galapagos.¹⁵⁹ The incident caused massive damage to the marine ecosystem in the area; algae surrounding the Santa Fe Island seas were contaminated to crisis proportions, killing 62% of all marine iguanas who feed on them.¹⁶⁰ While it can be argued that these incidents were isolated and exceptional, they merely reflect, although in catastrophic dimensions, the inevitable impact that human ecotourists are liable to exert upon sensitive ecosystems enclosed in ecotourism areas. Human ecotourist impact may be unobtrusive in isolation and on a person-to-person basis, but, as astutely observed by Professor Erlet Cater —

It is impossible that ecotourism, based on natural attractions, will not result in some environmental impact. Even the most environmentally conscientious tourist will have some degree of impact, however small. In aggregate, such impacts become all the more significant, particularly when such activities are inevitably concentrated in time and space.¹⁶¹

The environmental impacts of ecotourism are legion. In a manuscript edited by Professor Ralf Buckley of Griffith University in Queensland, Australia, 25 different authors presented a survey of the various environmental impacts of ecotourism.¹⁶² Among others, findings were made on the consequent in-migration occurring in the Greater Yellowstone Region,¹⁶³ the adverse effects to soil and vegetation of hiking and camping,¹⁶⁴ the adverse effects of tour boats,¹⁶⁵ and recreational power-

158. John Whitfield, *Humans Get Under Apes' Skin*, NATURE, Sep. 4, 2001, available at <http://www.nature.com/nsu/010906/010906-5.html> (last accessed Sep. 6, 2012).

159. Jeff Hecht, *Galapagos Oil Spill Devastated Marine Iguanas*, NEW SCIENTIST, June 5, 2002, available at <http://www.newscientist.com/article/dn2372-galapagos-oil-spill-devastated-marine-iguanas.html> (last accessed Sep. 6, 2012).

160. *Id.*

161. McClurg, *supra* note 137, at 107 (citing Cater, *supra* note 156, at 77).

162. See ENVIRONMENTAL IMPACTS OF ECOTOURISM (Ralf Buckley ed., 2004).

163. Jerry Johnson, *Impacts of Tourism-related In-migration: the Greater Yellowstone Region*, in ENVIRONMENTAL IMPACTS OF ECOTOURISM, *supra* note 162, at 25.

164. David Cole, *Impacts of Hiking and Camping on Soils and Vegetation: a Review*, in ENVIRONMENTAL IMPACTS OF ECOTOURISM, *supra* note 162, at 41 & Yu-Fai Leung & Jeffrey Marion, *Managing Impacts of Camping*, in ENVIRONMENTAL IMPACTS OF ECOTOURISM, *supra* note 162, at 245.

165. Jan Warnken & Troy Byrnes, *Impacts of Tourboats in Marine Environments*, in ENVIRONMENTAL IMPACTS OF ECOTOURISM, *supra* note 162, at 99.

boating¹⁶⁶ in marine ecosystems, the spread of disease through ecotourist traffic and exposure,¹⁶⁷ even the impact of ecotourists on polar ecosystems.¹⁶⁸

These impacts are measurable and determinable through scientific examination and they are by no means the only ones. Carla G. McClurg also discusses the various *cultural* impacts of ecotourism, in the form of commodification, standardization, and loss of authenticity.¹⁶⁹ McClurg explains instructively —

One such form of outsider influence is commodification. Tourism often turns ‘local cultures into commodities when religious rituals, traditional ethnic rites[,] and festivals are reduced and sanitized to conform to tourist expectations.’ Consequently, such tourist demand causes ‘basic changes in human values,’ resulting in a lack of respect for sacred sites and objects because they ‘are perceived as goods to trade.’

A second form of outsider influence on local identity and values is standardization. Standardization results from a destination’s ‘process of satisfying tourists’ desires for familiar facilities.’ Thus, local communities attempt to walk the blurry line between meeting ‘the tourists’ desire for the new and unfamiliar’ while not making accommodations ‘too new or strange because few tourists are actually looking for completely new things.’

A third form of outsider influence is the loss of authenticity and staged authenticity. Local communities often adapt ‘cultural expressions and manifestations to [satisfy] the tastes of tourists.’ Such communities even perform shows for tourists ‘as if they were ‘real life.’¹⁷⁰

The adverse effects of ecotourism not only on the physical environment, which harbors it, but also on the culture and social life of the local community whose livelihoods and overall well-being it seeks to sustain and enhance create a strong argument in favor of its regulation.¹⁷¹

Indubitably, the objectives of the ecotourism model are laudable; there is as yet no existing mechanism, which even comes close to ecotourism’s demonstrable track record, although not entirely perfect. Ecotourism has so

166. Thorsten Mosisch & Angela Arthington, *Impacts of Recreational Power-boating on Freshwater Ecosystems*, in ENVIRONMENTAL IMPACTS OF ECOTOURISM, *supra* note 162, at 125.

167. Ralf Buckley, et al., *The Role of Tourism in Spreading Dieback Disease in Australian Vegetation*, in ENVIRONMENTAL IMPACTS OF ECOTOURISM, *supra* note 162, at 317.

168. Bruce Forbes, et al., *Ecological Impacts of Tourism in Terrestrial Polar Ecosystems*, in ENVIRONMENTAL IMPACTS, *supra* note 162, at 155.

169. McClurg, *supra* note 137, at 108.

170. *Id.*

171. See generally Renteln, *supra* note 1, at 17–18.

far succeeded in shielding otherwise fragile and vulnerable ecosystems from unavoidable and unbridled human contact by conserving the environment and providing livelihood to the people, in a self-sustaining system, which generates enough incentives for people to be induced to engage in conservation practices in favor of sustained and long-term benefits.¹⁷²

As the foregoing studies show, however, ecotourism is not without flaws, and definitely not without inherent potential to cause serious environmental harm if not planned and executed in a proper manner.¹⁷³ From experience in various jurisdictions, it can be argued that ecotourism can only continue to live up to its promise of preserving both livelihood opportunities and essential biodiversity if it strictly operates within a sustainable framework; otherwise, it runs the inherent risk of stretching its limits too far and causing its own collapse.¹⁷⁴

IV. PROPOSAL TOWARDS A VIABLE MODEL FOR SUSTAINABLE ECOTOURISM THROUGH COMMUNITY-BASED ECOTOURISM MANAGEMENT

In Part II of this Article, it was discussed that the theory and practice of HRE at the international and national levels demonstrate the inextricable link between human rights and environmental concerns.¹⁷⁵ In Part III, it became clear that despite the inherent tensions between a particular human right — the right to livelihood — and a particular environmental concern — biodiversity conservation — there is an existing middle ground that, consistent with the HRE paradigm, can fuse these two seemingly divergent interests together and facilitate their simultaneous pursuit (i.e., ecotourism).¹⁷⁶

In Part III, however, it was likewise revealed that based on documented international practices, ecotourism has been shown to be fraught with significant risks, stemming from crises both intentional and unintentional.¹⁷⁷ The most substantial of these risks is the tendency for an ecotourism project to overstretch the carrying capacity of the ecosystem, usually due to the progressive pressure to accelerate the generation of income.¹⁷⁸ In short,

172. See, e.g., Mawere & Mubaya, *supra* note 7, at 30.

173. *Id.* at 30.

174. See generally Cater, *supra* note 156.

175. See Maggio & Lynch, *supra* note 20.

176. See Mawere & Mubaya, *supra* note 7, at 7.

177. See generally Veit & Benson, *supra* note 1, at 13-14; Alley & Meadows, *supra* note 1, at 15-16; & Renteln, *supra* note 1, at 17-18.

178. See Merg, *supra* note 13.

every ecotourism project inherently carries with it the risk of becoming unsustainable.

Considering this risk, it can be argued that HRE already provides an effective remedy. As discussed in Part II, there are two general themes that underscore the *corpus* of HRE theory: (1) the Right to Development Paradigm, which prescribes the *simultaneous* pursuit of all fundamental rights (including the right to livelihood *and* the right to environment) leading to the *comprehensive* advancement of human welfare;¹⁷⁹ and (2) the Participatory Democracy Approach, which maintains that all efforts to improve the well-being of persons must be anchored on the participation and involvement of the communities to whom such efforts are directed.¹⁸⁰

It is from the Participatory Democracy Approach, as found in the theoretical framework of HRE, that the concept of *sustainable ecotourism* can be derived. Intuitively, the sustainability of an ecotourism venture may be secured if it operates under a dynamic framework of community involvement and participation.¹⁸¹ It bears to reason that by involving the community in managing an ecotourism site, limits to carrying capacity and other restrictions may be drawn more effectively, leading to the sustainability of the venture.¹⁸²

This hypothesis is predicated on the assumption that the community possesses both: (1) indigenous knowledge invaluable to appraising the state and well-being of the local environment at any given time and (2) the most overriding interest in ensuring that an ecotourism venture will not fail, since the collapse of biodiversity will inevitably lead to loss of livelihoods.¹⁸³ Thus, the community is expected to be more sensitive in detecting potential risk areas and addressing them.

Whether or not this hypothesis of sustainable ecotourism through community-based ecotourism management, derived from the HRE paradigm, will hold true is something which only experience can answer. As a starting point, however, it will be argued in the following section that the experience of the Donsol Whale Shark Ecotourism project provides sufficient grounds for optimism along this line.

A. The Saga of the Donsol Whale Sharks

179. *Ksentini Report*, *supra* note 26, ¶¶ 63-66.

180. *Id.* ¶¶ 67-73.

181. Kanal & Babar, *supra* note 135, at 2.

182. *Id.*

183. *See generally* Cater, *supra* note 156.

In the island of Pamilacan in Bohol, a province in the Central Philippine region, the hunting of whale sharks is regarded in the community as a tradition.¹⁸⁴ The whale shark, locally known as the *tawiki* or *toki*, has been hunted in this community for over 40 years, recalls a local resident.¹⁸⁵ He himself started out in the whale shark hunting tradition when he was just 10 years old and merely assisting his fisherman father.¹⁸⁶ The local fisherfolk would sell the whale shark meat in the local market and earn just enough to buy food and other basic necessities.¹⁸⁷

For the 200 families living in *Barangays* Guiwanon and Nabuod in Talisayan, Misamis Oriental, the several thousands of pesos they earn from hunting whale sharks in the nearby Visayan Sea especially during the peak seasons of February and March would spell the difference between their children going to school when classes open or skipping another year to just help out in contributing to the family's meager earnings.¹⁸⁸ Whale shark hunting in these areas is so widespread that these communities have gained the notoriety of being the "killing fields" of the whale sharks.¹⁸⁹ Hunting has also been so embedded in the community's culture and tradition that until today, whale shark hunters still perform a collective ritual for good harvest passed on from generation to generation before they set out to sea.¹⁹⁰ The whale shark, to them, even in the context of hunting, is never regarded as prey, but as God's blessing.¹⁹¹

In the municipality of Donsol in Sorsogon Province, the biggest known school of whale sharks, locally known as the *butanding*, can be found, because of the abundance of marine phytoplankton and other nutrient-rich organisms that can be found in the area especially in the early parts of the year.¹⁹²

184. Stuart Heaver, In Too Deep With The Whale Sharks, *available at* <http://eastgatepublishing.com/2012/05/in-too-deep-with-the-whale-sharks/> (last accessed Sep. 6, 2012).

185. Marilyn Baldo, Whale shark hunters seek new livelihood, *available at* <http://www.helsinki.fi/~lauhakan/whale/asia/philippines/whalesha.html> (last accessed Sep. 6, 2012).

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. Baldo, *supra* note 185.

192. Vinson Serrano, Case Study on Community-Based Ecotourism Activities in Donsol, Sorsogon: Seeing Ecotourism as a Conservation Tool Towards Sustainable Development (A Term Paper Submitted to University of the Philippines School of Urban and Regional Planning) 6, *available at* <http://www.scribd.com/doc/75418046/Donsol-Sorsogon-LGU-Assessment->

In the 1990s, however, a trading firm based in Manila engaged the communities in Donsol, as well as in Talisayan and Pamilacan, in the whale shark business.¹⁹³ Entire villages, including the women and children, were employed as whale shark hunters, butchers, and porters of whale shark meat.¹⁹⁴ A single whale shark caught can fetch anywhere from ₱14,000.00 to ₱80,000.00.¹⁹⁵ From a primary means of subsistence and chief commodity in the local trade, whale shark meat became an object of a commercial venture, which spans the East Asian trading area — from Hong Kong restaurants, to Chinese diners, to Japanese factories.¹⁹⁶ Prosperity seemed on the way; whale shark meat became abundant, and the communities experienced a surge in economic activity brought by increased purchasing power.¹⁹⁷

In 1998, things came to an abrupt halt.¹⁹⁸ Pictures and videos of the slaughter of six full-grown whale sharks in Donsol were beamed in television channels and flashed in newspaper headlines across the country.¹⁹⁹ The nation was outraged, especially when environmentalists and marine biologists started explaining what the whale shark is — the largest fish in the world — and how infrequently they can reproduce, as well as how fortunate the Philippines is for having been graced by these gentle and rare creatures in numbers never seen anywhere else in the world.²⁰⁰ The public demanded no less than direct and swift government action. The Bureau of Fisheries and Aquatic Resources, as well as the local government of Donsol municipality, passed resolutions banning whale shark hunting and illegalizing the trade in whale shark meat.²⁰¹ The *butanding* became the symbol of the country's newfound consciousness of biodiversity and species conservation.

Along with the ban, however, economic activity in the former whale shark trading communities collapsed. Livelihoods were lost and established

and-Proposed-Interventions-Based-on-Five-5-Local-Economic-Development-Criteria (last accessed Sep. 6, 2012).

193. Baldo, *supra* note 185.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. World Wildlife Fund-Philippines (WWF-P), Donsol Community-Based Whale Shark Ecotourism and Coastal Resource Management, *available at* http://wwf.panda.org/what_we_do/endangered_species/pelagic_sharks/?UprojectID=PH0886 (last accessed Sep. 6, 2012) [hereinafter WWF-P, Donsol Community-Based].

200. *Id.*

201. *Id.*

norms and customs in relation to the whale sharks were disrupted.²⁰² The sentiments of one local whale shark hunter summed up the general feeling of the affected locals. In the vernacular, he said: *Kung did-an kaming mananagat sa pagpanuki kaming tanan magpapriso na lamang. Aduna bay ipakaon ang gobyerno sa aming pamilya ug pagpa-eskwela sa among mga anak?* (If the government will prohibit hunting, we might just as well go to jail. Can the government feed us and send our children to school?).²⁰³

Between the people's right to livelihood (which translates to their very right to life and to survival) and the paramount interest in preserving biodiversity in the Donsol seas, an abyss has been opened, and it has never been the same since.²⁰⁴

In 1998, the local government of Donsol, with the assistance of World Wildlife Fund-Philippines (WWF-P), pioneered a conservation effort that involved the entire community — the campaign to transform the former *butanding* hunting farms into ecotourism zones where people can interact with the gentle whale sharks in the open sea.²⁰⁵

The campaign soon gathered momentum. To date, the Donsol Whale Shark Ecotourism Project continues to be one of the most successful ventures of its kind in the country,²⁰⁶ with millions of pesos in revenues being earned by former shark hunters who are now employed as “interaction officers” and tour guides, as well as locals who were given training and capital to establish recreation, accommodation, and other amenities and facilities in the area.²⁰⁷

B. Lessons from the Donsol Project

The experience of the Donsol community can be considered a “success story” in the continuing ecotourism experiment. For the Philippines, it is significant because, to date, it is regarded as the most successful ecotourism ventures of its kind in the country, and the most successful in the world with regard to whale shark interaction.²⁰⁸ The Donsol experience is also the best-

202. Baldo, *supra* note 185.

203. *Id.*

204. *Id.*

205. WWF-P, Donsol Community-Based, *supra* note 199.

206. In 2005, the Donsol Whale Shark Ecotourism area was cited by Time Magazine as the “Best Place for an Animal Encounter” in the world. The international publication also cited the successful partnership between WWF-P and Donsol's local government and community in ensuring the integrity of the area's biodiversity despite increasing tourist traffic. *Id.*

207. *Id.*

208. *Id.*

documented ecotourism projects in the Philippines, making it easy for scholars to study and build upon. The Donsol Ecotourism Project, lastly, is one of the few ecotourism projects in the Philippines that involved a collaboration with an international organization,²⁰⁹ and so it presumably benefited from an application of internationally accepted standards of practice.

When the ban on whale shark hunting and whale shark meat trading was imposed through Fisheries Administrative Order No. 193 (series of 1998), the local government of Donsol proactively addressed the inevitable collapse of livelihoods in the local communities.²¹⁰ At the outset, tourism was already identified as the most feasible alternative livelihood in the area, since the whale shark interaction site in Placencia, Belize gained popularity just a year before.²¹¹ It is also fortuitous that the *butanding*, being a constant object of scientific observations, had already gained popularity through media expositions, and so it became an easy sell to expand the formerly all-scientist entourage of *butanding* visitors to include lay persons who simply wish to swim alongside the gentle giants.²¹²

However, at the beginning of the fledgling ecotourism industry in Donsol, local officials and managers were not able to easily get a handle of the rapidly expanding enterprise.²¹³ Due to the sudden influx of tourists, the tourism council of Donsol was initially caught off-guard, finding out too late that depending on ad hoc measures and flexible standards will not be sustainable. The whale-watching season of April-May 1998 became chaotic.²¹⁴

Thus, aware of its lack of experience and technical expertise in initiating a large-scale tourism plan, the local government of Donsol sought the assistance of a team of experts from various national agencies of government, as well as representatives from the private sector, and most importantly,

209. WWF-P, Donsol Whale Shark Tourism and Coastal Resource Management (A Case Study on the Philippines) 13, available at <http://www.wwf.org.ph/downloads/DonsolCaseStudy.pdf> (last accessed Sep. 6, 2012) [hereinafter WWF-P, Case Study].

210. *Id.* at 10.

211. Angela Quiros, Whale Shark “Ecotourism” in the Philippines and Belize: Evaluating Conservation and Community Benefits (A Research on Whale Shark Ecotourism for Tropical Resources Bulletin) 42, available at <http://www.docstoc.com/docs/43980759/Whale-Shark-Ecotourism-in-the-Philippines-and-Belize-Evaluating> (last accessed Aug. 9, 2012).

212. WWF-P, Case Study, *supra* note 209, at 13.

213. *Id.* at 13.

214. *Id.* at 15.

representatives of the Donsol community.²¹⁵ The ecotourism plan was drafted under the guidance of a technical team from WWF-P, with funding support from the U.N. Development Program.²¹⁶ What came out as a result was an integrated community-based ecotourism project which benefitted much from the education and training efforts led by WWF-P not only in the rudiments of tourism management, but most importantly in the scientific handling of each tour operation (including safeguards in whale shark interaction, proper boat-handling and life-saving measures for spotted whale sharks in distress), and in inculcating the values of biodiversity conservation among the people in the local community.²¹⁷

The key lesson to be learned in the Donsol experiment is that successful ecotourism projects are built on the foundations of meaningful and extensive community and stakeholder participation. The literature is replete with scholarly studies expounding on the beneficality and necessity of community-based conservation efforts, including those adopting the ecotourism model.²¹⁸ The Donsol Ecotourism Project, however, presents a more concrete and nuanced illustration of the benefits of community-based ecotourism modeling. Among others, the Donsol experience has imparted several lessons that may be used to inform and guide future sustainable ecotourism projects.

1. Engaging the Community at the Conceptualization Stage

At the conceptualization stage, the involvement of the community and other stakeholders is essential. While in the case of Donsol, much had been contributed by the technical expertise of an international organization like the WWF-P, many nuances of the proposed project were elicited and highlighted through the articulation of actual experience at the grassroots and local knowledge and expertise in the area.²¹⁹ The inputs at this stage from community stakeholders will seek to inform and guide the ecotourism plan by:

- (1) contextualizing the ecotourism plan (i.e., infusing the plan with the requisite sensitivities and sensibilities that are particularly relevant to the community in which the ecotourism project will seek to operate);

215. *Id.*

216. *Id.*

217. *Id.*

218. See generally JAMES SWEETING, ET AL., THE GREEN HOST EFFECT: AN INTEGRATED APPROACH TO SUSTAINABLE TOURISM AND RESORT DEVELOPMENT (1999).

219. WWF-P, Case Study, *supra* note 209, at 17.

- (2) identifying areas of concern and potential issues that might compromise the integrity of the ecotourism project — these areas and issues may particularly address political, social, and other factors that would prove to be hindrances and obstacles to the effective implementation and management of the ecotourism plan; and
- (3) expressing the expectations, needs, and interests of the community. As the ecotourism project seeks to advance not only the interests of biodiversity conservation but also the welfare and well-being of a community whose livelihood has been lost, it would be important to identify the targets and goals of the project with due consideration to what the community needs and expects. This is essential because, as discussed above, the tendency to actively imbibe a consciousness for biodiversity conservation is facilitated by the community's satisfactory enjoyment of direct and indirect benefits from the ecotourism venture. The partnership between the community and the managers of the ecotourism venture will be more effective if, at the outset, the two parties can agree on a fixed schedule of targets (as to income, expansion, administration, etc.) that realistically reflects the expectations and needs of the community whose support and cooperation is being elicited.

2. Enlisting the Aid of the Community in Imparting Conservation Consciousness

Involvement of the community is essential in the elevation of the collective consciousness of the local people in terms of the paramount need to ensure the ecological stability and viability of the ecotourism venture, and in terms of the value of biodiversity conservation in general.²²⁰ Education and training given by technical experts can only reach so many individuals. The educative dimension of the ecotourism project should be carried on by the community within and among themselves, while interacting with ecotourist guests, and among their children.²²¹ The deep ecological consciousness of the community will also ensure that the execution of the ecotourism project plan will adhere strictly to the standards imposed at the outset.²²²

In Donsol, prior to every whale shark interaction, educational videos are shown to ecotourist guests and these instructional materials are supplemented further by the environment-conscious guidance of interaction officers (former whale shark hunters employed as spotters, tour guides, boat

220. See generally WWF-P, Case Study, *supra* note 209, at 18-21.

221. *Id.*

222. *Id.*

operators, and first aid attendants) whom the guests deal with every step of the way.²²³ Owing to the clear mandate given to every interaction officer and owing to the level of conservation-consciousness instilled upon each one of them, it did not come as a surprise that, according to a scientific study conducted over an observation period of two years, the compliance rate of Donsol ecotourist guests with the “Code of Conduct” of interaction imposed by the managers of the project was very high, in some cases almost as high as 100%.²²⁴ This success is attributable in large part to the ability of interaction officers to effectively communicate biodiversity conservation lessons to guests and enforce maximum compliance with non-intrusive interaction guidelines.²²⁵

Indeed, so successful was the integration of the Donsol community into the conservation philosophy of the ecotourism project that as a community, it has undertaken allied projects that expanded the whale shark interaction component of the ecotourism project:²²⁶

- (1) The community, aware of the intricate workings of biodiversity and ecosystem processes in the area, led in the replanting of mangrove tress along the coastline of the Donsol River.²²⁷ When the replanting was completed, very soon after, a marked increase in the concentration of marine life was recorded in the Donsol Bay because, along with the whale sharks, marine species feed on planktons which, in turn, feed on nutrients flushed out into the Donsol Bay from the mangrove swamps upriver.²²⁸ As a result, whale shark encounters almost doubled and the increased abundance of marine life in the area made it possible for whale shark encounter tours to offer the additional amenity of snorkeling or diving in the shallow waters in the environs.²²⁹ The community likewise started offering “firefly tours,” where guests cruising in boats are treated to the spectacle of firefly sightings along the riverbanks.²³⁰

223. *Id.* at 16.

224. ANGELA QUIROS, MONITORING WHALE SHARK TOURISM IN DONSOL, PHILIPPINES (2006).

225. *Id.*

226. Marie Levine, Whale Sharks of Donsol, March 1 to 15, 2008 (Report of Flag Expedition) 4, available at <http://www.sharks.org/reports/TR-2008-Donsol.pdf> (last accessed Sep. 6, 2012).

227. *Id.* at 5.

228. *Id.*

229. *Id.*

230. *Id.*

- (2) The community has also organized themselves into a Task Force that will patrol the Donsol waters, called the Task Force *Sagip Kalikasan*.²³¹ The Task Force is a collaboration of individuals, including women and children, the local government, local police, and local fishing groups that patrol the Donsol waters to avert illegal whale shark hunting, as well as illegal fishing using the “*pangulong*” fishing technique or purse seine fishing.²³²

3. The Community as Feedback Mechanism

Indeed, the strength and sustainability of the ecotourism model in force in Donsol owes much from the collective participation and involvement of the community, which was forged effectively very early on, when they were made part of the partnership-building efforts leading up to the conceptualization and eventual execution of the Whale Shark Ecotourism Project.²³³

Ruel Pine, the Community-Based Ecotourism and Coastal Resource Management Project Manager of WWF-P, commented that “[t]he Whale Shark Ecotourism Program [in Donsol] is a testimony to the importance of a successful multi-stakeholder involvement.”²³⁴ Perhaps this element of community partnership is the chief cause why the Donsol experiment has been largely successful; popular involvement has ensured that the usual perils associated with other ecotourism projects are averted. If the community is made a partner, rather than a passive player in the project, breaches in the integrity of the ecotourism model will be easily identified and readily addressed. In this way, the community has made a feedback mechanism of the project, thereby ensuring that it will be self-correcting, self-adjusting, and self-sustaining:

- (1) If the ecotourism project starts failing to generate adequate income to ensure its economic and ecological viability, the members of the community are in the best position to act as a barometer. They are the ones who have a personal stake in the continued operation of the venture because if it fails, they would be left with no other source of livelihood.

231. WWF-P, Philippine coastal community cited as best place to observe whale sharks, available at http://wwf.panda.org/what_we_do/footprint/smart_fishing/fishing_news/fisheries_news_archive.cfm?17833/Philippine-coastal-community-cited-as-best-place-to-observe-whale-sharks (last accessed Sep. 6, 2012) [hereinafter WWF-P, Philippine coastal community].

232. *Id.*

233. WWF-P, Case Study, *supra* note 209, at 15.

234. WWF-P, Philippine coastal community, *supra* note 231.

- (2) If the ecotourism project starts to suffer from inadequate regulatory rules and standards or loopholes in implementation, the community is in the best position to provide an “early warning system” before the venture collapses. This is because the ecotourism project is operated in its minutest details and at the grassroots level through officers and deputies employed from among the community. They are the ones who will most likely detect the flaws in the project’s operation because they personally administer the various aspects of the project.
- (3) If the ecotourism project starts to feel the strain and impact of excessive human contact or intervention, the community is in the best position to detect so. Being themselves dependent upon plant and animal species before conservation efforts took their course, they have already acquired indigenous knowledge of the biological rhythm of the components of the area’s biodiversity. Abundance and scarcity of resources is something that they have already learned to observe keenly. Whereas before, they use this intimate knowledge in hunting and gathering, they are now in a better position to use it to calculate and project how much strain the biodiversity in the area is laboring under because of human interventions and other intrusions of the same nature. With this knowledge, they can act to recalibrate the components and operations of the ecotourism project accordingly.

V. CONCLUSION

The tension between the human right to livelihood and the interests of biodiversity conservation is as old as it is seemingly irresolvable.²³⁵ Under the HRE paradigm, both imperatives need to be addressed simultaneously; in practice, however, restriction of human access to plant and animal species — the paramount concern of conservation — is almost irreconcilably incompatible with the requisites of the exercise of the right to livelihood which include consumption of and/or trade in protected species. For this conflict, the ecotourism model was adopted, and it purports to resolve it by making biodiversity conservation a livelihood in itself, thereby addressing the two issues in unison.²³⁶ For as long as the ecotourism project generates income, the people will have sufficient stake in its continued viability, and will therefore be induced to adopt conservation practices.

The ability of ecotourism to bridge this gap, however, is only as impressive as its capacity to be sustainable. Without being sustainable,

235. See generally Veit & Benson, *supra* note 1, at 13-14; Alley & Meadows, *supra* note 1, at 15-16; & Renteln, *supra* note 1, at 17-18.

236. Mawere & Mubaya, *supra* note 7.

livelihoods will eventually be lost again, and biodiversities will collapse, defeating the purpose of adopting the conservation measure in the first place. While many regulatory measures for ecotourism are being adopted and proposed at the international level,²³⁷ it is argued that most of the perils traditionally associated with ecotourism projects will already be readily addressed if a community-based ecotourism planning and management will be adopted, as done in Donsol.

The community is more attuned to the peculiarities of the locality. Policies, operational procedures, and rules of ecotourism projects will be well-informed and well-guided if they incorporate the wealth of local knowledge, sensitivity, and sensibility that only the community can accurately provide. The community is also the most interested stakeholder in the ecotourism framework; without ecotourism, they will be precluded from engaging in any form of livelihood in the conservation area and would have to be displaced. Such is the sensitivity of the task of ecotourism that it cannot afford to be unsustainable and isolated from the community.

The success of the Donsol experiment, however, is by no means perfect and complete. As the WWF-P's study recounts,²³⁸ lingering issues regarding local politics, occasional influence struggles between interest groups, and other managerial concerns also threaten the ecotourism venture.²³⁹ Mention was also made about strengthening and making stable some of the standards that govern the various aspects of the project, which until now are based loosely on unwritten policies.²⁴⁰ However, despite these areas of concern, which are typical of any incubating venture, there is reason to believe that the Donsol Whale Shark Ecotourism Project is on track to achieve long-term sustainability under the auspices of the community's complex network of local experts and managers. Indeed, even the emerging problems being encountered can serve as learning opportunities for the community as they continue to own the project and hone their expertise. By all indications, ecotourism in Donsol is poised to hold its niche in the locality's development agenda and maintain, all at the same time, its economic feasibility, its environmental viability, and its social acceptability.

237. See generally José-Roberto Pérez-Salom, *Sustainable Tourism: Emerging Global and Regional Regulation*, 13 GEO. INT'L. ENVTL. L. REV. 801 (2001).

238. WWF-P, Case Study, *supra* note 209, at 17.

239. *Id.*

240. *Id.* at 15.