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Arbitration and Appraisal: Rent Reset Issues

Tony Sevelka

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ABSTRACT

Commercial leases often contain arbitration clauses to address disputes between a landlord and tenant. One of the most common disputes arbitrated centers on the determination of market rent or rent as defined or described in the lease, when the parties are unable to reach agreement through negotiation. Often the arbitration clause in the lease will dictate that an appraiser possessing certain professional qualifications and experience is to be selected and mutually appointed or party-appointed if an arbitral panel is contemplated. A determination of the rent to be fixed by the arbitrator or arbitral panel either during the term of the lease or at the end of the lease pursuant to an option to extend or renew the lease often requires evidence from real estate professionals, which typically include valuers. An appraiser appropriately qualified to act as an arbitrator, coupled with an effective appraisal strategy, should reduce the time required to complete the arbitration, and result in cost savings to both parties. Depending on the jurisdiction in which the property is located, the complexity of the valuation issue(s) or the amount of rent in dispute, it may be appropriate for each party to have its own appraisal report independently reviewed by a qualified appraiser prior to the arbitration. This article explores the decision to arbitrate and some of the issues encountered through the presentation of case studies, the role of an appraiser as an arbitrator, and the expectations of an appraiser acting as an expert witness.

Keywords: Arbitration; Rent; Rent reset; Lease; Landlord; Tenant

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1. INTRODUCTION

Many long term commercial leases (Sevelka, 2020), whether of land or space,¹ contain an arbitration clause as a court-alternative mechanism to resolve disputes between a landlord (lessor) and a tenant (lessee) in a consensual, confidential and private forum. One of the most common disputes concerns resetting of rent either at some point during the term of the lease, or at the end of the existing term by an option to extend the term of the existing lease or by exercising a renewal option. If the parties fail to negotiate a new rent within a specified timeframe as dictated by the lease, one of the parties will trigger the arbitration clause calling either for appointment of one mutually agreed arbitrator or for each party to designate a party-appointed arbitrator, the two of whom will, in turn, select a head (neutral) arbitrator or chair, rounding out the arbitral panel. Appointing real estate appraisers with appropriate professional designations, knowledge and skills as arbitrators to resolve rent reset disputes, and presenting them with appraisal evidence that is thorough and credible² should reduce the time to complete arbitrations, and result in substantial cost savings to the parties of the dispute.

This article explores some of the criteria by which appraisers are selected to act as arbitrators, and the importance of appraisers acting as expert witnesses to present evidence that is consistent with the nature of the dispute, and in compliance with recognized appraisal theory and practice. Unique situations involving space lease disputes and the potential consequences of failing to adhere to the arbitration clause or the agreement to arbitrate mutually agreed upon by the parties to the dispute are also addressed.

2. DEFINITION OF ARBITRATION

Arbitration involves resolution of disputes outside the courts, wherein the parties to a dispute refer it to one or more persons, by whose decision (the "award") they agree to be bound. Arbitration is a form of binding dispute resolution, similar to litigation, and entirely distinct from the various forms of non-binding dispute resolutions, such as negotiation and mediation, although it is possible to enter into binding mediation (Thayer and Smith, 2012).³ As described by the American Bar Association,

“Arbitration is a private process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments. The arbitration process is similar to a trial in that the parties make opening statements and present evidence to the arbitrator.”

Compared to a traditional trial, arbitration allows for appointment of subject matter experts as decision makers, is less formal and can usually be completed more quickly.

3. ARBITRATION AWARD

An Arbitration Award (or Arbitral Award) resolves a matter in dispute in a private forum. At the conclusion of an arbitration hearing, the arbitrator or arbitral panel issues an *Award*, which is a determination on the merits (i.e., the decision), and is analogous to a judgment in a court of law. Depending on the jurisdiction in which the property is located or the terms of the arbitration agreement, the award is issued to the parties either in a “conclusory”⁴ manner or “reasoned” (Chalk, 2019) setting out in transparent and sufficient detail (Kirchner, 2014) the basis of the decision.

¹ A “lease” is defined as “a contract in which the rights to use and occupy land, space, or structures are transferred by the owner to another for a specified period of time in return for a specified rent,” p. 105, *Dictionary of Real Estate Appraisal*, 7th ed., © 2022, Appraisal Institute.

² *Uniform Standards of Professional Appraisal Practice* (USPAP) define “credible” as “worthy of belief.” Appraisal Institute’s *Standards of Valuation Practice* (SVP), effective November 12, 2021, define “credible” as “worthy of belief, supported by analysis of relevant information. Credibility is always measured in the context of intended use.

³ See *Bowers v. Raymond J. Lucia Companies, Inc.*, 206 Cal. App. 4th 724 (2012) 142 Cal. Rptr. 3d 64. Retrieved from <https://casetext.com/case/bowers-v-raymond-j-lucia-cos>

⁴ Consisting of or relating to a conclusion or assertion for which no supporting evidence is offered. Retrieved from <https://dictionary.findlaw.com/definition/conclusory.html>

4. BRIEF LITERATURE REVIEW

In 1987, the American Arbitration Association published *Arbitration of Real Estate Valuation Disputes*,⁵ which was funded by a grant from the American Institute of Real Estate Appraisers, a predecessor organization of the Appraisal Institute. The text includes a collection of papers authored by a number of prominent appraisers and lawyers who were engaged in the arbitration of valuation disputes of real property rights and describes the procedural steps and obligations of an arbitrator, and discusses the role of an independent expert. The stated objective of the text is described as follows:

“It is hoped that the reader will become oriented to the arbitration process in general and to its specific application to real estate disputes in particular. Although a number of the authors make reference to legal issues and decisions, this volume is not intended to be an authoritative legal treatise. Different precedents and main trends exist in different state jurisdictions. Furthermore, there may be conflicting precedents within the same jurisdiction.”

While the appraisal profession in North America has a long history of involvement in resolving real estate disputes, the topic of arbitration appears for the first time in the 15th edition of the Appraisal Institute’s *The Appraisal of Real Estate* published in 2020 in which the word “arbitration” appears three times. In November 2016 (later revised in 2020), the Appraisal Institute published Guide Note 16 *Arbitration*,⁶ accompanied by a press release referencing Advisory Opinion 21 of Uniform Standards of Professional Appraisal Practice (USPAP),⁷ which explains the purpose of arbitration, and the role and professional obligations of a Member of the Appraisal Institute acting either as an expert witness or as an arbitrator, usually to resolve a dispute involving market value or market rent, or value or rent as defined/described in the lease.

The Appraisal Institute in broadening an understanding of arbitration as a means of resolving valuation disputes undertook a number of initiatives. Following three initiatives occurred that have raised awareness and understanding of arbitration as an area of expertise within the valuation profession:

- Publication of *Appraisers in Arbitration* (Konikoff, 2018, followed by second edition, 2022);
- Inclusion of a brief reference to arbitration in the 15th edition (2020) of *The Appraisal of Real Estate* as a subcategory of consulting (p. 648);
- Development of Course “Expand Your Practice: Arbitration Do’s and Don’ts.”

The text, *Appraisers in Arbitration*, delves into areas of appraisal practice beyond those typically associated with valuation practice. Alternative dispute resolution (ADR), which includes negotiation, mediation and arbitration (Celik, 2013), presents a growing area of need for the skills of valuation professionals. *The Appraisers in Arbitration*, second edition, provides detailed information to help valuation professionals participate in arbitration and understand the roles they will play. The text provides specific advice on how to perform each task required of an arbitrator, expert witness, or consultant and the standards that apply to each service. Every step in the arbitration process, from the preliminary hearing to the final award, is explained and common arbitration scenarios and real-world examples are discussed.

5. APPRAISER AS ARBITRATOR

The qualifications for selecting an arbitrator in a rent reset dispute are dictated by the language of the lease or as agreed upon by the parties to the dispute. If an appraiser is appointed to act as an arbitrator in a rental dispute, that particular individual is typically expected to possess a requisite professional designation, and the skills and experience to understand and resolve the dispute. Complex rent resets involving ground leases (Sevelka, 2011) demand a higher level of knowledge and expertise than is necessary to address a rent reset of a single tenancy in a small storefront. However, in all rent reset disputes the real estate appraiser appointed as an arbitrator should possess experience with the

⁵ *Arbitration of Real Estate Valuation Disputes*, American Arbitration Association, New York. 1987.

⁶ Guide Note 16, *Arbitration*, revised November 2020, <https://www.appraisalinstitute.org/assets/1/7/guide-note-16.pdf>.

⁷ Appraisal Institute’s New Guidance Outlines Appraiser’s Role in Arbitration, *Real Estate Rama*, January 27, 2017.

<https://www.realestaterama.com/appraisal-institutes-new-guidance-outlines-appraisers-role-in-arbitration-ID040185.html> [retrieved on 4 December 2023].

property type and have experience reading commercial leases and understanding relevant lease clauses. A lease is a contract, and the interpretation of the rent reset clause is of critical importance to the parties in a rent reset dispute.⁸ Appraisers may possess the same professional designations, but can have vastly different skills and experiences. An appraiser's suitability to act as an arbitrator depends on the language of the arbitration clause or as agreed upon by the parties, and may speak to some of the following:

- Professional Appraisal or Appraisal Review Qualifications (e.g., MAI, AACI, FRICS, AI-GRS⁹)
- Continuing Professional Education (on-going professional development)
- Professional Contributions (e.g., relevant articles published in recognized journals or trade publications)
- Appraisal Experience
- Ethical Requirements (whether the appraiser has been disciplined by any governing appraisal body for ethical breaches)
- Reputation within the Appraisal Community
- Geographic Knowledge of the area where the property (demised premises) is located (Carneghi, 1999).

In virtually all jurisdictions, the decision of an arbitrator or arbitral panel is final and binding, so it is extremely important for a real estate appraiser when acting as an arbitrator to understand his/her legal duties to the parties. Short of fraud, evident partiality¹⁰ or a failure on the part of the arbitrator to adhere to the parties' arbitration agreement or to the provisions of the relevant arbitration act in conducting the arbitration, it is virtually impossible to vacate an arbitration award.¹¹ Public policy supports minimal judicial intervention in an arbitration award, and the parties do not get to appeal an adverse decision¹² unless the arbitrator or arbitration panel has exceeded its jurisdiction¹³ or authority.¹⁴ Parties who opt for arbitration to settle their disputes accept up-front the risk of errors in *law* or *fact* committed by the arbitrator or arbitration panel.^{15, 16}

No matter how harsh,¹⁷ unfair, or unreasonable the terms and conditions of a lease are to either party, absent any ambiguity,¹⁸ courts will not intervene and rewrite a lease to which the terms and

⁸ Contract interpretation might require the assistance of legal counsel.

⁹ The AACI designation is awarded by the Appraisal Institute of Canada, and the FRICS designation is awarded by the Royal Institution of Chartered Surveyors in United Kingdom, both with similar designation requirements to the MAI granted by the Appraisal Institute in United States. The AI-GRS is a "General Review Specialist" designation awarded by the Appraisal Institute to professionals who provide reviews of appraisals of a wide range of property types, including commercial, industrial, agricultural, residential and vacant land. For designation requirements, see the link <https://www.appraisalinstitute.org/why-join/pursue-a-designation/ai-grs-designation>.

¹⁰ On December 30, 2019, the Ninth Circuit Court of Appeals denied petitions for panel rehearing and rehearing en banc in *Monster Energy Co. v. City Beverages, LLC*, No. 17-55813, and confirmed its decision to vacate an arbitration award for failure to disclose that (1) the arbitrator was a co-owner of JAMS (Judicial Arbitration and Mediation Services, Inc.); and (2) the prevailing party (Monster Energy Co.) had several prior cases with JAMS. The Ninth Circuit reversed and vacated the arbitration award for "evident partiality" resulting from the arbitrator's failure to disclose an ownership interest in JAMS, even though he stated to the parties that he "has an economic interest in the overall financial success of JAM."

¹¹ In the United States, grounds for setting aside an award are set out in the Federal Arbitration Act (FAA): "(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made (9 U.S. Code § 10(a))."

¹² "Courts have repeatedly instructed litigants that challenges to the arbitrator's rulings on discovery, admission of evidence, reasoning, and conduct of the proceedings do not lie." *Evans v. Cornerstone Development Co.*, 35 Cal. Rptr. 3d 745 (2005) 134 Cal.App.4th 151.

¹³ In *Westnav Container Services v. Freeport Properties Ltd.*, 2010 BCCA 33, the arbitrator's award made an error in describing the rental rate for a comparable property and, in supplementary reasons, the arbitrator eliminated reference to that comparable and added reference to other comparables, leaving the result unchanged. The Court of Appeal, at para. 47, found that the arbitrator had exceeded his jurisdiction and committed arbitral error.

¹⁴ In *Bankers Life & Casualty Insurance Co. v. CBRE, Inc.*, 830 F.3d 729, (2016), the Court of Appeals, 7th Circuit, held that the arbitration panel exceeded its authority by basing its award on documents outside the parties' agreement, unilaterally inserted by CBRE.

¹⁵ As established by the US Supreme Court in *Oxford Health Plans v. Sutter*, 133 S. Ct. 2064 (2013), 569 U.S. 564, 186 L. Ed. 2d 113, "[t]he potential for...mistakes is the price of agreeing to arbitration" and "so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation is different from his."

¹⁶ In Canada, in *Sattva Capital Corp. v. Creston Moly Corp.* 2014, SCC 53, the Supreme Court of Canada limited the availability of appeals from commercial arbitration awards on questions of law to those "rare" cases where the arbitral tribunal has made an "extricable error of law." *Pre-publication Article: Arbitration Appeals on Questions of Law in Canada: Stop Extricating the Extricable!*, <https://arbitrationmatters.com/news/pre-publication-article-arbitration-appeals-on-questions-of-law-in-canada-stop-extricating-the-inextricable/> retrieved on 4 December 2023.

¹⁷ *Heller & Henretig v. 3620-168th St., Inc.*, 302 N.Y. 326 (1951); *Hartigan v. Casualty Co. of America*, 227 N.Y. 175 (N.Y. 1919).

conditions were voluntarily and mutually agreed by the lessor and lessee, and drafted by experienced legal counsel. Rent reset clauses are the product of negotiation either directly by the parties to the lease (contract) or indirectly through legal counsel, and each rent reset clause is uniquely tailored to meet the specific business interests of each party, and the way in which parties contract to have rent *reset* is entirely within their discretion. The fact that a contract term is imprudent for one party to have agreed upon or that it worked out badly or even disastrously is no reason to deviate from the clear language of a rent reset clause. Whether a rent reset clause favours the landlord or the tenant is an irrelevant factor in fixing the new rent. Arbitration, unlike mediation,¹⁹ is not intended to produce a “win-win” outcome for both parties, which can sometimes lead a disgruntled party confronted by an unfavourable award to sue its own valuation expert in those jurisdictions that do not recognize witness immunity.²⁰ However, an appraiser acting as an arbitrator is entitled to arbitral immunity, which is defined and explained as follows:

“Arbitral immunity refers to the immunity that is extended to arbitrators for acts arising out of the scope of their arbitral functions. Arbitrators are judges chosen by the parties to decide the matters submitted to them. The independence necessary for principled and fearless decision making can best be preserved by protecting these persons from bias or intimidation caused by the fear of a lawsuit arising out of the exercise of official functions within their jurisdiction. Arbitral immunity is the keystone of the arbitral system and should not be overturned. Arbitral immunity is necessary for finality of arbitrators’ decisions.”²¹

6. CONDUCTING AN ARBITRATION

Once appointed, an arbitrator or arbitral panel performs a number of duties, and arbitral decisions on issues that are within the arbitrator’s jurisdiction are given substantial deference by the courts. In a rent reset arbitration proceeding, the arbitrator or arbitral panel should:

- Obtain a copy of the executed lease, including amendments to the lease, and a statement of the issue(s) in dispute (e.g., property value, rental value) from each party.
- Read the lease thoroughly, including schedules and any amendments to the lease, well in advance of the actual arbitration.
- Request a mutually agreed-upon Statement of Facts from the parties to narrow the scope of the dispute and minimize the duration and cost of the arbitration.
- Not engage in *ex parte* communications, as this conduct is a ground supporting vacatur of an arbitral award.²²
- Arrange a preliminary conference call, remote hearing or in-person hearing with the parties to discuss pre-arbitral issues and arbitral procedural issues and rules set forth by the arbitrator for the hearing. The arbitrator and the parties should agree on basic procedural issues, such as schedule, length and location of hearing(s), the number of expert witnesses, and the amount of time each party will have to present its case.
- Conduct the arbitration on the basis of a formal hearing, written submissions, teleconference or video conference (visual and audio), or a combination thereof. Consider the complexity of the issue(s) in dispute, while adhering to the principles of a fair arbitration process.²³ The COVID-19 global pandemic, announced March 11, 2020, which restricted public gatherings, has resulted in a paradigm shift reducing or eliminating the need for in-person hearings, and

¹⁸ *Ruth v. A.Z.B. Corp.*, 2 Misc.2d 631, 636 [NY County], *affd* 2A.D.2d 970 [1st Dept 1956]. Case cited in *The Manufacturers Life Insurance Company v. Parc-IX Limited*, 2018 ONSC 3625.

¹⁹ *Black’s Law Dictionary*, 11th edition, defines “mediation” as “[a] method of nonbinding dispute resolution involving a neutral third Party who tries to help the disputing parties reach a mutually agreeable solution.”

²⁰ In *Marrogi v. Howard*, 805 So. 2d 1118 – La: Supreme Court 2002, para. 1129, and corresponding footnote 16. In *Estate of Voutsaras v. Bender*, Mich: Court of Appeals 2019, the court ruled that “[l]icensed professionals owe the same duty to the party for whom they testify as they would to any client, and witness immunity is not a defense against professional malpractice.”

²¹ USLegal, <https://definitions.uslegal.com/a/arbitral-immunity/>

²² The United States Court of Appeals for the Sixth Circuit held that *ex parte* communications void an award if they violate the parties’ arbitration agreement. In *Star Ins. Co. v. Nat’l Union Fire Ins. Co. of Pittsburgh*, PA, No. 15- 1403, 2016 BL 267734 (6th Cir. Aug. 18, 2016),

²³ In *1414 Holdings, LLC v. BMS-PSO, LLC*, 2017 NY Slip Op 32551(U), the New York Supreme Court upheld a neutral arbitrator’s decision to not undertake a formal hearing, and confin[e] “the scope of the assignment..[to] meeting with [the parties’] arbitrators, reviewing all submitted documents and evidence, inspecting the subject premises, confirming the appropriateness of the data assumption and analyses presented by the arbitrators, and reaching a decision as to the value of the 19th Floor Space [at 1414 Avenue of the Americas in New York].” There is no express requirement in the lease for a formal hearing.

now post-pandemic most arbitrations are conducted online resulting in substantial cost savings to the parties.

- Issue, if necessary, a subpoena requiring a non-party to produce documents and/or attend and give evidence at an arbitration hearing. However, seeking documents and/or testimony from non-party witnesses is a complicated legal process in some jurisdictions, and if the subpoena is resisted, it may cause unnecessary delay of the arbitration. In some rental disputes, before the actual hearing commences, it may be appropriate for the arbitrator to order the appraisers retained by the parties to meet in private (without prejudice) to seek consensus on issues bearing on the determination of rent and submit a joint statement to that effect, which should be of assistance to the arbitrator and possibly lead to settlement between the parties.
- Exercise discretion over the admissibility of evidence as to its relevance and necessity, and guard against tactics that are inconsistent with the principle of fundamental fairness (Blankley, 2014).²⁴
- Inspect the subject premises, when it is appropriate and practical to do so or when authorized by the parties.
- Inspect the comparables, when it is appropriate and practical to do so or when authorized by the parties.²⁵
- Rule on *motions* submitted by the parties during the arbitration.
- Enter an *award* upon agreed terms at the request of the parties if the parties reach a settlement during the arbitration. Conversely, the parties may agree to discontinue the arbitration and enter into a private contract spelling out the terms and conditions of the settlement.
- Issue a written, dated, and signed decision (Arbitration Award),²⁶ including the legal place of the arbitration, and refrain from attaching any professional designations to the signature.²⁷
- Issue a written and signed Cost Award in favour of the prevailing party, if mandated, following the completion of the arbitration.

7. CHARACTERISTICS OF A LEASE RENEWAL AND LEASE EXTENSION

A resetting of rent during the term of an existing space lease (i.e., part or all of a building) always takes into consideration the lease itself, and typically all of the subsisting terms remain intact in fixing the new rent. The same holds true when resetting rent for a stated term under an *option to extend*²⁸ an existing lease. An *option to renew* constitutes a new lease, and resetting of the rent for the term covered by the renewal option may or may not take into account the subsisting terms of the original lease. There is a technical distinction between a [lease] *renewal* and [lease] *extension*. An extension is a stretching or spreading out of the term of the lease. A renewal, on the other hand, creates a new and distinct tenancy and is not merely a perpetuation of the old tenancy. It contemplates the execution of a new lease document.²⁹

In *Fire Productions Ltd. v. Lauro*,³⁰ the British Columbia appellate court addressed the interpretation of the term “fair market rent” in the renewal clause of the lease:

²⁴ In *1552 Broadway Retail Owner LLC v. McDonald's*, 2017 NY Slip Op 50011(U) [Jan 9, 2017], the New York Supreme Court upheld the Arbitration Award, while “find[ing] the behavior of Tenant’s counsel and expert reprehensible, especially in light of the Tenant’s previous protestations that the parties having different understandings of FMV would cause the arbitration to be ‘fatally flawed.’” [Footnote 9]

²⁵ In *California Union Square LP v. Saks & Co., LLC*, 50 Cal.App.5th 340 (2020), the arbitration agreement gave the arbitrator discretion to inspect “the subject property” and “the party experts’ lease comparables,” but the trial court determined that the arbitrator exceeded his powers by visiting properties outside the scope of his authority as arbitrator.

²⁶ In most jurisdictions in the United States reasons for an arbitration Award are not required, but the parties may still request a reasoned Award.

²⁷ A state-licensed appraiser acting as an arbitrator in Hawaii is subject to Hawaii Revised Statutes Section 466K-6, and “the record of an award shall include but not be limited to findings of fact, the...rationale for the award,...certification of compliance with the most current Uniform Standards of Professional Appraisal Practice...; and information regarding the evidence, including the data, methodologies, and analysis that provided the basis for the award.” This requirement is unique to the state of Hawaii.

²⁸ According to *The Dictionary of Real Estate Appraisal*, 7th ed., an option to extend a lease is synonymous with the term “renewal option,” defined as “an agreement entered into at the time of the original lease providing the tenant with the right, but not the obligation, for the tenant to extend the lease term for a specified time at a rent specified in the option agreement or at the market rate at the time of renewal.”

²⁹ See 10 Miller & Starr, Cal. Real Estate (4th ed. 2020). Landlord and Tenant, ‘Renewal’ and ‘extension’ distinguished §34.73 (Miller & Starr)

³⁰ *Fire Productions Ltd. V. Laura*, 2006 BCCA 497 (CanLII), <<http://canlii.ca/t/1q1r7>>, accessed on 22 November 2023.

“... provided that the rental payable under the [renewal] of the lease will be the fair market rent for the Premises as mutually agreed upon by the parties hereto within one (1) month after the giving of such notice, provided that upon failure of such agreement, the same will be determined by a single arbitrator acting in accordance with the Commercial Arbitration Act (British Columbia), whose decision will be binding on the parties hereto.”

The tenant exercised a second *renewal* option for a term of 5 years commencing May 1, 2003. The dispute was whether the tenant’s leasehold improvements should be considered in the rent reset analysis upon “renewal” of the lease. The court treated the renewal option as if the premises were available for lease in “as is” condition (i.e., as finished space) on the open market to any potential third party, commenting as follows:

“The tenant has not been disadvantaged if on exercising his right of renewal he is required to pay the rent the landlord would be able to obtain if the lease was not renewed. The tenant may in one sense be paying interest on the improvements he made, but he has the continued use of the improvements, which have become the property of the landlord, to the end of the renewal period. It is all a matter of the bargain driven when the parties enter into the lease and it is then essential that effect be given to the wording the parties actually employed to express their bargain in any given instance. In this case, the bargain made in terms of the renewal rent to be paid favoured the landlord.”

8. NATURE OF RENT TO BE DETERMINED

In exchange for the right of a tenant to occupy and use space on specified terms and conditions, a landlord is entitled to receive *rent*. The nature of the *rent* to be determined for the demised premises (or leased space) is defined and dictated by the language of the lease, and may deviate from Market Rent, which, according to *The Dictionary of Real Estate Appraisal*, 7th edition, is defined as follows:

“The most probable rent that a property should bring in a competitive and open market under all conditions requisite to a fair lease transaction, the lessee and lessor each acting prudently and knowledgeably, and assuming the rent is not affected by undue stimulus.”

Implicit in this definition is the execution of a lease as of a specified date under conditions whereby:

- Lessee and lessor are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their best interests;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto; and
- The rent reflects specified terms and conditions found in that market, such as permitted uses, use restrictions, expense obligations, duration, concessions, rental adjustments and revaluations, renewal and purchase options, frequency of payments (annual, monthly, etc.), and tenant improvements (TIs) [p. 117].

9. EXISTING USE OR (UNRESTRICTED) HIGHEST AND BEST USE

A *use clause* in a space lease dictates the type of use(s) to which the demised premises can be put during the term of the lease or during the period of a lease extension. However, the formula or mechanism for resetting the rent during the term of the lease or during the period of a lease extension may have no connection to what is actually permitted under the use clause. Unless the language of the lease has a contrary intention, the appraiser should estimate rent on the basis of the use(s) permitted under the use clause in the existing lease.

If a rent reset clause in a space lease stipulates that market rent be based on the highest and best use³¹ of the space (demised premises), all relevant factors, including the following, should be taken into account by the appraiser as of the valuation date stipulated in the lease:

³¹ “Highest and best use” is “The reasonably probable use of property that results in the highest value [and] [t]he four criteria that... must be met are legal permissibility, physical possibility, financial feasibility, and maximum productivity,” *The Dictionary of Real Estate Appraisal*, 7th ed., p. 88. For a discussion of “Highest and Best Use” involving ground leases see “Ground Leases: Rent Reset Valuation Issues,” *The Appraisal Journal*, (Fall 2011), p. 316-317.

- The years remaining on the existing lease³² and any lease extensions unilaterally exercisable by the lessee (tenant) at the time of the rent reset or the period of time stipulated in the rent reset clause.³³
- The location of the space within the building or complex.
- The type of access to the space (e.g. stairs, elevator, street grade, etc.).
- The amount of space and its utility.
- The condition of the space (i.e., finished or unfinished).
- The age and condition of the building or complex housing the space.
- The uses permitted under the prevailing land use controls, and not prohibited by any restrictive covenants registered against title or by covenants in other tenant leases.
- The market support and level of demand for each permitted (viable) use.

A space lease (demised premises) that makes no provision for parking (either onsite or offsite) eliminates permitted uses dependent on parking, and permitted uses that cannot be accommodated within the space or within the unexpired term of the lease and any lease extensions are also eliminated from further consideration. Likewise, any permitted use that is not financially feasible given the remaining term of the lease, coupled with any lease extensions, is also eliminated from further consideration in the highest and best use analysis.

In *McDonald's Corporation v. 1552 Broadway Retail Owner, LLC*,³⁴ a dispute arose as to whether resetting of the rent during the first 5 years of a 10-year Lease Extension³⁵ should be based on the existing restaurant use or the (unrestricted) highest and best use of the “demised premises” defined as follows:

“The demised premises consist of a ground floor space [2,200 square feet], basement [315 square feet] and mezzanine [3,700 square feet]...”

The fixing of rent for the 5-year period of June 1, 2014 to May 31, 2019 is pursuant to the following formula as set out in valuation clause 4(b)(1):

“Ninety Percent (90%) of the fair market rent (the “FMV”) for the demised premises determined as of the date occurring six (6) months prior to June 1, 2014 [the “*Determination Date*”]....The FMV shall be determined on the basis of the highest and best use of the demised premises and considering all relevant factors.”³⁶

According to Article 9 of the lease, the only permitted use of the demised premises is as a McDonald's restaurant or another restaurant that McDonald's operates. The *use* clause is in conflict with the rent reset (valuation) clause, and to suggest restaurant use is the only permitted use of the demised premises would render the valuation clause and the concept of highest and best use meaningless. At the tenant's insistence, the court was persuaded to intervene on a threshold issue of “highest and best use,” arguing that the arbitration would be impracticable if the parties' competing valuations were premised on different concepts of value. *‘Highest and best use’* is not a term typically found in rent reset clauses associated with space leases in a building. Also, reference in the rent reset clause to *fair market rent* as *FMV* is confusing on its face, as *FMR* is the common initialism for *fair market rent*. A poorly drafted rent reset clause can make it difficult for an appraiser to determine appropriate uses of the demised premises, define the type of value and apply appropriate appraisal methods and techniques, and a challenge for an arbitrator to interpret.

³² An early termination clause exercisable at the discretion of the owner (landlord) effectively reduces the remaining term of the lease for the purpose of a rent reset, and has an impact on highest and best use analysis, resulting in a lower rent for the rent reset period. To achieve a higher rent, it is in the best interest of the owner (landlord) to waive the early termination clause for the purpose of resetting the rent for the period covered by the rent reset.

³³ In *Galvano Enterprises Limited v. Orionvink BV*, [1999] NICA 11, at each rent reset date of the 25-year Term of the space lease rent is to be fixed “for a term equal to, whichever is the greater of, the period of 15 years or the remainder of the Term.”

³⁴ *McDonald's Corporation v. 1552 Broadway Retail Owner, LLC*, 2017 NY Slip Op 50011(U) – NY: Supreme Court, 2017, <https://static.schlamstone.com/docs/1552-Broadway-Retail-Owner-LLC-v-McDonalds-Corporation-2017-NY-Slip-Op-50011U.pdf> accessed on 11 November 2023.

³⁵ Pursuant to the Lease, the rent in Years 6-10 is to be 115% of the rent fixed during Years 1-5 of the 10-Year Lease Extension.

³⁶ Highest and best use in the context of estimating market rent of a *space* lease should consider reasonably probable uses permitted under the prevailing land use controls supported by an investment horizon or holding period of 10 years, consistent with the term of the lease extension and lease expiry, as of the valuation or rent reset date stipulated in the lease. In other words, prospective retail/commercial tenants requiring more than 10 years recouping their investment in the business and leasehold improvements should be disregarded in the highest and best use analysis. Certainly, the remaining term of the lease, i.e., the 10-year lease extension and lease expiry of May 31, 2024, is a “relevant factor” in the highest and best use analysis.

As noted by the court, “highest and best use” is a phrase used all the time in the real estate industry. Determining highest and best use is within the jurisdiction of the arbitrators (unless the use is stipulated in the lease or agreed to by the parties). However, the court ruled that the arbitrators could not limit their valuation analysis to the use of the demised premises as a *McDonald’s* restaurant without determining if there are more valuable uses for the demised premises pursuant to the language of the rent reset clause.

‘Highest and best use’ analysis can prove challenging in a rent reset of a leasehold defined only as part of a building or complex and with a fixed term under single tenant occupancy. *McDonald’s* space lease, with a remaining term of 10 years,³⁷ consists of 5,900 square feet on two levels, street frontage of 37.75 feet (midblock location), and benefits from exposure to pedestrian and vehicular traffic (high volume in Times Square). The potential proxy tenant pool for the space occupied by *McDonald’s* is limited, as space requirements vary from tenant to tenant depending on the nature of the business and intended use.

10. APPRAISAL SUGGESTIONS AND CONTENT

A lease that calls for the exchange of appraisal reports by a specified date requires each party give its appraiser sufficient lead time to complete the appraisal in a credible and timely manner. Conversely, it is equally important that an appraiser retained on behalf of a party involved in a rental dispute be aware of and comply with contractual obligations involving compliance with recognized appraisal principles and standards such as Uniform Standards of Professional Appraisal Practice (USPAP), Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP) or International Valuation Standards (IVS),³⁸ and timely completion and delivery of an appraisal report. If the appraisal is to be independently reviewed (Sevelka, 1996 & 1997; Sorenson, 2010),³⁹ more lead time should be set aside to commission the appraisal. A lease clause or provision that imposes unrealistic timeframes for the preparation and exchange of appraisal reports should, if possible, be renegotiated or temporarily relaxed for the mutual benefit of the parties before proceeding to arbitration.

Credible appraisal evidence is crucial in a rent reset dispute, and each party (or their legal counsel) should exercise due diligence in overseeing the appraisal process to provide for the following:

- The appraiser’s overriding duty is to assist the trier of fact (i.e. arbitrator, arbitral panel or court) and to provide evidence that is objective and non-partisan, and a statement to that effect should be attached to the appraisal report.
- The appraisal report must identify the intended user, the intended use (i.e., arbitration), type of value (e.g., market value, market rental value) and sourced definitions, effective date of opinions and conclusions, and any assignment conditions.⁴⁰
- The appraisal report should include a detailed curriculum vitae disclosing professional qualifications, emphasizing knowledge and experience relevant to the valuation issue(s) in dispute.
- The appraisal report should include a “Lease Synopsis,” with an executed copy of the Lease attached to the appraisal report.
- The appraisal report should include date-stamped aerial views and street scenes to provide the arbitrator or arbitral panel with a geographic context for the subject property (demised premises).
- The *Scope of Work*⁴¹ undertaken and presented in the appraisal must be consistent with the intended use, outlining the nature and extent of the research conducted in connection with

³⁷ In *United Equities, Inc. v. Mardordic Co.*, 8 AD 2d 398 (1st Dept. 1959), *aff’d* 7 N.Y. 2d 911 (1960), the court ruled that consideration must be given to the term of the rent reset (21 years) and the renewal option (21 years), or 42 years in total, in determining “the best use to which the land can be put and not limited to improvement as a garage,” para. 405. With rent fixed for only 21 years, redevelopment options may be impacted by mortgage financing constraints.

³⁸ In *Westmay Container Services Ltd. v. Freeport Properties Ltd.*, 2009 BCSC 184 (CanLII), the arbitrator rejected a two-step procedure (i.e., estimated property value times estimated rate of return) in favour of an estimated lease rate applied directly to the demised premises in resetting the rent. The rationale for resorting to indirect methods of estimating rent should be adequately explained in the appraisal report.

³⁹ Appraisal Review requirements are covered under Standard 3 and Reporting Standard 4 of USPAP; Standards Rule 10 and 11, and Reporting Standards 6 and 7 of CUSPAP; and Section 6 under Professional Standard 2 of the RICS Valuation – Global Standards, effective January 31, 2022.

⁴⁰ See “Identification of the Appraisal Problem,” *The Appraisal of Real Estate*, 15th ed., p. 30.

⁴¹ CUSPAP (effective January 1, 2024) 3.72 defines *Scope of Work* as “[t]he type of inspection, the type and extent of research and analysis required, any limitations, or other terms to fulfill the Authorized Assignment. The Scope of Work for an Assignment is determined by the Member’s compliance to CUSPAP and applicable legislation. [see 6.2.4, 7.5, 7.6]

the rent reset assignment, and reliance on reports prepared by other professionals must be disclosed. The appraisal report should be proofread for typographical errors, math errors, factual omissions, inconsistent statements and inclusion of privileged documents or information inadmissible in a court of law such as protected client-lawyer communications or work product.⁴²

- The appraisal report should be independently reviewed before reports are exchanged, and prior to submitting the report to the arbitrator or arbitral panel. If necessary, the appraisal report should be amended to shore up any weaknesses and reconcile inconsistencies, and correct errors of commission or omission, all to ensure compliance with professional appraisal standards,⁴³ and applicable legal requirements.
- The appraisal report should include sketches (or architectural drawings, if available) and confirmed measurements of the demised premises⁴⁴ or premises in dispute if not explicitly defined in the lease or agreed to by the parties. It is preferable for the parties to jointly retain a qualified third-party to conduct measurements of demised premises in dispute prior to commencing the arbitration. If the demised premises include improvements or structures, a building permit history and analysis should be provided, if readily available.
- Ideally, the appraisal report should include an abstract of title or parcel register for each comparable sale or comparable lease relied on in the rent reset analysis.
- The appraisal should disclose and analyze recent leasing activity or listings of the subject and all of the comparable market data relied on in the rent reset analysis extending for a period of time prior to the effective date of the rent reset considered appropriate by the appraiser.
- The appraisal should disclose the address or legal description of each comparable lease/rental and the extent of documentation and verification of each comparable lease/rental relied on in the rent reset analysis.
- The appraisal should disclose whether and when a sale or lease/rental comparable has been inspected, and, ideally, by whom. All photographs and aerial views should be date-stamped.
- The reliance on published surveys (e.g., land prices, rental rates, rates of return, etc.) should reflect an understanding as to how they were conducted, for what purpose and by whom.
- The reliance on any *assignment conditions*⁴⁵ must not limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use, and the assignment conditions must be disclosed in the appraisal report.
- The appraisal methods and techniques relied on must be appropriate and properly applied, consistent with the intended use of the appraisal, and reflect the current body of appraisal knowledge.⁴⁶

11. CASE STUDY – REVIEW OF A RENT RESET ARBITRATION AWARD

In a rent reset involving a landlord and *Best Buy Canada Ltd.* as the lessee (tenant), the dispute was confined to determining “market rent” of a space lease for 5 years, consisting of a 37,000-sf store (occupied by Best Buy) on two levels (17,385 sq. ft. – 1st floor, and 19,598 sq. ft. - 2nd floor) and 109 surface parking spaces, argued before a “single” arbitrator:

“Fixed Rent for the sixteenth (16th) through twentieth (20th) Lease Years [June 1, 2014 – May 31, 2019] (i.e., the second option period) shall equal the greater of (i)...\$1,095,030.00 per

⁴² The rules of privilege are matters of public policy that are to be enforced in arbitration just as they would be in litigation, p. 4; “Best Practices Regarding Evidence in Arbitrations,” *American College of Trial Lawyers, Alternative Dispute Resolution Committee*, February 2018. Retrieved from https://www.actl.com/docs/default-source/alternative-dispute-resolution-committee/adr_best_practices_regarding_evidence_in_arbitrations.pdf?sfvrsn=2.

⁴³ Compliance with CUSPAP, USPAP or IVS, depending on the laws in the jurisdiction in which the property is located, and, if a member of a professional organization, compliance with their rules and regulations.

⁴⁴ *Demised premises* are defined as “[p]roperty that is leased to a person or entity for a specific period of time...,” *The Dictionary of Real Estate Appraisal*, 7th ed. (Chicago: Appraisal Institute, 2022), 51.

⁴⁵ USPAP defines Assignment Conditions as “assumptions, extraordinary assumptions, hypothetical conditions, laws and regulations, jurisdictional exceptions, and other conditions that affect the scope of work. Laws include constitutions, legislative and court-made law, administrative rules, and ordinances. Regulations include rules or orders, having legal force, issued by an administrative agency.”

⁴⁶ References to outdated appraisal texts should be avoided. Quoting from outdated appraisal texts may be a sign of indifference to the profession expanding its body of knowledge or his or her own knowledge, especially if the appraiser’s curriculum vitae fails to demonstrate the knowledge and experience necessary to complete an assignment for its intended use.

annum; or (ii) the market rental value for the Premises but excluding from consideration, the Tenant's signs, trade fixtures, furnishings and interior finishes. Should the Landlord and Tenant not be able to agree on the market rental value in respect of the Premises, the issue shall be arbitrated in accordance with the *Arbitration Act* (Ontario)."

"In the event of any bona fide dispute arising between Tenant and Landlord under this Lease, the dispute, at the option of Landlord or Tenant will immediately be referred to a single arbitrator to be agreed upon by Tenant and Landlord...Such arbitrator, whether agreed on or appointed, will have access to such records of the parties as are reasonably necessary and the decision of such arbitrator will be final and binding upon the parties. The cost of the arbitration will follow the award, unless otherwise determined by the arbitrator."

At the outset of the arbitration, the Landlord's appraisal estimated the annual market rental value at \$1,653,140, while the Tenant's appraisal estimated the annual market rental value as a range of \$662,771 to \$983,232, with both appraisers relying on comparable lease/rental data. Subsequent settlement offers made by each party were rejected. The divergence in the parties' market rental value estimates is an astonishing 68% to 150%. A brief review of the arbitrator's award, which in this rental dispute required a reasoned award,⁴⁷ reveals the following:

- "Sales volumes,"⁴⁸ a fundamental metric of a "big box"⁴⁹ retail operation, and the typical parking ratio required to support a retail operation⁵⁰ are not mentioned in the arbitral award, but it is unknown whether this information was contained in either party's appraisal report.
- One of the appraisals treated the store and parking as two discrete components, contrary to the language of the lease,⁵¹ to derive a market rental rate for the Premises (consisting of the property as a whole), an approach which is inconsistent with recognized appraisal theory.
- In the presentation of comparable lease/rental data, the reported per square foot rates are "net", but it is unknown whether either party's appraisal report included a cost of occupancy analysis⁵² to account for differences in operating expenses between the subject Premises and each comparable lease/rental.
- As for the corresponding parking ratios of the comparables, it is unknown whether that information was provided in either party's appraisal report.
- Although the arbitrator accepted that the "amended use provision [in the Lease] is broad enough to encompass a wide variety of uses," there is no reference in the decision as to the

⁴⁷ Under the Commercial Arbitration Rules of the American Arbitration Association (CAR-46(b)), "[t]he arbitrator need not render a reasoned award unless the parties request an award in writing prior to appointment of the arbitrator or unless the arbitrator determines a reasoned award is appropriate." According to JAMS Comprehensive Arbitration Rules & Procedures, effective June 1, 2021, Rule 24 (h), "[t]he Award shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim. Unless all Parties agree otherwise, the Award shall also contain a concise written statement for the Award."

⁴⁸ In 2009, at the time of the previous rent reset, the Best Buy Brand averaged sales of \$877 per sq. ft. based on 1,023 stores and an average store size of 39,000 sq. ft. In 2014, Best Buy's average store size was 27,400 sq. ft., and sales volume averaged \$770 per sq. ft. based on 1,779 stores, <https://retail-index.emarketer.com/company/data/5374f24e4d4afd2bb4446640/5374f25d4d4afd824cc1564d/lfy/false/best-buy-real-estate> [accessed 27 November 2023].

According to CBRE's July 13, 2015 *Marketflash* (Money Talks: Retail Sales Productivity Show Divergence in Performance), Best Buy Co. Inc.'s (Future Shop, Best Buy, Best Buy Mobile) sales productivity in Canada averaged \$800 per sq. ft. in 2013.

⁴⁹ "A single-use store, typically between 10,000 and 100,000 square feet or more, such as a large bookstore, office-supply store, pet store, electronics store, or toy store (ICSC)" *Dictionary of Real Estate*, 7th ed. p. 18. The typical lease term for a "Big Box" store is 20 years, often structured as an initial term of 10 years at fixed rental rates with two 5-year lease extensions or options to renew, also at fixed rental rates.

⁵⁰ A typical parking ratio for a "big box" retailer is between 4.5 and 5.5 stalls per 1,000 sq. ft. of Gross Leaseable Area (GLA). The subject Premises has a parking ratio of 2.87 stalls per 1,000 sq. ft. of GLA, which may be appropriate given that the store is located in a densely populated urban area on a subway line in midtown Toronto, Ontario.

⁵¹ The parking component is operated by a third party on behalf of the tenant under a License Agreement with the tenant. A "license" is not an interest in land, and *The Dictionary of Real Estate*, 7th ed., defines "license" as "[f]or real property, a personal, unassignable, and typically revocable privilege or permit to perform some activity on the land of another without obtaining an interest in the property." [p. 108] In *12400 Stowe Drive, LP v. Cycle Express, LLC*, Cal: Court of Appeals, 4th Appellate District, Division One, the "Premises" consist of a 133,125 sq. ft. industrial building on a 297,505 sq. ft. site and an adjoining 112,830 sq. ft. vacant lot used for customer parking during auctions, as no off-site parking is permitted. In resetting the rent for the 5-year lease extension, the court found in favor of the tenant's appraisal, which estimated the market rental value of the two components as one "collective unit" at \$106,500 per month, based on the conditions and restrictions contained in the Lease. The landlord's appraisal valued each component separately in its highest and best use and arrived at a combined market rental value of \$138,270 per month.

⁵² Tenants are concerned about *Occupancy Cost*, which "...constitute the rent and reimbursables (expense reimbursements to the landlord as specified in the lease), which may include items such as heat, utilities, janitor service, taxes not included in the rent, and amortization of the tenant's cost of alterations over the term of the lease." *The Dictionary of Real Estate*, 7th ed., p. 134.

zoning of the subject property (Premises) and the Permitted Uses. It is unknown whether either party's appraisal report contains a zoning analysis of the demised Premises.

- There is no indication which, if any, of the *uses* reflected in the comparable lease/rental data would be permitted in, or suitable for the subject Premises (37,000 square feet over two levels), and available for the 5 years remaining on the term of the Lease. It is unknown whether this information is contained in either party's appraisal report.
- Only one of the rental comparables (an available sublease) presented in one of the party's appraisal report is for a term of 5 years, consistent with the 5-year period for which the rent was to be fixed, and is on two levels (13,400 sq. ft. – 1st floor, and 14,500 sq. ft. – 2nd floor), as is the subject space, but it was dismissed by the arbitrator as “not an accurate reflection of the market.”

There may be no reasonable basis for the large divergence in the opinions of market rental value, and why the arbitration should have taken “some ten days” to complete is not entirely clear. Neither party's opinion of market rental value was accepted by the arbitrator, who fixed the rent for the Premises at \$1,279,260. Based on the entirety of the evidence presented by the parties, the arbitrator identified the Landlord as “the prevailing party,” leaving the Tenant to bear the cost of the arbitration, including the Landlord's Costs Award of \$383,000. On appeal, the Tenant argued unsuccessfully against the Costs Award claiming that the Awarded Rent of \$1,279,260 was closer to the minimum “Base Rent” of \$1,095,030 than the Landlord's settlement Offer of \$1,550,000. As noted by the court,

“The Arbitrator was entitled to exercise his discretion in weighing the relevant factors he considered in making the Costs Award.”

The arbitration lasted 10 days at an approximate cost of \$1,000,000. Both parties would likely have benefited had each party undertaken an independent review of their own appraisal prior to relying on it for the purpose of the rent reset arbitration, assuming no such review was undertaken.

Ensuring an appraisal report has addressed the disputed rent reset valuations issue(s) in a thorough and credible manner should be of assistance to each party in understanding the relative merits and strength of its case and assist the arbitrator or arbitral panel in deciding the dispute, and reduce the cost of the arbitration to both parties. Arbitrators make decisions on the basis of the appraisal evidence presented to them, and the decisions they make are guided by the completeness, accuracy, adequacy, relevance and reasonableness of the appraisal reports.

12. ARBITRATOR REJECTS NON-COMPLIANT APPRAISAL REPORT

Presenting appraisal evidence that falls short of the professional standards expected of a “reasonable appraiser”⁵³ and that does not follow “applicable appraisal principles” can cause a party to sustain significant financial losses, and, in turn, could have unintended consequences for an appraiser whose client has received an unfavourable decision in an arbitration as occurred in the dispute between two parties over the value of an unserviced 84-acre parcel to be developed some six to eight years in the future as a residential subdivision.⁵⁴

A retired judge presided over an 18-day hearing as the sole arbitrator, and based on a very detailed analysis referencing an authoritative appraisal text and generally accepted appraisal standards he rejected the appraisal prepared on behalf of one of the parties. In effect, one party was left without any appraisal evidence on which to rely in support of its position. The reasoning in support of the arbitrator's decision to reject the appraisal is reproduced, in part, as follows:

“In his analysis, [the] Arbitrator...imported and, with rigour, applied a number of professional standards from the Canadian Uniform Standards of Professional Appraisal Practice [CUSPAP] and the text *The Appraisal of Real Estate, 3rd Edition, Canadian Edition*, published by the Appraisal Institute of Canada [AIC]. He reasoned that the latter part of Article 9 [of the Co-Tenancy Agreement] was intended to make the AIC Standards and principles in its text applicable to the appraisals called for under the CTA.⁵⁵

⁵³ CUSPAP 3.64 defines “Reasonable Appraiser” as “[a] Member providing Professional Services within an acceptable standard of care and based on rational assumptions. [see 4.2.5, 7.1.2, 9.9]

⁵⁴ On the facts of the case, the arbitrator concluded that the Subdivision Development Approach had no application.

⁵⁵ Under the CTA, the appraisals had to be prepared by designated “AACI” members of the Appraisal Institute of Canada.

...[T]he...Report did not qualify as an appraisal under Article 9 of the CTA [Co-Tenancy Agreement]; on the evidence there was no factual basis for estimating the value of the land using the appraisal method [Land Residual Approach] chosen by...[the appraiser]; and, there were errors in the inputs and/or calculations...[the appraiser] had made, as reflected in the detailed reasons given between pages 15 and 40 of his decision.

...[The] Arbitrator examined the “Land Residual Approach” said by...[the appraiser] to have been used to determine the fair market value⁵⁶ of the subject property. This approach was described in the AIC text as one technique of giving effect to the income approach. In contradiction, notes the Arbitrator, the income approach was said by the appraisal not to be relevant. He rejected...[the appraiser’s] insistence that the Land Residual Approach was the same as the Subdivision Development Approach, as being inconsistent with the authoritative text...In comparing...[the appraiser’s] report and evidence to specific A.I.C. standards, [the] Arbitrator said they “... did not begin to comply”.

The arbitrator informed himself as to the body of knowledge articulated in *The Appraisal of Real Estate*, and the *Canadian Uniform Standards of Professional Appraisal Practice* (CUSPAP), standards to which all members of the Appraisal Institute of Canada must comply.

It is apparent that the “Land Residual Approach” is not the same as the “Subdivision Development Approach,”⁵⁷ and one is not a substitute for the other. The financial losses sustained by the party left without an acceptable appraisal, including a reported \$800,000 payment of costs levied by the arbitrator, could possibly have been avoided had the appraisal report been independently reviewed prior to the arbitration, assuming no such review was undertaken. The party’s trust in the appraisal proved fatal. In some jurisdictions, an appraiser retained as an expert witness may be liable for negligence in his or her report or testimony,⁵⁸ and could be held liable if the retainer agreement (contract) with the client is breached and results in financial losses. The appraiser’s work product might also lead to an investigation by the umbrella organization of which the appraiser is a Member. Of course, before an assignment is accepted an appraiser has an obligation to satisfy the competency provision as set out in CUSPAP, USPAP or IVS, depending on the governing Standards.⁵⁹

13. CONCLUSION

Arbitration may be preferable to court proceedings as a mechanism to resolve disputes over private contracts such as leases, especially valuation issues involving rent resets. While still adversarial, arbitration is a consensual and typically less formal procedure, and resolution of a dispute is timely. Arbitrators experienced as valuers understand the appraisal process and the governing appraisal standards (e.g., USPAP, CUSPAP, IVS), making appraisers suitably qualified to act as arbitrators in rent reset disputes. An arbitrator whose rent reset decision rests on appraisal evidence has an expectation of being able to rely on credible appraisals, as does each party on whose behalf the appraisal has been prepared.

An arbitrator retained for their subject matter expertise should be capable of identifying both the strengths and weaknesses of each party’s appraisal evidence, while performing the arbitral duties in a

⁵⁶ *The Dictionary of Real Estate*, 6th ed., 2015, defines “fair market value, in nontechnical usage, a term that is equivalent to the contemporary usage of market value.” The 7th ed., 2022, defines “fair market value, in nontechnical usage, a term that is generally synonymous with the contemporary usage of market value.”

⁵⁷ According to *The Appraisal of Real Estate “Third Canadian Edition*, 2010,” [t]he land residual technique is a method of estimating land value in which the net operating income attributable to the land is isolated and capitalized to produce an indication of the land’s contribution to the total property,” [p. 16.12] which differs from the steps involved in “subdivision development analysis.” See *Subdivision Valuation*, 2nd ed., © 2017, Appraisal Institute, Chapter 11 (Land Value Using the Subdivision Development Method).

⁵⁸ In Canada, an expert witness that “provides evidence that was useless” to the client and to the court (arbitrator or arbitral panel) is entitled to “expert witness immunity.” (See *The 6th Line Mofos Limited v. Stewart* 2022 ONSC 520). In the United States, some jurisdictions do not permit a party to sue its own expert witness. In Florida, an expert in an arbitration hearing may not rely on the statutory immunity granted to arbitrators and may be sued for negligence. Fla. Stat. §682.0 51 (2016) created statutory immunity for arbitrators, and immunity has never been expressly expanded to include experts. (Brian C. Willis, “Resolving Disputes By Expert Determination: What Happens When Parties Select Appraisers, Accountants, Or Other Technical Experts To Decide Disputes.”) *Florida Bar Journal*, Vol. 91, No. 7 July/Aug 2017, p. 35, <https://www.floridabar.org/the-florida-bar-journal/resolving>, accessed on 14 November 2023. In the United Kingdom, in the decision of the Supreme Court in *Jones v. Kaney*, [2011] UKSC 13, “expert witness immunity” was abolished for a party suing its own expert in a claim for negligence.

⁵⁹ Peter T. Christensen, “Averting Professional Liability Claims, Essential guidelines for appraisers serving as expert witnesses,” *Right of Way* (November/December 2016): 24-27, <https://www.liability.com/publications/2016/averting-professional-liability-claims.aspx>, accessed on 20 November 2023.

neutral manner and in accordance with the arbitration agreement and arbitration act governing the geographic location of the demised premises. Depending on the jurisdiction in which the property is located, the complexity of the valuation issue(s) or the amount of rent in dispute, it may be appropriate for each party to have its own appraisal report independently reviewed by a qualified appraiser prior to the arbitration, and address any shortcomings warranting revisions to the appraisal report. A party's failure to have its own appraisal independently reviewed prior to acting upon it could prove to be a costly oversight.

Arbitrators exercise wide discretion as to how they weigh appraisal evidence, and appraisal evidence that is credible will carry more weight. Valuations at the extremes do little to enhance the credibility of the appraisal profession. Arbitration awards are final and binding,⁶⁰ absent any extremely limited irregularities. Accordingly, each party should exercise due diligence in formulating an appropriate appraisal strategy in anticipation of a rent reset arbitration. Rent reset arbitrations can be costly, but an effective pre-arbitration appraisal strategy will shorten the duration of the arbitration and likely result in substantial cost savings to both parties.

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⁶⁰ "Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes, it should receive every encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or fact." *Burchell v. Marsh*, 58 US 344 (1854) 17 How.344.

AUTHORS' DECLARATIONS AND ESSENTIAL ETHICAL COMPLIANCES

Author's Contributions (in accordance with ICMJE criteria for authorship)

This article is 100% contributed by the sole author. He conceived and designed the research or analysis, collected the data, contributed to data analysis & interpretation, wrote the article, performed critical revision of the article/paper, edited the article, and supervised and administered the field work.

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Research involving human bodies or organs or tissues (Helsinki Declaration)

The author(s) solemnly declare(s) that this research has not involved any human subject (body or organs) for experimentation. It was not a clinical research. The contexts of human population/participation were only indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or ethical obligation of Helsinki Declaration does not apply in cases of this study or written work.

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The author(s) solemnly declare(s) that this research has not involved any animal subject (body or organs) for experimentation. The research was not based on laboratory experiment involving any kind of animal. Some contexts of animals are also indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) does not apply in cases of this study or written work.

Research on Indigenous Peoples and/or Traditional Knowledge

The author(s) solemnly declare(s) that this research has not involved Indigenous Peoples as participants or respondents, with the documentation of their Indigenous Knowledge. Some other contexts, if any, of Indigenous Peoples or Indigenous Knowledge are only indirectly covered through literature review. An Ethical Clearance 'to conduct research on indigenous peoples' Indigenous knowledge is also not relevant. Therefore, an Ethical Clearance (from a Committee or Authority) or prior informed consent (PIC) of the respondents or Self-Declaration in this regard does not apply in cases of this study or written work.

Research involving Plants

The author(s) solemnly declare(s) that this research has not involved the plants for experiment or field studies. The contexts of plants were only indirectly covered through literature review. Thus, during this research the author(s) obeyed the principles of the Convention on Biological Diversity and the Convention on the Trade in Endangered Species of Wild Fauna and Flora.

(Optional) Research Involving Local Community Participants (Non-Indigenous)

The author(s) solemnly declare(s) that this research has not involved local community participants or respondents belonging to non-Indigenous peoples. This study did not involve any child in any form directly. The contexts of different humans, people, populations, men/women/children and ethnic people are also indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or prior informed consent (PIC) of the respondents or Self-Declaration in this regard does not apply in cases of this study or written work.

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The author(s) has/have NOT complied with PRISMA standards. It is not relevant in case of this study or written work.

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Enhancing Conservation Communication: Using Digital Literacy to Address the Misunderstanding of Southern Africa's Sustainable Use Approach in Western Settings

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ABSTRACT

Effective communication and digital literacy are crucial for addressing misunderstandings about the Southern African approach to sustainable use in Western settings. This paper highlights the need to enhance conservation communication and explores the role of digital communication in bridging the gap between the Southern African approach and Western conservation paradigms. The Southern African emphasis on community-based natural resource management (CBNRM) and sustainable wildlife use for both conservation and economic purposes often faces misinterpretation and scepticism in Western societies that prioritize preservation and non-consumptive use. By analysing literature, case studies, and communication strategies, this study identifies the challenges stemming from cultural biases, differing conservation ideologies, and limited understanding of the Southern African context. It investigates the significance of digital literacy in overcoming these challenges by promoting the development of technology skills among conservation practitioners and members of communities coexisting with wildlife, equipping them with relevant digital tools, promoting information sharing, fostering cross-cultural dialogue, and engaging diverse stakeholders through digital platforms. The paper stresses the significance of utilizing diverse communication channels (including social media, online forums, websites, campaigns, multimedia tools, and educational resources) to share accurate and culturally sensitive information about the Southern African approach. It highlights the necessity for tailored communication strategies that consider the distinct needs and values of various audiences, incorporating digital approaches involving active listening, dialogue, and the integration of local knowledge. This study promotes the development of inclusive and accessible spaces through improved digital literacy and effective communication strategies. It advocates for mutual understanding and collaboration between Western and Southern African conservation practitioners, stakeholders, and decision-makers. By leveraging digital platforms and enhancing communication competencies, the Southern African approach can be better comprehended within Western settings, fostering sustainable conservation practices and nurturing collaborative partnerships in conservation initiatives.

Keywords: Conservation communication; Digital literacy; Sustainable use; Conservation

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1. INTRODUCTION

Amid the ongoing discourse surrounding trophy hunting, it has become evident that proponents of animal rights, who frequently prioritize the welfare of animals over human rights, often lack a comprehensive understanding of the African perspective on sustainable use. Recognizing the contrasting viewpoints on sustainable use held by these parties, it has become apparent that initiating a dialogue is crucial to foster a deeper understanding and bridge the gap between these differing perspectives.

In addition to the urgent need for dialogue, it is essential to acknowledge the role of cultural nuances in shaping perspectives on sustainable use. Southern Africa's longstanding traditions and cultural practices have historically involved a close relationship with wildlife, viewing animals as integral components of their heritage. Understanding the cultural context is pivotal in appreciating the intricate balance between human livelihoods and wildlife conservation. Engaging in meaningful conversations that incorporate cultural sensitivity can contribute to a more holistic understanding of how communities in Southern Africa perceive and value sustainable use practices, shedding light on the deep-rooted connections between humans and the environment.

Furthermore, the discourse on trophy hunting often oversimplifies the complex dynamics at play in Southern Africa's conservation strategies. Conservation efforts in the region are multifaceted, addressing not only ecological concerns but also socio-economic factors. Sustainable use, when managed responsibly, can provide communities with economic incentives for conservation, supporting local livelihoods and fostering a sense of stewardship towards wildlife. By highlighting the intricate web of ecological, cultural, and economic considerations in Southern Africa's approach to sustainable use, this dialogue seeks to dispel misconceptions and encourage a more nuanced understanding of the interconnected challenges faced by communities engaged in wildlife management. Only through a comprehensive and inclusive discourse can a path be forged towards conservation practices that respect both animal welfare and the well-being of local communities.

This paper is subdivided into three sections. The first section aims to provide a comprehensive understanding of the sustainable use approach adopted in Southern Africa for wildlife conservation. To do that, we explore the historical and cultural context that shapes the Southern African perspective on sustainable wildlife management. It is also aimed at identifying and conducting a critical analysis of the prevalent misconceptions and misunderstandings surrounding Southern Africa's sustainable use approach in Western societies. In that regard, we examine the factors contributing to these misconceptions, such as cultural differences, ethical perspectives, and media portrayals.

The second section discusses the role of digital literacy in addressing the misunderstandings discussed in the first section. In this regard, the potential of digital platforms and tools in shaping public perceptions and opinions related to wildlife conservation is investigated. Assessment is also made of the impact of misinformation and biased narratives on social media platforms and other online sources regarding Southern Africa's sustainable use approach.

The third section proposes strategies to bridge the gap between Southern Africa's sustainable use approach and Western perspectives. There, the use of social media, online campaigns, and other digital platforms to disseminate accurate information and engage diverse audiences is explored. Case studies and best practices in leveraging digital literacy for improving conservation communication and fostering a more nuanced understanding of sustainable wildlife management is equally evaluated. By addressing these objectives, the paper aims to contribute to the advancement of effective conservation communication strategies that utilize digital literacy to mitigate misunderstandings surrounding Southern Africa's sustainable use approach in Western settings.

2. METHODS

This paper relies on a combination of desk research and field observations conducted by the authors. They conducted a comprehensive literature review to gather existing knowledge and insights on the southern African and western views of sustainable use, conservation communication, and digital literacy. The authors also reviewed relevant academic journals, books, reports, and online resources to establish a theoretical foundation for the research.

Representative case studies were selected from both Southern African and Western contexts to examine the misunderstandings surrounding the sustainable use approach. These cases were chosen based on their relevance, diversity, and impact. Conversations (around experiences, challenges, and

perspectives) with practitioners, experts, and stakeholders from both end of the conservation spectrum, as well as observations from participation in surveys and activities in the field in Southern Africa have equally informed the development of this paper.

Having contributed to communication strategies and analysed the digital content of CBNRM-organizations in Namibia, including social media, websites, and online forums, the authors identified that digital literacy was an urgent need. Moreover, content analysis from previous research (Al-Shawaf, and Buss, 2021; Castillo-Huitrón et al., 2020; Snorek and Bolger, 2022) has identified misinformation, common misconceptions, and patterns of communication that contribute to misunderstandings. The combination of these methods will provide a comprehensive understanding of the misunderstandings surrounding the sustainable use approach in Western settings and the role of digital literacy in addressing them.

3. BACKGROUND ON SOUTHERN AFRICA'S SUSTAINABLE USE APPROACH AND IMPACTS OF PARK ESTABLISHMENT ON WILDLIFE CONSERVATION AND LOCAL COMMUNITIES

Historically, Southern African communities had traditional systems of resource management that involved sustainable practices to ensure the long-term availability of natural resources. These practices often incorporated local knowledge, customary laws, and cultural beliefs and rituals that promoted the sustainable use of resources (Child and Barnes, 2010; Fabricius, 2004; Mohamed-Katere, 2001). According to Pearce (2010), prior to the establishment of wildlife parks, animals were arguably better preserved. However, with the introduction of parks, a shift occurred in the dynamics of local populations and conservation efforts. This transformation brought about the implementation of quotas, privatization, and the emergence of small beneficiary groups, leading to a cascade of consequences that had detrimental effects on both wildlife preservation and community relations.

During the colonial era, the management of natural resources shifted towards centralized control by colonial powers, leading to the exclusion of local communities from decision-making processes and resource access (Dilys et al., 2009). This approach resulted in the degradation of ecosystems and marginalized local communities who had traditionally depended on those resources (Boudreaux, 2007). The exclusivity also led to a diminished sense of ownership and involvement among the local communities, as their original perception of their habitats – now turned parks - as communal resources for the benefit of all was altered. The imposition of privatization further exacerbated this issue, as it resulted in the exclusion of traditional users and cultivators of the land. According to Colchester (2003): “national parks and other protected areas have imposed elite visions of land use, which result in the alienation of common lands to the State. What is equally clear is that the conservationists’ concept of wilderness is a cultural construct not necessarily shared by other peoples and civilizations, which have quite different views of their relationship with what we call nature”.

Box 1: Views of nature by Indigenous peoples, extracted from Colchester’s 2003 report entitled Salvaging Nature.

Indigenous peoples are thus perplexed by western views of what conservation means. For example, Jakob Malas a =/Khomani hunter from the Kalahari, whose lands were classified as the Gemsbok National Park, has noted: “The Kalahari is like a big farmyard. It is not a wilderness to us. We know every plant, animal, and insect, and know how to use them. No other people could ever know and love this farm like us”. The nineteenth century Ogala Sioux Chief, Luther Standing Bear, made a similar point: “We did not think of the great open plains, the beautiful rolling hills, and winding streams with tangled growth as ‘wild’. Only to the white man was nature a ‘wilderness’ and only to him was the land ‘infested’ with ‘wild’ animals and ‘savage’ people. To us it was tame. Not until the hairy man from the east came... was it ‘wild’ for us”. Ruby Dunstan of the NI’aka’pamux people of the Stein Valley in Alberta, Canada, who have been fighting to prevent the logging of their ancestral lands, has likewise remarked: “I never thought of the Stein Valley as wilderness. My Dad used to say, ‘that’s our pantry’. We knew about all the plants and animals, when to pick, when to hunt. We knew because we were taught every day. It’s like we were pruning everyday... But some of the white environmentalists seemed to think if something was declared a wilderness, no-one was allowed inside because it was fragile. So they have put a fence around it, or maybe around themselves.”

Furthermore, small beneficiary groups within the park management system contributed to the erosion of trust within local communities. As certain individuals or organizations gained exclusive access and privileges, suspicion and resentment grew among those who felt excluded. This breakdown in trust had a ripple effect, causing communities to disengage from collaborative conservation efforts and pursue their own interests, often at the expense of wildlife preservation. As a result, the accelerated extinction of animals occurred due to increased poaching, habitat destruction, and a lack of concerted efforts to address conservation challenges.

In the post-colonial period, there was a growing recognition of the importance of involving local communities in natural resource management. This led to the emergence of community-based natural resource management (CBNRM) initiatives in the 1980s and 1990s (Fabricius et al., 2013). CBNRM aimed to devolve rights and responsibilities over resources to local communities, recognizing their traditional knowledge and rights to benefit from those resources (NACSO, 2015). CBNRM programs sought to empower local communities by granting them ownership or access rights to natural resources, including wildlife, forests, and water. These programs emphasized community participation, benefit-sharing, and the integration of conservation with sustainable livelihoods (Child, 1996). The sustainable use of wildlife resources through regulated hunting and ecotourism became key components of CBNRM.

Over the past decade, a series of radical alternatives have emerged to refine the concepts, policies, and practices that underpin conservation in Africa. While the sustainable use approach in Southern Africa has often been interpreted as an effort to empower communities in conservation (Agrawal et al., 1997), it is important to distinguish that its dynamics are more intricate than a mere transfer of responsibility and authority from the state to the local communities (Borrini and Jaireth, 2007). Initiatives and alternatives developed under the Southern African sustainable use approach do not only involve the inclusion of local communities in conservation efforts but also incorporate market mechanisms and redefine the very essence of conservation, a concept further developed into the price-proprietorship notion (Child, 2000; Child, 2012; Bond, et al., 2004). Consequently, this approach represents a "new conservation" paradigm that aims to transcend the historical and western framework of "fortress conservation" (Adams & Hulme, 1998), which has been influenced by colonial and neo-colonial constructs for most of this century.

Mainstream, conventional or fortress conservation initiatives have repeatedly had negative impacts on local livelihoods (Betoko & Carvalho, 2020), frequently resulting in violence against people and property (Pemunta, 2019), as well as forced resettlement that leads to long-term deterioration of living standards (Luoma, n.d), contrarily to the new conservation model.

3.1 Significance of the New Conservation Model in Conservation Efforts

The new conservation model incorporates three arguments: Firstly, conservation is advocated to shift from a state-centric approach to one rooted at the local level in society. This challenges the perception that rural Africans are solely responsible for environmental degradation, as their Indigenous knowledge demonstrates a sophisticated understanding of environmental processes. Instead of being seen as perpetrators, they should be recognized as legitimate proprietors, with rights and responsibilities over conservation resources (Western et al., 1994). This shift rejects the notion of separating humans from nature through state coercion and advocates complete transfer of management responsibilities and property rights over natural resources to local communities. Initiatives like CBNRM have influenced practices in Namibia, and proponents of Zimbabwe's CAMPFIRE program see it as necessary for realizing its full potential (Hulme and Murphree, 1999). The success of CBNRM in Southern Africa can be attributed to various factors, including legal reforms, policy frameworks, institutional support, and community capacity building (IRDNC, n.d). Several countries in the region, such as Namibia, Zimbabwe and Botswana, have implemented successful CBNRM programs that have demonstrated positive outcomes for both conservation and local communities.

Secondly, conservation is advocated to shift from preservation to sustainable development, with the aim of simultaneously achieving both conservation and development goals. This shift means that the things to be conserved, such as species, habitats, or biodiversity, are no longer untouched, but are now seen as renewable natural resources that can be utilized as long as it is done in a sustainable manner that does not compromise their long-term viability (Hulme and Murphree, 1999). This shift in thinking reflects an acknowledgement that much conservation discourse in the past has been seen as "environmental imperialism," prioritizing Western conservation goals over the development needs of

African nations. The world commission on environment and development report (Brundtland et al., 1987) emphasized the futility and injustice of expecting the poor to remain impoverished in the name of protecting the environment.

Thirdly, conservation is re-thought from a neoliberal economic perspective, emphasizing the importance of unrestricted markets in determining patterns of natural resource use, including conservation. Individuals "protect what they eat" by ensuring the food source does not go extinct. Thus, the economic principle of "use it or lose it" argues against protecting species and habitats from market forces, suggesting that an inefficient state (susceptible to corruption from poachers and timber companies) could lead to degradation (Lee et al., 2002). Instead, proponents advocate for exposing resources to a distortion-free market, where high economic values are placed on them, thereby increasing the likelihood of conservation. This approach relies on consumers, such as tourists, trophy hunters, and those valuing the species or habitat, bidding up prices and discouraging environmentally damaging uses like commercial agriculture.

According to Buscher and Fletcher, the realm of political ecology in conservation can be delineated along two primary axes: Nature/Culture Dichotomies and Beyond Nature/Culture Dichotomies. Within the axe of Nature/Culture Dichotomies, we encounter Mainstream Conservation characterized by its capitalist orientation and Neoprotectionism, which adheres to a non-capitalist ethos. Meanwhile, in the axe of Beyond Nature/Culture Dichotomies, we find New Conservation, aligned with capitalist principles, and Convivial Conservation, embracing a non-capitalist perspective (Buscher & Fletcher, 2020).

Within the framework of Nature/Culture Dichotomies, Mainstream Conservation stands as a prominent archetype marked by its inherent capitalist orientation. This perspective places a significant emphasis on market-driven approaches, private ownership, and the commodification of natural resources as strategies for conservation. Mainstream Conservation often aligns with economic interests, framing environmental protection within the context of profit-making ventures, such as ecotourism or carbon trading.

In contrast, Neoprotectionism emerges as a counterforce within the same dichotomy, advocating for conservation practices rooted in a non-capitalist ethos. Neoprotectionism rejects the commodification of nature and challenges the idea that market-driven solutions alone can effectively address environmental issues. Instead, it emphasizes community-based initiatives, indigenous knowledge systems, and a holistic, ecosystem-centered approach to conservation. This paradigm seeks to safeguard the environment by prioritizing sustainable practices, equitable resource distribution, and the preservation of cultural and ecological diversity.

The tension between Mainstream Conservation and Neoprotectionism encapsulates a broader ideological struggle within the Nature/Culture Dichotomies, reflecting divergent perspectives on the relationship between human societies and the natural world. This dynamic interplay shapes the discourse on conservation, influencing policies, practices, and the overall trajectory of environmental stewardship in a global context.

Within the expansive terrain of Beyond Nature/Culture Dichotomies, two distinct paradigms emerge: New Conservation, as a forward-looking approach, aligns itself with capitalist ideologies, acknowledging the role of markets and economic incentives in environmental management. Advocates of New Conservation argue that by integrating economic interests with conservation goals, innovative solutions can be devised to address environmental challenges. This paradigm often promotes strategies such as payments for ecosystem services, eco-certifications, and market-driven conservation initiatives. Proponents argue that by assigning economic value to nature, it becomes a more salient factor in decision-making processes, leading to more sustainable resource management. Borrowing from Buscher and Fletcher (2020), the new conservation movement can be summarised in these terms:

- Emphases on the importance of working with local communities in conservation efforts, recognizing their traditional knowledge and values, rather than solely relying on government or private organizations
- Protects individual species, habitats, and processes that sustain entire ecosystems
- Addresses social justice issues
- Advocates for a holistic approach to conservation
- From protected to promoted areas
- From saving nature to celebrating human and non-human nature
- From touristic voyeurism to engaged visitation

- From spectacular to everyday environmentalisms
- From privatized expert technocracy to common democratic engagement

On the other end of the spectrum, Convivial Conservation stands as a contrasting force within Beyond Nature/Culture Dichotomies, championing a non-capitalist perspective. This paradigm challenges the commodification of nature inherent in capitalist models and seeks alternative pathways for conservation that prioritize social and ecological well-being over profit. Convivial Conservation emphasizes community-based stewardship, participatory decision-making, and the recognition of diverse cultural values in shaping conservation practices. It aims to foster a harmonious coexistence between human communities and the environment, rejecting the notion that economic growth must come at the expense of ecological integrity.

The juxtaposition of New Conservation and Convivial Conservation within Beyond Nature/Culture Dichotomies reflects a profound philosophical and ethical debate about the future of conservation. It prompts critical reflections on the values, power structures, and societal paradigms that underpin contemporary approaches to environmental protection, highlighting the need for a nuanced understanding of the intricate relationships between nature, culture, and socio-economic systems.

3.2 Benefits and Importance of Sustainable Use

By adopting sustainable utilization (careful and responsible use of natural resources), Southern African countries ensure that essential ecological processes, such as the hydrological cycle and soil productivity, are not compromised (MEFT, 2022). Also, in the context of trophy hunting, studies have proven that when wild species are conserved but not utilized, local resource users perceive them as pests, damaging livelihoods, and properties (i.e. edifices, crop-raiding, livestock) and posing threats to human life (Hewitson and Sullivan, 2021). Conversely, when they are fully utilized through tourism, trophy hunting activities (i.e. gastronomy, taxidermy, pharmaceuticals, cosmetics), providing economic incentives to local resource users (Lindsey et al., 2007), people become motivated to protect and manage wild species, prioritizing the maintenance of their habitat. If the market does not assign a high enough value to a species or habitat, it may be lost as humans prioritize other goals (Thomson, 2013). Therefore, effective conservation communication is essential in conveying this notion clearly.

3.3 Exploring Misconceptions in Western Settings

Although sustainable use is a globally significant concept, there are notable misconstructions (Wachala and Cupp, 2022) and divergent perspectives (He, 2020; UNEP, 2019) between Southern Africa and the West. To identify misunderstandings about sustainable use in both regions, it is necessary to consider their specific contexts. While it is challenging to capture the full range of perspectives, and crucial to recognize that perceptions can differ among individuals and communities, we will outline some general misconceptions that may arise. However, it is important to note that these misconceptions do not apply universally, as individuals within these regions may hold diverse views.

- a. *Sustainable use is synonymous with unsustainable exploitation.* Sustainable use may mistakenly be perceived as license for uncontrolled exploitation of natural resources without considering long-term conservation goals (Hoyt, 1994). This misconception arises from a lack of understanding about the principles and practices of sustainable use, which aim to balance conservation and socioeconomic development; and prioritize responsible resource management and the preservation of ecosystems (Government of the Republic of Namibia, 2004). In Southern Africa, sustainable use involves a blend of regulatory measures including careful management, scientific assessments, and regulated practices to ensure long-term ecological and socio-economic viability.
- b. *Sustainable use is only about hunting.* There is a distinction between hunting, trophy hunting and conservation hunting.
 - ▶ Hunting in Africa takes various forms, including subsistence hunting, commercial meat harvesting, and trophy hunting. Hunting is also used to manage herbivore populations and mitigate their impact on rangelands, particularly in fenced areas.
 - ▶ Trophy hunting refers to a specific form of hunting where clients pay for the opportunity to hunt and keep certain parts of the animal as a "trophy" or a symbol of their achievement. The remaining parts usually consumed by local residents and/or wildlife. In this practice, the focus is often on obtaining prized animal parts rather than primarily utilizing the meat or supporting local communities.

- ▶ The primary concerns for host countries regarding hunting are its alignment with wildlife conservation goals, support for local livelihoods, and welfare considerations. In Namibia, hunting that meets all three criteria is called conservation hunting.
- ▶ Conservation hunting, also known as sustainable hunting or well-managed hunting, is an approach that aims to contribute to wildlife conservation and support local livelihoods. Highly selective (age-based and gender-based adaptive quotas) (Dickman et al., 2021), it involves carefully selecting and harvesting a limited number of animals (taking only 1% of the national herd) to ensure the long-term sustainability of the population. It generates over 10 times more income per animal harvested than meat harvesting and provides meat as a by-product (Conservation Namibia, n.d). It occurs on both communal and freehold land and includes measures to ensure that local communities benefit from hunting activities through revenue sharing, job creation, or other means. While the term "conservation hunting" can sometimes be used in the context of trophy hunting, its broader meaning encompasses hunting practices that align with wildlife conservation goals and support local communities. It emphasizes sustainable practices, ethical considerations, and the importance of generating benefits for both wildlife conservation and local people. For example, it is crucial for Namibian hunting outfitters and professional hunters to educate their foreign clients about conservation hunting principles and the positive contributions of well-managed hunting to both Namibian people and wildlife. One common misconception is that sustainable use solely revolves around hunting practices. While hunting can be a component of sustainable use, it is just one aspect. Sustainable use in Southern Africa also encompasses practices such as community-based ecotourism, fisheries management, and sustainable forestry or savannahs, which aim to balance conservation and socioeconomic development.
- c. *Economic interests solely drive sustainable use.* The latter may be perceived as solely focused on economic gains without considering ecological and social dimensions. However, sustainable use approaches in Southern Africa emphasize the integration of economic, environmental, and social factors to ensure long-term conservation and community well-being.
- d. *Sustainable use undermines conservation efforts.* There is a common belief that sustainable use practices, such as regulated hunting, can have negative impacts on wildlife populations and ecosystems. However, when responsibly managed with scientific guidelines and monitoring, sustainable use can contribute to wildlife conservation by providing incentives for habitat protection, generating funds for conservation initiatives, and involving local communities in conservation efforts.
- e. *Trophy hunting is purely for sport and has no conservation benefits.* Trophy hunting, when well-regulated and managed, becomes conservation hunting. The latter contributes to conservation efforts in Southern Africa. This practice involves strict quotas, monitoring, and revenue sharing that incentivize habitat protection, anti-poaching measures, and support for local communities. It can generate funds for conservation initiatives and provide economic incentives for wildlife conservation (Conservation Namibia, n.d).
- f. *Trophy hunting is cruel and for psychopaths.* Apart from implying mental health bias, such belief is a misconception as it assumes that all trophy hunting is inherently cruel or that only psychopaths engage in this activity (Richardson, 2017). While some cases of trophy hunting may involve unethical practices or individuals with questionable motives, it is essential to avoid painting all trophy hunters with a broad brush. Trophy hunting can take different forms and occurs in various contexts around the world. In some cases, it is regulated and managed by wildlife conservation organizations and government authorities to ensure sustainability and conservation goals. These organizations set specific quotas and guidelines to maintain healthy wildlife populations and protect ecosystems. It is crucial to note that many trophy hunters adhere to legal and ethical guidelines established by conservation authorities. They obtain permits, follow hunting regulations, and participate in guided hunts conducted by experienced professionals. These hunters often prioritize fair chase, where animals have a chance to evade the hunter, and the goal is more often about experiencing the connection to nature, the thrill of the hunt, and the challenge it presents than the act of killing itself. When the latter occurs, regulations require it to be quick and humane. It is important to separate personal emotions

and opinions from factual assessments of hunting practices. And while ethical debates surrounding trophy hunting continue, it remains prejudicial, discriminating, and inaccurate to label all trophy hunters as cruel or psychopathic based solely on their participation in this activity. Ultimately, it is important to approach this topic with nuance and recognize that not all trophy hunters fit into a single stereotype.

- g. *Trophy hunters do not care about animals.* It is a misconception to assume that all trophy hunters do not care about animals. It is important to recognize that individuals engage in trophy hunting for various reasons, and their motivations and attitudes towards animals can differ significantly. Hunting activities contribute to conservation efforts and support local communities (Aru Game Lodges, 2016). By paying for hunting permits and fees, hunters provide funding for wildlife conservation programs, anti-poaching initiatives, habitat preservation, and local economies. Hunters and members of communities where hunting is allowed believe conservation hunting can be an effective tool for wildlife management and conservation, especially in areas where alternative forms of land use might pose a greater threat to animal populations. However, it is crucial to distinguish between responsible trophy hunters who prioritize conservation and ethical considerations and those who engage in irresponsible or illegal hunting practices. Instances of illegal poaching, excessive trophy hunting, or targeting endangered or threatened species do occur, and these actions are condemned in Southern Africa.
- h. *Trophy hunting is inappropriate and can be replaced by another alternative.* Opinions on trophy hunting vary widely among different groups, including conservationists, animal welfare advocates, human rights in conservation advocates, and local communities (IUCN, 2016). Some argue that the focus should be on promoting non-consumptive forms of wildlife tourism, such as wildlife photography or ecotourism, as alternatives to trophy hunting. Others, members of local communities across the globe, have multiplied publications and awareness actions stating that they are capable of deciding how they want to manage their natural resources. According to leaders and representatives of local communities and local community institutions (CLN, 2022), the judgement over alternatives should be left for them to make.
- i. *Local communities are not capable of sustainable resource management.* Some misconceptions assume that local communities lack the knowledge or capacity to manage natural resources sustainably. However, community-based approaches in Southern Africa have demonstrated that involving local communities in resource management can be effective in achieving conservation goals while also improving community livelihoods and fostering a sense of ownership and responsibility.
- j. *Ethical considerations.* From an ethical standpoint, trophy hunting raises concerns about animal welfare and the morality of killing animals for sport or trophies. It is argued that it is unnecessary and inconsistent with modern conservation values. Concurrently, similar concerns are increasingly raised about other types of animals, considering the environmental impact of animal agriculture (deforestation, greenhouse gas emissions, etc.) when discussing the morality of killing animals for food (large-scale meat production). According to Indigenous peoples (RA, 2020), if it is morally acceptable to kill animals for food because it is a natural part of the food chain – as supported by the Carnivorous/Naturalistic perspective that believes that humans are biologically designed to consume meat, and therefore, it is morally justified to do so – then it is morally justified to hunt wildlife as the benefits of this activity includes meat that is healthier than large-scale produced meat. It has been documented that hunted wild game meat (HWGM) has a complete nutritional profile, and its environmental impact is lower than farmed meat (Annafrancesca et al., 2022).
- k. *Sustainable use undermines animal welfare.* There is a concern that sustainable use practices, such as conservation hunting, can compromise animal welfare. However, sustainable use frameworks in Southern Africa typically involve strict regulations and monitoring to ensure ethical hunting practices and minimize animal suffering. These practices often align with international standards and prioritize humane and responsible utilization of wildlife resources.
- l. *Local communities have limited or no involvement in decision-making.* It is assumed that sustainable use practices disregard the rights and perspectives of local communities. However, in Southern Africa, sustainable use approaches emphasize CBNRM, where local communities actively participate in decision-making processes, benefit-sharing, and conservation efforts.

- m. *Local communities have little say or receive minimal benefit from sustainable use practices.* In reality, successful models of sustainable use emphasize community participation, ownership, and benefit-sharing. These practices aim to empower local communities, involve them in decision-making, and ensure they receive economic benefits from natural resource utilization. For example:
- ▶ Namibia's CBNRM program has been widely recognized for its success in integrating local communities into wildlife conservation and sustainable resource management (NNF, 2021). The program involves communal conservancies that grant local communities rights and responsibilities over wildlife and other natural resources. These conservancies generate revenue through regulated trophy hunting and tourism, which is reinvested in conservation efforts, community development, and livelihood projects. The program has shown positive outcomes in terms of wildlife conservation, community empowerment, and poverty reduction (NACSO, 2018).
 - ▶ The Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) in Zimbabwe is another successful example of sustainable use practices. It enabled local communities to manage and benefit from wildlife resources in communal areas. The program allowed for regulated hunting and community-based ecotourism (Kiss, 2004), generating income that is shared among the communities and invested in conservation initiatives and community development projects. CAMPFIRE has been credited with increased wildlife populations, improved livelihoods, and reduced poaching in participating areas (Child, 1996).
 - ▶ Southern Africa is home to numerous private game reserves that have successfully implemented sustainable use practices. These reserves promote responsible wildlife management, including controlled trophy hunting, alongside ecotourism activities. Revenue generated from hunting and tourism is reinvested in conservation, anti-poaching efforts, and local community development. Private game reserves like Sabi Sands in South Africa have demonstrated the positive impact of sustainable use practices by maintaining healthy wildlife populations, protecting habitats, and contributing to local economies (Lindsey et al., 2006).
- n. *Sustainable use is detrimental to wildlife conservation.* There is a misconception that sustainable use practices, including regulated hunting, can have negative impacts on wildlife populations and ecosystems. However, when implemented with careful planning, scientific monitoring, and adherence to sustainable quotas, these practices can contribute to wildlife conservation by providing incentives for habitat protection, anti-poaching efforts, and funding for conservation initiatives.
- o. *Sustainable use neglects environmental conservation.* Critics argue that sustainable use prioritizes economic interests over environmental conservation. However, in Southern Africa, sustainable use practices are often designed to balance socioeconomic development with ecological integrity. These approaches recognize the importance of preserving ecosystems, maintaining biodiversity, and incorporating ecological considerations in resource management.
- p. *Sustainable use is a one-size-fits-all approach.* Sustainable use is often perceived as a uniform approach that applies universally across different regions and contexts. However, sustainable use practices need to be tailored to the specific ecological, cultural, and socio-economic conditions of each region. Approaches that work in western settings may not be directly applicable or suitable for other regions.
- q. *Sustainable use is a Western imposition on Southern Africa.* There may be a perception that sustainable use practices are imposed on Southern African countries by Western conservation ideologies. However, many sustainable use approaches in the region have emerged from within local contexts and have been shaped by local knowledge, cultural practices, and community aspirations.

It is crucial to recognize that these misconceptions do not reflect the views of all individuals or communities in Southern Africa or the West. Sustainable use is a complex and multifaceted concept, and perspectives can vary widely within and between regions. Public attitudes and perceptions towards sustainable use can vary significantly among individuals, communities, and even within different sectors of society (Song et al., 2021). Understanding and addressing these misconceptions requires open

dialogue, collaboration, and an appreciation for the diverse cultural, social, and ecological contexts in which sustainable use practices are implemented.

3.3 Understanding the Communication Gap

Contextual differences and cultural paradigms: sources of misunderstandings between Southern Africa and the West

In the realm of wildlife ownership, disparities between Western and Southern African perspectives create nuanced challenges for conservation dialogues. While the West generally adheres to the notion that wildlife is public or state-owned, Southern Africa recognizes private ownership. Game reserves, private landowners, and communities play pivotal roles in Southern African conservation by establishing protected areas, implementing sustainable practices, and engaging in eco-tourism. The varying perceptions on wildlife ownership can lead to misinterpretations in discussions about conservation approaches, highlighting the need for cross-cultural understanding.

Transitioning to the aspect of community involvement, Southern Africa places emphasis on sustainable practices that empower local communities. The prevalent concept of CBNRM allows communities to manage and benefit from wildlife resources sustainably. This stands in contrast to the Western focus on government-managed protected areas, potentially leading to a misunderstanding of the depth of community participation and benefits in Southern African conservation models. Striking a balance between community needs and conservation goals is crucial for the effectiveness of community-based initiatives in Southern Africa, where challenges such as resource depletion and governance issues persist.

Delving into wilderness areas and human presence, the Western belief in pristine wilderness devoid of human presence contrasts with Southern Africa's recognition that human communities can coexist with and benefit from protected areas through responsible tourism and resource management. The acknowledgment of these divergent perspectives is vital for fostering productive discussions on conservation strategies.

Transitioning to trophy hunting activities, it is crucial to dispel misconceptions surrounding this practice in both Western and Southern African contexts. Well-regulated trophy hunting programs contribute to conservation efforts and provide economic benefits for local communities in both regions. However, misinformed narratives (Dickman et al., 2021) on social media platforms have fuelled the misconception that trophy hunting is universally unsustainable. Understanding the nuances of trophy hunting in both contexts is essential to prevent unbalanced policy-making that may negatively impact communities coexisting with wildlife.

Shifting to cultural perspectives and traditional practices, it is imperative to recognize the value of local knowledge in sustainable resource management. While there may be a misconception that traditional practices are inherently unsustainable and should be replaced by modern approaches, Indigenous cultures in Southern Africa often possess longstanding traditions of living in harmony with nature. These cultural nuances shape the understanding and practice of sustainable use, which may not always be fully appreciated or understood by Western perspectives, leading to misapprehensions about the approaches taken.

Finally, addressing ecotourism, while it can have positive impacts such as raising awareness and generating revenue for conservation, poorly regulated or excessive tourism can lead to environmental degradation and disrupt local communities. Understanding the potential drawbacks of ecotourism is essential for ensuring its sustainability and minimizing negative impacts on both the environment and local cultures. It is important to note that perspectives on sustainable use can vary within southern Africa and the West. Recognizing and understanding these differences can foster better dialogue and collaboration toward shared conservation goals.

3.4 Analysing the Underlying Reasons for the Misunderstandings

The underlying reasons for the misunderstandings about sustainable use between Southern Africa and the West can be attributed to several factors discussed in tables 1 and 2:

3.4.1 Cultural and historical context

The differences in cultural backgrounds, historical experiences, and societal values between Southern Africa and the West can contribute to contrasting perspectives on sustainable use. Western

societies have often emphasized preservation and protection of nature, influenced by movements like environmentalism and the concept of national parks. In contrast, Southern African countries have faced different challenges such as poverty, land rights, and wildlife-human conflicts, leading to a different approach to conservation that incorporates sustainable use practices (Ashley et al., 2001). These differences have shaped attitudes towards wildlife, conservation, and resource management, leading to varying interpretations of sustainable use concepts.

Table 1: Cultural and historical context influencing sustainable use perspectives

<i>National Parks in the West vs. Community-Based Conservation in Southern Africa</i>	
Western Perspective - Strict Preservation	<p>Yellowstone National Park, USA:</p> <ul style="list-style-type: none"> • <i>Cultural background:</i> The establishment of national parks in the West is rooted in the transcendentalist movement and a romanticized view of pristine nature. • <i>Historical context and sustainable use emphasis:</i> Established in 1872, Yellowstone National Park is widely considered the world's first national park, and an iconic symbol of preservation, where strict regulations aim to protect the natural environment and wildlife. Visitors are often passive observers, and the focus is on maintaining ecosystems in their pristine state. Similar parks in the West prioritize strict preservation, with limited human impact. The Sierra Club in the USA advocates for the preservation of wilderness areas. Their focus is often on protecting ecosystems from human impact, reflecting a narrative rooted in Western environmentalism. <p>European Environmentalism:</p> <ul style="list-style-type: none"> • <i>Historically:</i> Europe has a rich history of environmental movements dating back to the 19th century. • <i>Societal values:</i> European societies often place a high value on environmental conservation, with strong environmental regulations and a cultural emphasis on protecting biodiversity. • <i>Sustainable use emphasis:</i> Policies and public attitudes often prioritize the preservation of natural habitats and species, influenced by the Green movement and environmental consciousness. This explains why Europe today is the leader in global efforts to combat climate change and at the forefront of global environmental agreements like the Paris Agreement 2015, aiming to limit global warming to well below 2 degrees Celsius above pre-industrial levels; the Kyoto Protocol 1997, aimed at reducing greenhouse gas emissions. The EU committed to specific emission reduction targets during the first commitment period (2008-2012); the Aarhus Convention 1998, a UNECE (United Nations Economic Commission for Europe) agreement that grants the public rights regarding access to information, public participation, and access to justice in environmental matters. It has been ratified by many European countries; the Oslo-Paris Convention (OSPAR) for the Protection of the Marine Environment of the North-East Atlantic 1992, which addresses the prevention and elimination of pollution in the North-East Atlantic; the Water Framework Directive 2000, while not an international agreement, the EU's Water Framework Directive is a significant regional initiative establishing a framework for the protection and sustainable use of water resources across European member states.
Southern African Perspective - Incorporating Human Needs	<p>Community-Based Conservation in Namibia:</p> <ul style="list-style-type: none"> • <i>Historically:</i> Post-independence (after 1990), more than a century after the creation of national parks in the west, Namibia faced challenges related to poverty. • <i>Culturally:</i> The concept of communal conservancies emerged, involving

	<p>local communities in wildlife management and benefit-sharing.</p> <ul style="list-style-type: none"> • <i>Sustainable use emphasis</i>: Namibian conservancies focus on sustainable hunting and tourism, allowing local communities to benefit economically while ensuring the conservation of wildlife. <p>South African Game Reserves and Private Conservancies:</p> <ul style="list-style-type: none"> • <i>Historically</i>: South Africa has a history of wildlife-rich landscapes, but also issues related to land rights and conflicts, due to the Apartheid. • <i>Culturally</i>: Private game reserves and conservancies have developed, often owned, and managed by private individuals. • <i>Sustainable use emphasis</i>: These areas often combine wildlife conservation with sustainable tourism and controlled hunting, providing economic incentives for conservation. <p>Zimbabwe's CAMPFIRE Program:</p> <ul style="list-style-type: none"> • <i>Historically</i>: Zimbabwe faced challenges related to wildlife conservation and rural development. • <i>Societal values</i>: The CAMPFIRE program involved local communities in wildlife management. • <i>Sustainable use emphasis</i>: Through regulated hunting and tourism, the program aimed to alleviate poverty, promote sustainable resource use, and foster positive attitudes toward wildlife conservation. Here, conservation is seen as a means to alleviate poverty and secure land rights, showcasing a pragmatic approach shaped by the socioeconomic context.
Wildlife Conservation Policies	The U.S. Endangered Species Act prioritizes the protection of species at risk, often leading to stringent measures to prevent harm to these species or their habitats. While in Botswana, the government has employed a strategy of sustainable wildlife management, allowing controlled hunting of certain species, acknowledging the complex interactions between people and wildlife.
Tourism and conservation	Ecotourism in Western countries often promotes non-consumptive activities, such as wildlife watching, with a focus on minimizing impact and maintaining the ecological integrity of natural areas. In the South, countries like Kenya and Tanzania have embraced wildlife tourism, but the emphasis is on responsible tourism that contributes to local economies and community development. This aligns with the idea of sustainable use, where the economic benefits of conservation are shared with local populations.

3.4.2 Media representation and public perception

Media coverage and popular narratives about sustainable use practices in both regions can contribute to misunderstandings. In the West, the media tends to focus on sensationalized stories, such as trophy hunting controversies or negative ecological impacts, without providing a comprehensive understanding of the broader context and the positive aspects of sustainable use. Also, it often highlights extreme cases, such as poorly regulated trophy hunting or unsustainable tourism practices, which can create a negative perception of sustainable use. These biased portrayals may not adequately capture the complexities and nuances of sustainable resource management in associated context, thus contributing to misunderstandings and misconceptions.

Table 2: Examples of how media representation of conservation influences public perception

Trophy Hunting Controversies	<i>Selective reporting</i> : Media coverage might selectively report on conservation initiatives in Southern Africa, highlighting conflicts and challenges while neglecting successful community-based conservation models. For instance, if there's a conflict between wildlife and local communities, the media may focus on the negative aspects without adequately exploring the innovative solutions and coexistence strategies being implemented. Instances of poorly regulated trophy
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	<p>hunting or unsustainable tourism practices are sometimes sensationalized in the media. For instance, a high-profile case of unethical hunting or environmental damage may be disproportionately covered, leading the public to associate such extremes with sustainable use practices as a whole, rather than recognizing them as outliers.</p> <p><i>Lack of context in reporting:</i> Media coverage often lacks the necessary context to understand the cultural, historical, and economic factors that shape sustainable use practices in Southern Africa. This lack of context can contribute to misunderstandings among the Western audience, as they may not appreciate the intricate balance that Southern African countries are striving to achieve between conservation and socioeconomic needs.</p> <p><i>Lack of knowledge, information, and communication:</i> Limited awareness and understanding of the principles and practices of sustainable use can contribute to misconceptions. Lack of accurate communication, misinformation or incomplete information about sustainable use can lead to misunderstandings and biases. Limited exposure to each other's perspectives, policies, and scientific research on sustainable use can lead to stereotypes. Bridging this information gap and promoting dialogue can help foster better understanding. Education and awareness-building efforts are essential in addressing these knowledge gaps and fostering informed discussions.</p> <p>The killing of Cecil the lion in Zimbabwe in 2015 received extensive media coverage in the West. The focus was on the ethical issues surrounding trophy hunting, portraying it as a negative and harmful practice without delving into the complexities of how regulated hunting can contribute to conservation efforts and local community benefits (Lindsey et al., 2007). The fees paid by hunters for permits can fund conservation programs and benefit local communities, providing an economic incentive for them to protect wildlife habitats (Semcer, 2019).</p> <p>In 2020, a German hunter legally obtained a permit to hunt a large-tusked Namibian desert elephant. The event sparked outrage and critics argued that trophy hunting could have negative consequences for the gene pool and social structure of these elephant populations. However, it is argued that hunting older males past their reproductive age could potentially benefit the overall health of the elephant population and prevent resource competition. Another study reveals the complex historical roots of African culling practices in both pre-Colonial and Colonial elephant hunting (Shaffer et al., 2019). The authors state that by the late nineteenth century ivory hunting severely reduced elephant populations and supported colonial settlement and an expansion of agricultural cultivation (Ballard, 1981; Beinart, 1990; Forssman et al., 2014).</p> <p>Three year earlier, Xanda, the son of Cecil the lion, was legally killed by a trophy hunter in Zimbabwe. Like Cecil, Xanda's death reignited the debate on trophy hunting, but did not highlight that regulated trophy hunting has positive impact on wildlife populations (Brink et al., 2016). When properly managed, it can contribute to population control and conservation. In certain cases, removing specific individuals from a population, especially older males, can prevent inbreeding and improve the overall health of the species (Whitman et al., 2004).</p> <p>In 2019, Spanish conservationist Josep M. Mallord was killed while on an anti-poaching mission in Burkina Faso. His death highlighted the dangers faced by those working to protect wildlife and raised questions about the broader issues of poaching. The same year, an American hunter faced backlash after photos of her posing with a giraffe she had killed in South Africa went viral. It is crucial to distinguish between ethical, sustainable hunting practices and illegal poaching. Well-managed hunting provides funding for anti-poaching activities (Lindsey et al., 2013) and other conservation programs (Dickman et al., 2011).</p> <p>In 2016, Harambe, a western lowland gorilla, was shot and killed at the Cincinnati</p>
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	Zoo after a child fell into his enclosure. This incident generated widespread controversy, with discussions about the ethics of keeping animals in captivity and the decision to euthanize Harambe. This highlights the broader issues surrounding human-wildlife interactions and the public's emotional response to the death of iconic animals, in comparison to that of the human child. Also, it brought into perspective the immorality of zoos and why they should be banned (Engle, 2021; Gupta & Chakraborty, 2005; Kiley-Worthington, 1990; Laybourne, 2022) and the fact that they are not ours to use for entertainment (Peta, n.d.).
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3.4.3 Different priorities and perspectives, ethical considerations

It is important to recognize these underlying reasons for the misunderstandings and work towards promoting open dialogue, cross-cultural exchange of knowledge, an appreciation of the diverse approaches to sustainable use, and mutual understanding between different regions and stakeholders. This can help bridge the gaps in perception and foster collaboration in achieving common conservation goals.

3.5 Exploring the impact of these misunderstandings on conservation efforts

When misconceptions arise surrounding sustainable use practices, it can undermine conservation efforts in several ways. Misguided perceptions can lead to public outrage and negative sentiments towards the Southern African conservation model, creating obstacles for conservation organizations, policymakers and rural stakeholders who recognize the potential benefits of well-regulated trophy hunting programs. They may also generate opposition to these practices, making it challenging to implement sustainable hunting regulations that could contribute positively to conservation efforts. Consequently, we may witness the surge of fragmented conservation initiatives, with different stakeholders pursuing divergent approaches. This lack of coordination will hinder overall effectiveness and result in inefficient use of resources.

Moreover, conservation hunting provides economic incentives for local communities living near wildlife habitats, leading to increased support for conservation initiatives. Nonetheless, if misunderstandings about it prevail, it can erode trust and cooperation between conservation organizations and local communities. It can also give way to public scepticism and lack of support for conservation initiatives. Diminished local engagement and support may hinder conservation efforts, as local communities play a vital role in protecting wildlife and their habitats. It may equally lead to decreased financial support from stakeholders, impacting the availability of funds for conservation programs. This funding shortfall can significantly hamper conservation efforts and impede the overall protection of wildlife.

Finally, misunderstandings can result in conservation efforts that disproportionately benefit certain groups or prioritize preservationist ideals over community well-being. This can lead to social and economic disparities, potentially undermining the long-term sustainability of conservation efforts. Such inequitable conservation outcomes may generate resistance to adopting new conservation models or practices. This resistance can impede progress and make it difficult to implement innovative strategies that could benefit both conservation and local communities. It may further accentuate the mistrust that local communities already have towards foreign-funded conservation initiatives. By cumulating into the creation of barriers to collaboration among stakeholders with different perspectives, this can limit knowledge sharing, hinder joint decision-making, and hamper the development of holistic and integrated conservation strategies.

Addressing these misunderstandings through education, dialogue, and transparent and accurate and strategic communication is crucial for ensuring that conservation efforts are not hindered by misconceptions surrounding hunting practices. By promoting a better understanding of the complexities and potential benefits of the sustainable use approach in the Southern African setting (including conservation hunting), and by borrowing tools from other fields such as communications (e.g., framing) (Wright et al., 2015), psychology (e.g., social marketing) (Smith et al., 2020), or even public health (e.g. behavioural change campaigns) (Kidd et al., 2019), it will become possible to foster greater support for inclusive conservation initiatives that benefit wildlife, habitats, and people.

4. IMPORTANCE OF CONSERVATION COMMUNICATION IN ADDRESSING MISUNDERSTANDINGS

Conservation communication is a vital component of the broader fields of conservation biology and environmental management, focusing on effectively communicating the importance of conservation efforts to diverse audiences. It involves the effective dissemination of information, ideas, and values to raise awareness, foster understanding, and promote positive action towards the conservation and sustainable use of natural resources and ecosystems. It plays a critical role in bridging the gap between scientific knowledge and public understanding, ensuring that conservation messages resonate and motivate individuals, communities, policymakers, and stakeholders to take conservation-oriented actions. By employing various communication strategies, channels, and techniques, conservation communication seeks to address the complex environmental challenges we face and promote a collective sense of responsibility towards safeguarding the planet for current and future generations.

Effective conservation communication is keys to addressing misunderstandings surrounding the Southern African approach to sustainable use in Western settings. By emphasizing clear and targeted communication, proponents of human rights in conservation can succeed in fostering a better understanding of the Southern African approach to conservation. The following points highlight the significance of conservation communication in addressing cultural differences, divergent conservation paradigms, and related misunderstandings:

- *Promoting awareness and understanding:* conservation communication can serve as a vehicle to raise awareness about the Southern Africa sustainable use approach and its underlying principles. It provides an opportunity to disseminate accurate information, debunk misconceptions, and educate the public about the positive aspects of sustainable resource management the Southern African way. While sharing information to raise awareness has traditionally been a common conservation communication strategy aimed at promoting behavioural change, the 'deficit' approach (Kidd et al., 2019) that assumes that people don't conserve biodiversity due to lack of knowledge, is now ineffective. As pointed towards in recent literature, while increasing awareness and education can address knowledge gaps initially, conservationists should also factor in other influences like nature relatedness (Nisbet and Zelenski, 2013; Schultz, 2002; Van Overwalle and Siebler, 2005), familiarity (Reder and Ritter, 1992), risk perception (Wildavsky and Dake, 2018), mode of persuasion (Petty and Cacioppo, 1986), social norms (Mengak et al., 2019), among others. Recent research suggests that leveraging psychological factors like social influence and habit in messages can encourage pro-environmental behaviours among consumers (White et al., 2019).
- *Clarifying misinterpretations:* misunderstandings often arise due to cultural differences, differing perspectives, and limited exposure to alternative conservation approaches. Conservation communication can help clarify misinterpretations by presenting the Southern Africa sustainable use approach in a contextually relevant and culturally sensitive manner, fostering greater understanding and empathy.
- *Building trust and credibility:* effective communication builds trust and credibility among stakeholders, including local communities, policymakers, relevant organizations, and the public. By transparently sharing information, engaging in meaningful dialogue, and involving diverse voices, conservation communication can establish a foundation of trust, enhancing the reception and acceptance of the sustainable use approach.
- *Influencing policy and decision-making:* conservation communication can influence policy and decision-making processes by providing evidence-based arguments and highlighting the positive outcomes of the sustainable use approach. It can enable policymakers to make informed decisions that align with conservation objectives while considering socio-economic factors and cultural contexts.
- *Empowering local communities:* conservation communication can empower local communities by providing them with the knowledge and tools necessary to engage in meaningful decision-making processes. By earnestly communicating the benefits of sustainable resource utilization and the role they play in conservation efforts, communities can become active participants in knowledge transfer and narratives shaping.

- *Encouraging collaboration and partnerships:* clear and effective conservation communication can facilitate collaboration and partnerships between Southern African and Western stakeholders. By fostering mutual understanding and respect, it will promote shared goals and cooperation in addressing conservation challenges, leading to the development of innovative solutions and joint initiatives.

4.1 Role of Digital Literacy in Bridging Communication Gaps

Digital literacy refers to the ability to effectively and responsibly use digital technologies, tools, and resources to find, access evaluate, utilize, create, and communicate information. It encompasses a broad range of skills, knowledge, attitudes, and competencies that are necessary for individuals to navigate the digital world, leverage digital technologies for various purposes and thrive in a digital society. The significance of digital literacy has increased dramatically in the modern era due to the pervasive use of digital technologies in various aspects of life, including education, work, communication, and accessing information.

Digital literacy plays a significant role in conservation communication, particularly in addressing misunderstandings in Western settings. Utilizing digital platforms allows for the dissemination of information to broader audiences, engagement with diverse communities, and the exchange of knowledge and experiences. To accomplish these goals, it is essential to possess the necessary digital skills to navigate the ever-evolving digital landscape proficiently. Finally, digital literacy is crucial for individuals to thrive in the digital age, participate fully in society, make informed decisions, and harness the benefits of digital technologies for personal, professional, and educational purposes. It promotes digital inclusion and helps create a more equitable society.

Table 3: Role of digital literacy in enhancing communication

<i>Role of digital literacy in enhancing communication</i>	
Access to information	Digital literacy empowers individuals to navigate the massive and complex online landscape, distinguish reliable information from misinformation, and make informed decisions.
Communication and collaboration	Digital literacy facilitates effective communication and collaboration through various digital platforms, such as email, social media, video conferencing, and instant messaging. It enables individuals to connect with others, share ideas, collaborate on projects, and engage in global conversations.
Employability and career advancement	In today's digital economy, many job roles require digital literacy skills, ranging from basic computer proficiency to more advanced skills like data analysis, coding, or digital marketing. Proficiency in using digital tools, software, and online platforms is often an essential requirement for employment and career advancement. Digital literacy enhances job prospects and increases productivity in the workplace.
Critical thinking and problem-solving	Digital literacy fosters critical thinking skills by encouraging individuals to analyze, evaluate, and synthesize information from a wide range of digital sources. It helps develop problem-solving abilities, adaptability, and creativity in utilizing digital tools and technologies to address challenges.
Empowerment and participation	Digital literacy empowers individuals to be active participants in the digital society. It enables them to express their opinions, engage in online activism, advocate for social causes, and contribute to the digital economy.
Online safety and digital citizenship	Digital literacy includes knowledge of online safety practices, privacy protection, and responsible digital behavior. It equips individuals with the skills to navigate online spaces safely, protect their privacy, identify, and mitigate online risks, and contribute positively to the digital community.
Lifelong learning	The digital world is constantly evolving, and digital literacy enables individuals to adapt and engage in lifelong learning. It empowers individuals to seek out new knowledge, acquire new digital skills, and keep up with technological advancements.

4.2 Role of Digital Platforms in Conservation Communication

The role of digital platforms in conservation communication is significant, offering numerous advantages and the potential to bridge cultural and geographical gaps. In the contemporary era, where information is rapidly disseminated and accessed globally, digital platforms serve as powerful tools to amplify conservation messages. Social media, websites, apps, games, ai and online forums provide a vast reach, enabling conservationists to engage with diverse audiences and disseminate information in real-time. Moreover, the accessibility of digital platforms transcends geographical boundaries, enabling conservation messages to reach audiences in remote or otherwise hard-to-reach areas. This global reach is particularly crucial in the context of cross-cultural conservation efforts, where understanding and collaboration between diverse communities are essential for effective wildlife preservation. Through digital communication, conservationists can tailor their messages to resonate with different cultural backgrounds, ensuring that the nuances of local perspectives on sustainable use are acknowledged and respected. The democratization of information facilitated by digital platforms empowers local communities to contribute their insights and experiences to the broader conversation, fostering a more inclusive and collaborative approach to conservation on a global scale. In the following sections, we will delve into specific strategies for leveraging digital literacy to enhance conservation communication and address the misunderstanding of Southern Africa's sustainable use approach in Western settings. Figures 1 through 3 depict the functions and benefits of digital platforms in the context of conservation communication.

In summary, digital platforms play a crucial role in conservation communication by disseminating information, promoting engagement, facilitating crowdsourcing, and supporting fundraising efforts. They offer advantages such as wide reach, interactive content, and real-time updates. Moreover, digital platforms have the potential to bridge cultural and geographical gaps, fostering cultural exchange, language accessibility, and global collaboration in conservation endeavours (Figure 3).

4.3 Initiatives using Digital Literacy to Address Misunderstandings

There have been successful initiatives that have utilized digital literacy to address misunderstandings and counter misinformation. By equipping individuals with critical thinking skills, fact-checking tools, and responsible online behaviour, these initiatives have empowered users to navigate the digital landscape more effectively and contribute to a more informed and responsible online community. These concepts can be applied in conservation to address gaps and foster a more informed and responsible online community. Figure 4 provides instances of successful initiatives that have utilized digital literacy to address misunderstandings.

4.5 Case Studies Using Digital Literacy in Conservation Communication

While specific case studies focusing solely on digital literacy initiatives in conservation are limited, there are few examples that demonstrate how digital literacy has been integrated into conservation initiatives to address misunderstandings and promote accurate understanding. By leveraging citizen science platforms, podcasts, online tools, and immersive technologies, these initiatives empower individuals to access reliable information, contribute to conservation efforts, and develop a deeper understanding of conservation challenges.

- ▶ **iNaturalist:** is a widely recognized citizen science platform that utilizes digital technology to engage individuals in biodiversity observation and data collection. Users can upload photos of species they encounter, and the community helps with identification. The platform incorporates digital literacy principles by providing resources to users on species identification, promoting accurate data collection, and fostering discussions among participants. iNaturalist has played a significant role in increasing public awareness and understanding of biodiversity, ultimately contributing to conservation efforts (iNaturalist, n.d.).
- ▶ **Wild Podcasts:** LIVE Safaris (Wildark, 2023) and Conservation Conversations (Spotify, 2021; Apple Podcast, 2022) are to address misunderstandings and engage the public in conservation topics. The podcast features interviews with experts, scientists, and conservationists, discussing various conservation issues. By leveraging digital literacy principles, such as fact-checking information and promoting critical thinking, the podcast aims to provide accurate information, dispel myths, and foster a deeper understanding of conservation challenges.

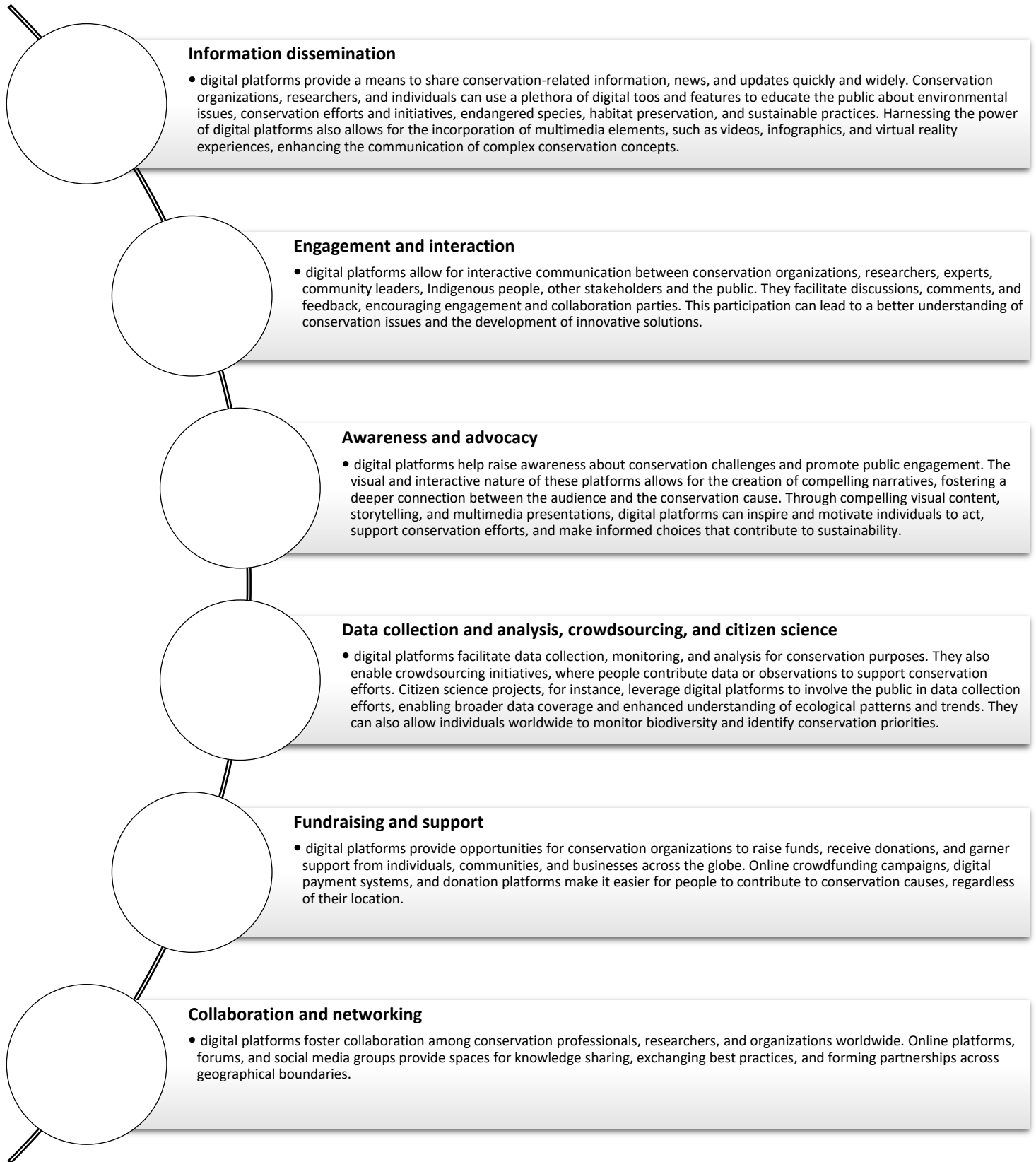


Figure 1: Role of digital platforms in conservation communication

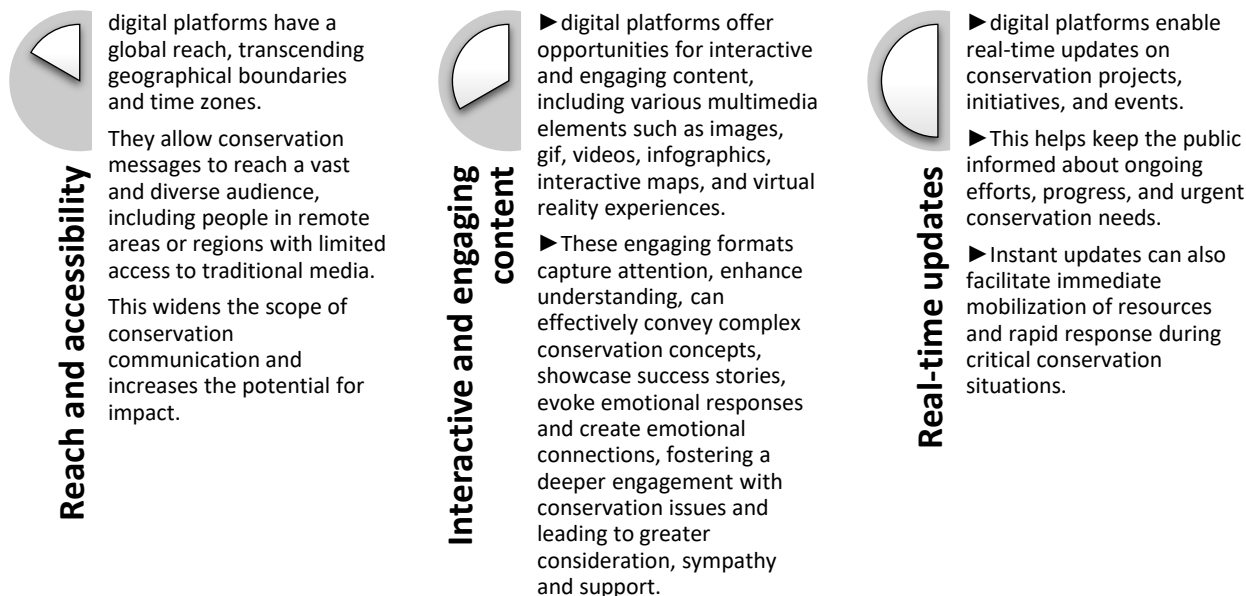


Figure 2: Advantages of digital platforms for communication

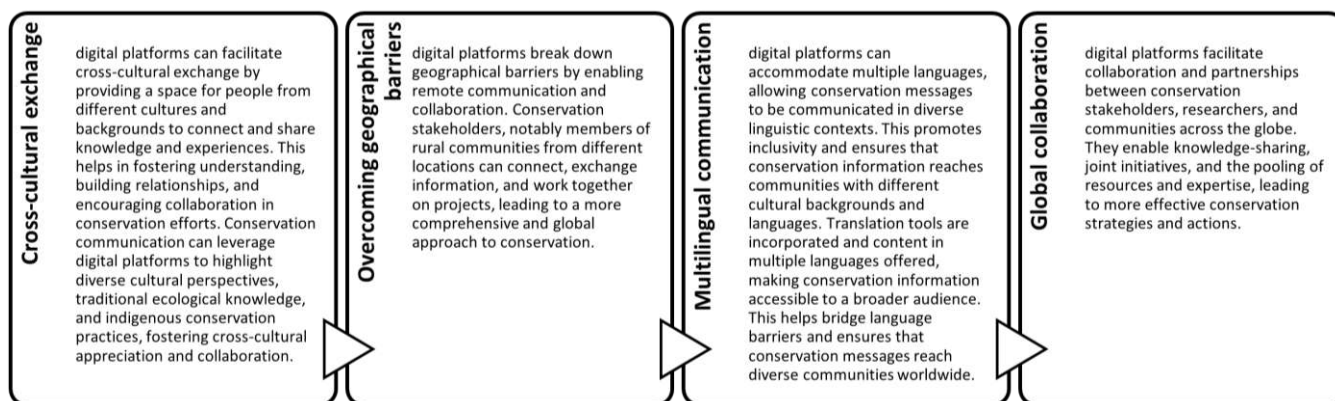
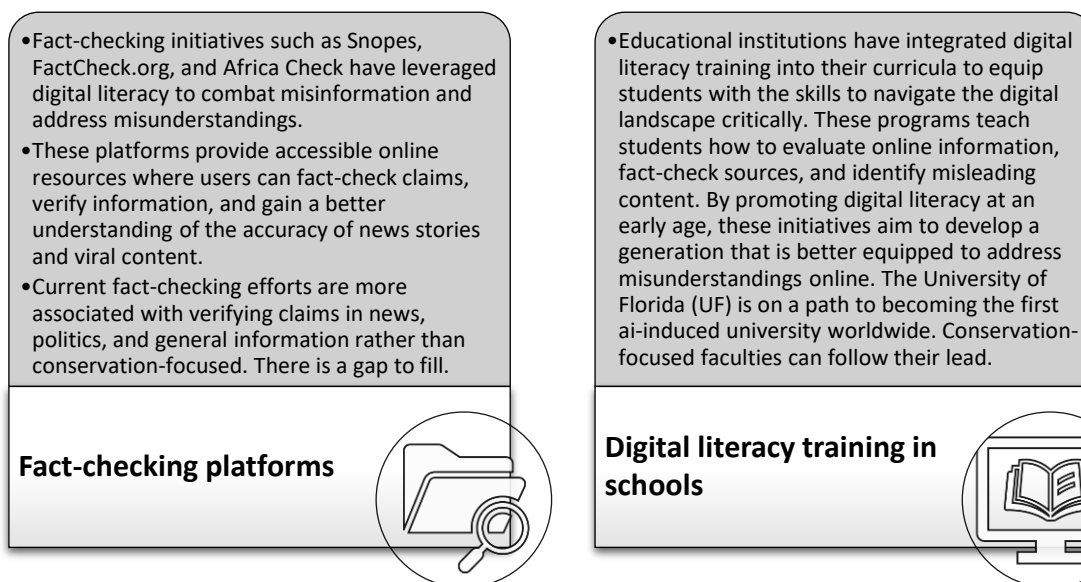


Figure 3: Potential for bridging cultural and geographical gaps



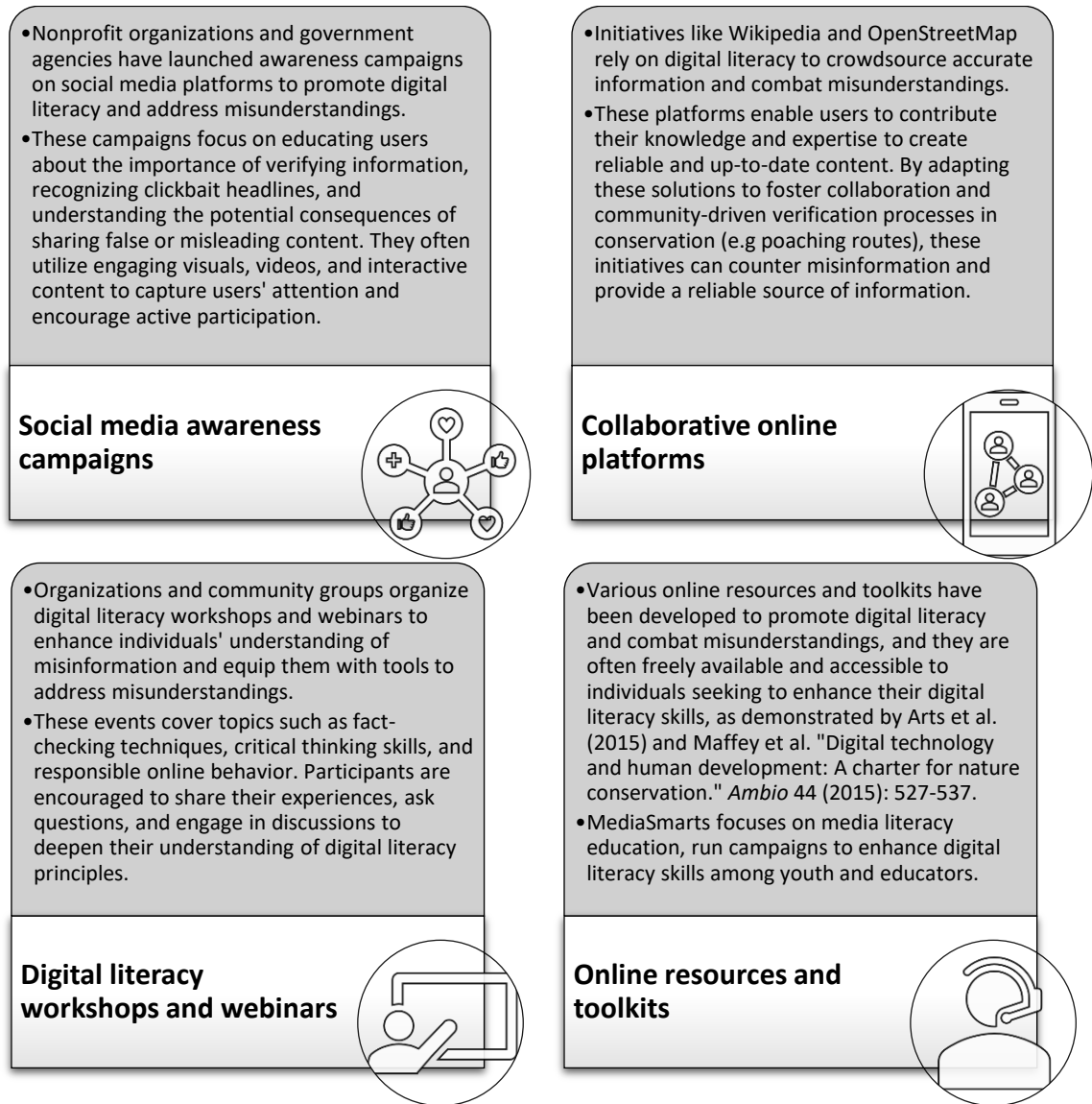


Figure 4: Successful initiatives using digital literacy to address misunderstandings



- ▶ **Nature's Notebook:** Nature's Notebook is a project of the USA National Phenology Network that engages citizen scientists in monitoring and recording plant and animal phenology (life cycle events) across the United States. The project utilizes an online platform where participants can submit their observations and access educational resources. By integrating digital literacy principles into the project, participants are encouraged to accurately record observations, engage in discussion forums, and access additional resources to improve their understanding of phenology and its relevance to conservation (USA-NPN, n.d.).
- ▶ **Virtual Reality (VR) and Augmented Reality (AR) Experiences:** Some conservation organizations have employed VR and AR technologies to enhance digital literacy and create immersive experiences for the public. These initiatives offer virtual tours of ecosystems, wildlife habitats, and conservation projects, allowing users to explore and learn about these environments. By using interactive elements and informational overlays, these experiences help address misunderstandings by providing accurate and engaging information about conservation issues (Lets Nurture, 2023).

4.6 Using Digital Literacy to Address the Misunderstanding of Southern Africa’s Sustainable Use Approach in Western Settings

To address this misunderstanding, innovative approaches that merge technology (Arts et al., 2015; Southworth et al., 2023; University of Florida, 2023), diverse cultural perspectives and traditional knowledge regarding sustainable resource management can be implemented to capture attention, engage individuals, and foster tolerance. Collaborative approaches that involve local communities in decision-making processes and integrate their traditional practices can lead to more effective and contextually appropriate sustainable use strategies. Moreover, it is crucial to consider the broader social, economic, and environmental impacts of resource use in Western settings. This includes examining issues such as overconsumption, waste generation, and the equitable distribution of benefits and burdens associated with resource extraction.

In Africa, despite the valuable contributions of Indigenous knowledge and innovation, there remain technology-related challenges, which in turn create imbalances in decision-making and policy-making processes. The lack of digital skills and limited access to digital tools – among community leaders, conservancy members, the youth and local conservation stewards – significantly impede the sharing of knowledge and dissemination of successful practices and local narratives online and to the global community. This situation also hinders their ability to stay informed about current debates, preventing them from participating in these influential discussions in real-time and on equitable basis. As a result, their exclusion from the conversations that shape and transform conservation efforts – and consequently their own lives and livelihoods – has detrimental consequences both for human rights and conservation outcomes.

This knowledge gap at both ends of the conservation spectrum highlights the pressing need for education in digital literacy, raising awareness about wildlife conservation and community-based natural resource management (CBNRM), and implementing effective communication strategies. By equipping individuals (who co-exist with wildlife) with digital literacy skills, they can access a wide range of information sources and engage in informed and meaningful discussions on sustainable use practices. Additionally, promoting awareness in and raising awareness about wildlife conservation and CBNRM principles can provide the necessary context for understanding the African approach to conservation, which considers the interdependence of ecosystems, communities, and sustainable resource utilization. As depicted in Figure 5, through strategic communication strategies, including open dialogues, public campaigns, and cross-cultural exchanges, stakeholders can foster a deeper understanding of the intricate balance between human livelihoods and wildlife preservation, mutual respect, and constructive engagement between proponents of animal rights and proponents of human rights and sustainable use. Initiating such dialogues is crucial to bridge the gap between these differing perspectives, work towards finding common ground that respects both animal and human rights within the framework of sustainable use and establish a foundation for collaborative efforts towards effective and sustainable wildlife conservation practices.

Gamification and Mobile Apps	Online Platforms and Mobile Apps
	
<input type="checkbox"/> *Develop interactive mobile applications or games that educate users about sustainable use through engaging and immersive experiences. Gamification can make learning fun and encourage behavior change through challenges, rewards, and social interactions.	<input type="checkbox"/> *Create user-friendly online platforms and mobile apps that provide information, resources, and tools for individuals to adopt and track their sustainable behaviors.
<input type="checkbox"/> Design apps that provide real-time feedback on sustainable behaviors, such as tracking energy consumption, carbon footprint, or waste reduction, and rewarding users for positive actions.	<input type="checkbox"/> Offer personalized recommendations based on users' preferences and lifestyles, helping them make sustainable choices in areas such as CBNRM, energy consumption, sustainable wildlife management, waste reduction, etc.
<input type="checkbox"/> *Create virtual simulations or augmented reality experiences that allow users to visualize the consequences of different consumption choices and their impact on the environment and explore sustainable alternatives.	<input type="checkbox"/> Integrate features like carbon footprint calculators, sustainable product directories, or community forums to foster knowledge sharing and collaboration.

Virtual and Augmented Realities (VR/AR)



- *Use VR and AR technologies to create and develop immersive experiences that allow users to witness the consequences of unsustainable behaviors, such as deforestation, overfishing, or pollution, in an immersive and impactful way. These technologies will also allow users to visualize the effects of unsustainable practices and explore sustainable alternatives.
- *Develop virtual tours of eco-friendly initiatives or experiences that showcase sustainable practices and their impact on the environment, such as sustainable farms or renewable energy projects, to provide a first-hand experience of sustainable practices.
- *Incorporate AR into educational materials, packaging, or advertisements to provide additional information about the sustainability attributes of products or services.

Social Media Campaigns and Challenges



- *Launch social media challenges and campaigns that raise awareness and promote sustainable use, encouraging users to share their sustainable actions, practices or experiences using specific hashtags. By developing hashtags and viral campaigns that raise awareness about sustainable practices, it can help inspire others to adopt them and thus contribute to changing mentalities.
- *Create sustainability challenges or competitions that encourage individuals or communities to adopt and showcase sustainable behaviors, with prizes or recognition for the most innovative or impactful initiatives.
- *Collaborate with content creators, influencers, or micro-influencers on social media platforms to amplify the promotion and message of sustainable use and reach a wider audience through engaging and relatable content.

Creative Arts and Media



- *Engage artists, musicians, filmmakers, and storytellers to convey messages of sustainable use through their creative works.
- *Organize sustainability-themed art exhibitions, film festivals, or music events that inspire and provoke thought.
- *Use creative mediums such as street art or guerrilla marketing to capture attention and spark conversations about sustainable use.

Interactive Exhibitions and Pop-up Installations



- *Organize interactive exhibitions or pop-up installations in public spaces, shopping centers, or educational institutions to showcase sustainable innovations, technologies, and practices.
- *Provide hands-on activities, workshops, or demonstrations that allow visitors to experience and understand sustainable solutions first-hand.
- *Collaborate with artists, designers, and architects to create visually striking installations that convey the importance of sustainable use and capture people's attention.

Sustainability Hubs and Living Laboratories



- *Establish physical spaces, such as sustainability hubs or living laboratories, where individuals, businesses, and communities can come together to learn, experiment, and collaborate on sustainable practices.
- *Offer workshops, seminars, or skill-sharing sessions on sustainable topics, such as zero-waste living, renewable energy, or regenerative agriculture.
- *Provide resources, tools, and prototypes for individuals to explore and implement sustainable solutions in their own lives or organizations.

Peer-to-Peer Learning and Mentoring Programs



- *Develop peer-to-peer learning programs where individuals with expertise in sustainable use mentor and support others who are interested in adopting sustainable practices.
- *Create online platforms or communities where people can connect, share experiences, ask questions, and seek advice on sustainable living.
- *Facilitate networking events or meetups that bring together individuals passionate about sustainability to exchange ideas, inspire each other, and collaborate on projects.

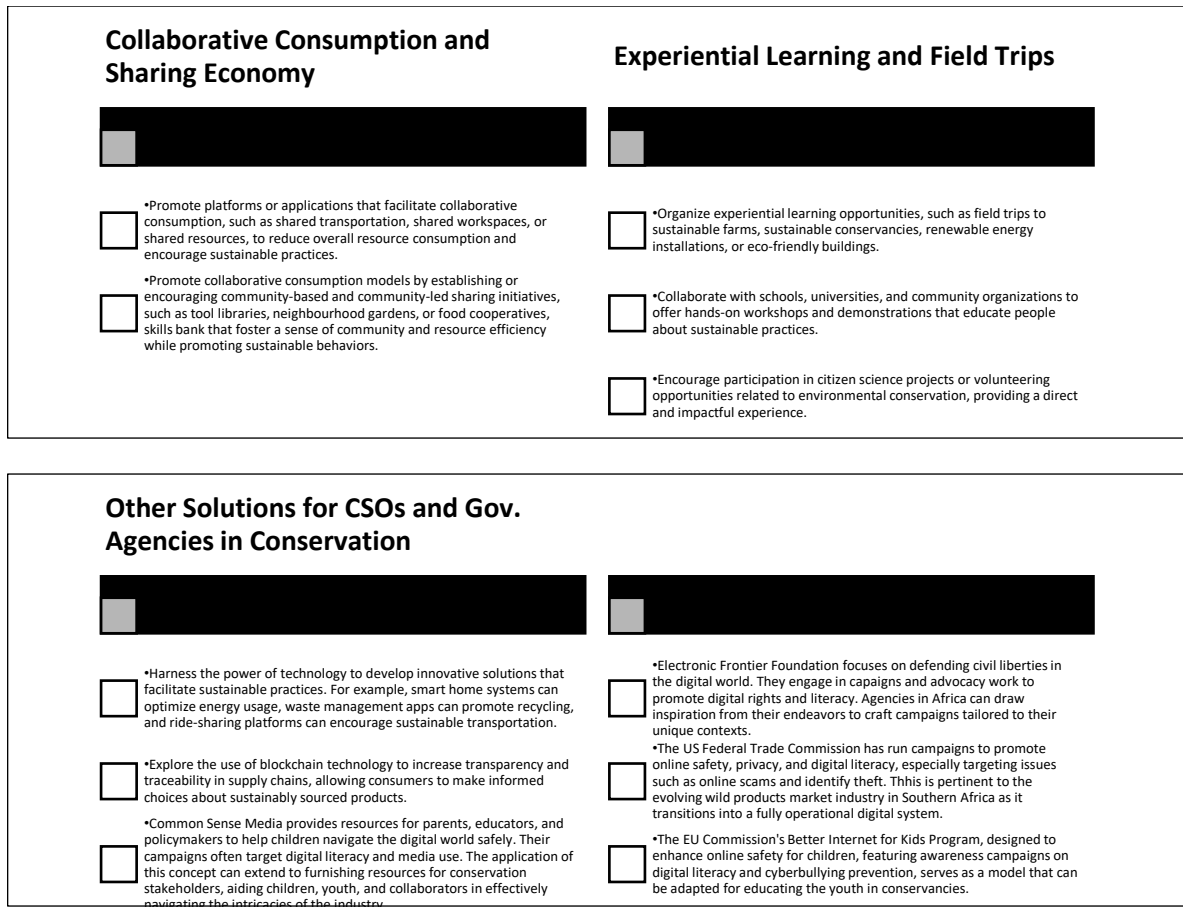


Figure 5: Usages of digital literacy tools to enhance conservation communication

These innovative approaches can help break through the noise and engage individuals in Western settings, encouraging them to rethink their behaviours and embrace sustainable use in creative and impactful ways. Finally, effective communication strategies should be ongoing and adaptable, and their impact regularly evaluated based on feedback and evolving public understanding.

Table 4: Effective communication strategies applicable to conservation

<p>Clear and Accessible Messaging</p>	<ul style="list-style-type: none"> • Simplify complex sustainability concepts into easily understandable messages without oversimplifying the issues. • Use plain language and avoid jargon or technical terms that may confuse or alienate the audience. • Communicate the principles, benefits, and relevance of sustainable use in everyday life in relatable terms. • Highlight how it can improve well-being, save money, and protect the environment. • Make sustainability information accessible to a wide range of audiences through various mediums, such as public events, websites, social media, brochures, etc. • Utilize visual aids, infographics, and storytelling techniques to make the information more engaging and memorable.
<p>Storytelling and Personal Narratives</p>	<ul style="list-style-type: none"> • Utilize storytelling techniques to convey the real-life experiences of individuals and communities who have adopted sustainable practices successfully. • Share personal narratives that resonate with the target audience, emphasizing how sustainable use positively impacts their lives and communities, the environment, and future generations. • Highlight inspiring success stories to demonstrate that sustainable practices are

	<p>achievable and beneficial.</p> <ul style="list-style-type: none"> • Share real-life stories and examples of individuals, businesses, and communities that have successfully implemented sustainable use practices. • Showcase diverse perspectives and experiences to make the messaging relatable and inclusive
Visual and Multimedia Content	<ul style="list-style-type: none"> • Use images to convey key messages and statistics related to sustainable use. • Create short, attention-grabbing videos or animations that illustrate the consequences of unsustainable practices and the benefits of sustainable alternatives. • Leverage social media platforms and websites to share engaging content that educates and inspires people to adopt sustainable behaviors.
Engage Influencers and Opinion Leaders	<ul style="list-style-type: none"> • Collaborate with influencers, celebrities, environmental activists and opinion leaders who are passionate about sustainability to help amplify the message who have a wide reach and credibility. • Encourage them to share their own sustainable practices and advocate for responsible consumption through their social media platforms, interviews, public appearances, sharing information, personal experiences, and promoting sustainable products and services. • Organize events or campaigns that bring together influential figures to discuss and promote sustainable use.
Tailored Messaging for Different Audiences or Targeted Campaigns	<ul style="list-style-type: none"> • Recognize the diversity within Western settings and tailor the messaging to different target audiences, considering their unique interests, values, and concerns. • Highlight how sustainable use aligns with specific demographic groups' priorities, such as health-conscious individuals, parents concerned about future generations, or business leaders interested in corporate social responsibility. • Customize communication channels and formats based on the preferences and habits of specific audiences, such as using social media for younger demographics or traditional media for older populations. • Focus on the relevance of sustainable use to people's daily lives, emphasizing how it can improve their well-being, save money, and create a better future for their communities and the planet.
Collaboration with Media	<ul style="list-style-type: none"> • Establish relationships with journalists, bloggers, and media outlets to promote accurate and balanced coverage of sustainable use topics • Provide journalists with access to experts, case studies, trainings and data that can help them produce informed and compelling stories. • Organize press conferences, media events, or webinars to educate journalists and provide them with up-to-date information on sustainable use initiatives. • Collaborate with influencers, celebrities, and opinion leaders who resonate with the target audience to deliver the sustainability message effectively. • Encourage media coverage of sustainable use initiatives and success stories.
Social Media and Online Platforms	<ul style="list-style-type: none"> • Utilize social media platforms to disseminate information about sustainable use and engage with the public. • Create online communities and forums where individuals can share their experiences, ideas, and challenges related to sustainable use. • Encourage user-generated content and participation through hashtags, challenges, and contests that promote sustainable practices.
Two-Way Communication, Dialogue and Feedback	<ul style="list-style-type: none"> • Encourage or create opportunities for two-way communication, two-way communication channels, such as online forums, social media discussions, and public consultations, to engage with the public and address their questions, concerns, and misconceptions. • Actively listen to feedback, acknowledge differing perspectives, and respond constructively to criticism or skepticism. • Foster dialogue with stakeholders, including community groups, NGOs, businesses, and policymakers, to collaboratively develop solutions and address

	<p>misunderstandings.</p> <ul style="list-style-type: none"> • Listen to people's concerns, answer their questions, and address misconceptions about sustainable use. • Actively seek feedback from the public and stakeholders to improve communication strategies and refine sustainability initiatives.
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5. INSTITUTIONAL STRATEGIES FOR CONVEYING THE POSITIVE ASPECTS OF SUSTAINABLE USE

Institutional strategies aimed at effectively conveying the positive aspects of sustainable use involve various approaches that comprehensively communicate and promote the benefits inherent in sustainable practices. These strategies recognize the need to bridge the gap in understanding sustainable use, particularly in Western settings where misconceptions may prevail. A key component of these institutional strategies is education. Establishing educational programs that provide accurate and nuanced information about the principles, methodologies, and positive outcomes of sustainable wildlife management can significantly contribute to altering perceptions. By fostering a deeper understanding of the ecological, cultural, and economic dimensions of sustainable use, these programs empower individuals with the knowledge needed to (a) appreciate the complex interplay between human activities and wildlife conservation, (b) dispel misconceptions surrounding sustainable use and (c) make informed decisions and engage in constructive dialogue about conservation. This educational aspect extends beyond theoretical understanding to practical insights, emphasizing the real-world implications of sustainable practices.

Simultaneously, raising awareness is essential for influencing public opinion and dismantling preconceived notions. Strategic communication campaigns, utilizing various media channels, can highlight the success stories of sustainable use in different regions, emphasizing the coexistence of wildlife conservation and local community development. These campaigns can also address the economic benefits, such as job creation and community empowerment, associated with responsible wildlife management practices. By showcasing tangible examples of positive outcomes, institutions can use awareness initiatives to reshape the narrative around sustainable use and contribute to a more informed public discourse. This proactive approach would help shift the narrative from one of skepticism to one that recognizes the symbiotic relationship between responsible human activities and biodiversity conservation.

Furthermore, institutional strategies should include practical steps that go beyond communication and actively promote sustainable practices. This involves collaboration with local communities, conservation organizations, and governmental bodies to implement and support initiatives that exemplify sustainable use. By demonstrating tangible benefits, such as improved community livelihoods, habitat conservation, and biodiversity enhancement, institutions will contribute to the actualization of sustainable practices and contribute to living testimonials that challenge and dispel misconceptions, fostering a more informed and supportive global community.

By implementing the following strategies in table 5, it is possible to increase understanding and promote sustainable use practices in Western settings at the institutional level, leading to a more sustainable and environmentally conscious society.

Table 5: Institutional strategies for conveying the positive aspects of sustainable use

Education and Awareness	<ul style="list-style-type: none"> • Encourage the inclusion of sustainable use concepts in school curricula at various levels, fostering an early understanding and appreciation for sustainable practices. • Launch public awareness campaigns, social media initiatives, and engage with mainstream media to promote understanding of sustainable use practices. • Organize workshops, seminars, and training programs to educate the public, professionals, and policymakers on local sustainable land practices. • Highlighting the importance, benefits for individuals, communities, and the planet, and long-term consequences. • Offer environmental education programs providing a comparative analysis of sustainable land use models.
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Policy and Regulation	<ul style="list-style-type: none"> • Encourage governments to integrate sustainable land use practices into national and local policies, promoting responsible production and consumption. • Revise policies to ensure they promote sustainable land use aligned with global sustainability goals, emphasizing effectiveness and enforceability. • Implement economic incentives such as tax breaks, subsidies, and grants for businesses and individuals that adopt sustainable practices. <p>Encourage research and development in rural technologies and practices and provide support for entrepreneurs and startups working in that sector.</p>
Collaboration and Partnerships	<ul style="list-style-type: none"> • Foster CBNRM public-private partnerships to develop and implement joint initiatives and policies for sustainable use, sharing resources, knowledge, and expertise. • Engage diverse stakeholders, including local communities, Indigenous groups, industry representatives, and environmental organizations, in decision-making for sustainable land use practices. • Collaborate with international organizations, participate in global sustainability initiatives, and share best practices to foster cross-cultural understanding and learning. • Forge partnerships with stakeholders to promote sustainable consumption through joint initiatives like sustainability certifications and labeling programs. • Develop and promote clear labelling systems and certifications that indicate the sustainability credentials of products, allowing consumers to make informed choices.
Consumer Awareness, Engagement and Behavior Change	<ul style="list-style-type: none"> • Launch public campaigns that inspire individuals to adopt sustainable practices in their daily lives, emphasizing the positive impact of their choices on the environment. • Promote responsible consumption, and encourage the purchase of sustainable products and services • Encourage consumers to make informed choices by providing transparent information about the environmental and social impact of products and services. • Promote and support sustainable alternatives adopted in rural areas by highlighting their benefits (energy efficiency, reduced waste, lower ecological footprints, etc). • Foster a culture of conscious consumerism by encouraging individuals to prioritize quality over quantity, repair and reuse items, and reduce unnecessary consumption.
Research, Monitoring and Evaluation	<ul style="list-style-type: none"> • Back scientific research on ancestral sustainable practices (e.g. life-cycle assessments and impact studies, ecological footprints) for evidence-based information. • Create online platforms to share research findings, best practices, and narratives, fostering knowledge exchange among practitioners, policymakers, and the public. • Establish monitoring systems to track progress in sustainable use practices, assess the impact of policies, and identify areas for improvement. • Continuously assess and enhance sustainable use strategies by incorporating insights from scientific research, emerging trends, and feedback from stakeholders.

6. CASES DEMONSTRATING SUCCESSFUL COMMUNICATION INITIATIVES IN CONSERVATION IN SOUTHERN AFRICA

There have been several successful communication initiatives in conservation in Southern Africa that have made significant contributions to raising awareness, changing behaviours, and promoting conservation efforts. The following highlights few cases:

► *Rhino Campaigns*

#RoomToRhino (Save The Rhino, n.d.), #EndWildlifeCrime (WWF, n.d.), #RhinoFriday (Rhino Friends of America, n.d.), and #GiveRhinosAHand or #GivingTuesday (International Rhino Foundation, n.d) are examples of campaigns to raise awareness and funds for rhino conservation. These

initiatives utilized social media platforms, including Facebook, Twitter, and Instagram, to spread the message and engage with the public. The campaigns included sharing informative posts about rhino conservation, success stories, threats, and updates on their projects. They also collaborated with influencers and partnered with local businesses to increase reach and generate donations. The campaigns gained significant traction and successfully raised funds for anti-poaching efforts, community engagement, and education programs.

► ***Save the Rhino Trust (SRT) - Namibia***

SRT has implemented effective communication initiatives to raise awareness about rhino conservation. They used various channels such as social media, traditional media, and educational programs to engage local communities and international audiences. SRT's campaigns focused on the importance of rhinos in the ecosystem, the threats they face, and the need for conservation efforts. Their efforts resulted in increased public support, donations, and a decline in poaching incidents (SRT, n.d).

► ***Peace Parks Foundation's Transfrontier News - Southern Africa***

Through annual infographic reviews (Peace Parks Foundation, n.d.) distributed both in print and online, showcasing success stories, research findings, and updates on conservation projects across the region and targeting stakeholders like governments, conservation organizations, researchers, and local communities, the Peace Parks Foundation facilitates knowledge exchange and raises awareness. Collaborating with Conservation International, the foundation engages local communities through outreach programs, educational campaigns, and interactive workshops. By involving local communities in decision-making processes and highlighting the benefits of conservation, the foundation has successfully gained support for their initiatives and helped reduce illegal activities such as poaching and deforestation (Conservation International, 2023).

► ***AWF #TimeToSaveWildlifeIsRunningOut Campaigns (Rhino/Elephant) - Africa***

The African Wildlife Foundation (AWF) has implemented successful communication initiatives that focus on both wildlife protection and sustainable tourism. AWF collaborates with local communities, government agencies, and tourism stakeholders to promote responsible tourism practices and wildlife conservation. Through educational campaigns (Pinterest, n.d; Dragon Trail, 2019; AWF, n.d), visitor centres, and interpretive signage, they raise awareness about the importance of protecting wildlife habitats and supporting local economies. AWF's communication initiatives have resulted in increased tourist engagement in conservation activities, enhanced wildlife protection measures, and the promotion of ethical wildlife experiences.

► ***Monitoring and Reporting App and more***

Wildlife ACT in Southern Africa developed a series of tools to facilitate wildlife monitoring and reporting (WildlifeAct, n.d.). Other apps such as Forest Watcher (Global Forest Watch, 2023) or Wildlife Sentinel (Traffic, 2021) developed by a consortium of NGOs have been used by field rangers and conservationists to record and report wildlife sightings, poaching incidents, and other conservation-related data in real-time. The information collected through the app is shared with conservation organizations, government agencies, and the public. This initiative not only improves data collection and analysis but also engages local communities in conservation efforts. The app has been successful in increasing community participation, enhancing anti-poaching efforts, and raising awareness about wildlife conservation.

► ***African Parks "Lion Recovery Fund" Campaign - Africa***

African Parks launched the "Lion Recovery Fund" (African Parks, 2018) campaign to address the decline of lion populations in Southern Africa. The campaign focused on raising awareness about the threats facing lions and garnering support for their conservation. African Parks utilized social media, traditional media outlets, and partnerships with celebrities (Lion Recovery Fund, 2018) and influencers to spread their message. They highlighted success stories of lion conservation, showcased the efforts of local communities, and emphasized the importance of protecting lions as a flagship species. The campaign generated significant public support, resulting in increased funding for lion conservation projects and the implementation of effective conservation strategies (African Parks, n.d.).

► ***The Bateleurs #FlyingForTheEnvironment campaign – South Africa***

The Bateleurs focuses on conservation through aerial initiatives. They successfully communicate aerial conservation to raise awareness and engage the public in conservation efforts. By utilizing small aircraft, they capture stunning aerial images and videos of conservation areas, wildlife, and environmental issues. These visuals are then shared through various communication channels, such as social media, websites, and documentaries. The Bateleurs' communication initiatives effectively

highlight the importance of conservation, showcase the beauty of Southern Africa's natural landscapes, and inspire people to act (The Bateleurs, n.d.).

► ***Painted Dog Conservation - Zimbabwe***

Painted Dog Conservation has implemented successful communication initiatives to engage local communities in protecting African wild dogs, also known as painted dogs. By using a combination of workshops, community meetings, and educational materials, they raise awareness about the importance of painted dogs and their conservation. The organization also involves local communities in monitoring and research activities, fostering a sense of ownership and pride in protecting the species. These communication initiatives have led to increased community support for conservation and reduced human-wildlife conflict (Painted Dogs, 2022).

► ***Wildlands Conservation Trust - South Africa***

The Wildlands Conservation Trust has implemented positive communication initiatives (Wild Trust, n.d.) to facilitate public-private partnerships for conservation. They actively engage with businesses, corporations, and individuals to promote sustainable practices and support conservation projects. Through targeted marketing campaigns, such as the #30x30Now campaign (Wild Trust, 2022), corporate social responsibility programs, and community engagement events, Wildlands effectively communicates the value of conservation to different stakeholders. By building partnerships, they secure funding and resources for conservation activities, establish conservation corridors, and protect critical habitats. The trust's communication initiatives showcase the positive impact of collaboration between the private sector and conservation organizations.

► ***WildAid's #Ivory Free Campaign - Zambia***

WildAid launched a highly successful campaign called "Ivory Free" in Eastern and Southern Africa. The campaign aimed to combat the illegal ivory trade by raising awareness about the devastating impact on elephant populations and the broader ecosystem (USAID, 2021). WildAid partnered with local communities, celebrities, and influential figures to spread their message (WildAid, n.d.) through TV, radio, billboards, and social media. The campaign successfully decreased the demand for ivory products and led to a decline in poaching incidents.

► ***Cheetah Conservation Fund #UnitingForCheetahs Campaign***

The Cheetah Conservation Fund (CCF) has developed successful communication initiatives to address human-wildlife conflict and promote cheetah conservation (CCF, n.d.). CCF employs a multifaceted approach, including educational programs in schools, community-based initiatives, and outreach activities. They work closely with local farmers and herders, providing them with tools and techniques to reduce conflict with cheetahs and protect their livestock. Through their communication initiatives, CCF has built trust, fostered collaboration, and increased awareness about the importance of conserving cheetahs as an integral part of the ecosystem.

► ***Rhino poaching awareness campaign - South Africa***

South Africa has been battling the poaching crisis affecting its rhino populations. In response, the Department of Environmental Affairs launched a comprehensive communication campaign to raise awareness about the importance of rhino conservation and the detrimental impacts of poaching. The campaign included TV and radio advertisements, social media outreach, educational materials distributed in schools, and community engagement activities. The initiative successfully increased public awareness about the issue, leading to a greater understanding of the need to protect rhinos and a reduction in poaching incidents.

► ***Community-led conservation efforts - Namibia***

Namibia's community-based natural resource management (CBNRM) program has been successful in engaging local communities in conservation efforts. Through effective communication strategies, such as community meetings, radio programs in local languages, and culturally relevant storytelling, the program has empowered communities to take ownership of wildlife and natural resource management. The initiative has resulted in reduced poaching, increased wildlife populations, and improved livelihoods for local communities, as they benefit from sustainable tourism and other conservation-related activities (NACSO Reports).

► ***#NotOnOurWatch African penguin conservation campaign - South Africa***

The African penguin population has been declining due to habitat loss, overfishing, and pollution. To address this issue, The Southern African Foundation for the Conservation of Coastal Birds (SANCCOB) launched a campaign to raise awareness and mobilize support for African penguin conservation. The campaign utilized various communication channels (Daniels, 2022), including social

media, websites (Two Oceans Aquarium, 2023), educational materials, and public events (ZoosAfrica, n.d.). The initiative successfully raised public awareness about the plight of African penguins, leading to increased public support and donations, as well as government action to protect their habitat and implement sustainable fishing practices (SAAMBR, n.d.).

► ***Elephant-human conflict mitigation - Botswana***

Botswana has faced challenges of human-wildlife conflict, particularly related to elephants (Save the Elephant, 1969). In response, conservation organizations and government agencies have implemented communication initiatives to reduce conflicts and promote peaceful coexistence. These initiatives involved working closely with local communities to understand their concerns, conducting awareness campaigns on elephant behaviour and conflict mitigation strategies, and establishing community-led early warning systems. Through effective communication and engagement, the initiatives have helped to minimize negative interactions between elephants and local communities, ensuring the long-term survival of both (CITES/Department of Wildlife and National Parks of Botswana, 2022).

These case studies demonstrate the power of effective communication initiatives in mobilizing support and driving conservation efforts in Southern Africa. By engaging and empowering local communities, raising awareness, and promoting behaviour change, these initiatives have made significant contributions to sustaining people and conserving wildlife and their habitats in the region (AWF, n.d.).

7. LESSONS LEARNED

Drawing insights from all the initiatives and case studies discussed above, the following section distils key lessons learned and highlights best practices gleaned from these impactful endeavours. Delving into the nuances of the cases, we aim to provide a comprehensive understanding of the strategies employed and the valuable takeaways that can inform and inspire future endeavours in similar contexts. By implementing these lessons learned and best practices, initiatives can use digital literacy to address misunderstandings more effectively. These approaches empower individuals to navigate the digital landscape with critical thinking skills, promote accurate information sharing, and foster a more informed and engaged digital community.

- *Tailor content to the target audience:* effective digital literacy initiatives understand the specific needs, preferences, and technological capabilities of the target audience. Content should be presented in a user-friendly manner, using language and formats that resonate with the intended recipients. Consider cultural sensitivities and ensure that the information is accessible to individuals with varying levels of digital literacy.
- *Promote critical thinking and fact-checking:* digital literacy initiatives should emphasize critical thinking skills and encourage individuals to evaluate the credibility and accuracy of online information. Teach participants how to fact-check sources, verify information through multiple channels, and discern between reliable and unreliable sources. Encourage a healthy scepticism and empower individuals to make informed judgments.
- *Provide skills for effective online communication:* effective communication in the digital realm is crucial for addressing misunderstandings. Digital literacy initiatives should equip participants with skills such as clear and respectful online communication, constructive dialogue, and conflict resolution techniques. Promote active listening, empathy, and the ability to express opinions in a non-confrontational manner.
- *Foster media literacy:* digital literacy initiatives should educate participants about media literacy, helping them understand how media messages are constructed, disseminated, and interpreted. Teach individuals to critically analyse media content, including identifying bias, recognizing manipulative techniques, and understanding the impact of sensationalism on public perception.
- *Encourage collaborative learning:* foster a collaborative learning environment where participants can share their experiences, perspectives, and challenges related to digital literacy. Encourage peer-to-peer support, group discussions, and knowledge sharing. This approach not only enhances learning but also creates a sense of community and collective responsibility in addressing misunderstandings.

- ▶ *Provide practical training and resources:* offer hands-on training and practical resources that allow participants to apply their digital literacy skills in real-life scenarios. This could include workshops, interactive activities, online tutorials, and access to reliable information sources. Ensure that participants have the tools and resources they need to navigate the digital landscape effectively.
- ▶ *Engage trusted community leaders and organizations:* collaborate with trusted community leaders, influencers, and organizations to amplify the reach and impact of digital literacy initiatives. Their support and endorsement can enhance credibility and facilitate wider adoption of digital literacy practices within the community.
- ▶ *Evaluate and adapt:* continuously evaluate the effectiveness of digital literacy initiatives through feedback mechanisms, surveys, and assessments. Regularly reassess the needs and challenges of the target audience and adapt the content and delivery methods accordingly. Flexibility and responsiveness are key to addressing evolving misunderstandings and effectively leveraging digital literacy.

7.1 Prospects and Potential Developments in the Field

The field of conservation is continuously evolving, and several prospects and potential developments hold promise for advancing conservation efforts. Here are some key areas to watch for:

- ▶ *Data-driven conservation:* the increasing availability of big data and advancements in data analytics present opportunities for data-driven conservation approaches. Integrating diverse data sources, including ecological data, socio-economic data, and satellite imagery, can provide comprehensive insights into conservation challenges and guide evidence-based decision-making. Data-driven approaches can enable more targeted conservation interventions and help measure the impact of conservation efforts more effectively.
- ▶ *Conservation technology for public engagement:* the digital age presents new opportunities for conservation communication and engagement. Social media platforms, online communities, and digital storytelling can amplify conservation messages, reach wider audiences, and foster global collaboration. Integrating digital literacy into conservation initiatives will continue to be crucial to address misinformation and promote accurate understanding. Digital platforms and technologies will continue to play a crucial role in engaging the public in conservation. Augmented reality, virtual reality, and interactive apps can offer immersive experiences, educational tools, and virtual tours, creating a deeper connection between individuals and conservation issues. These technologies can inspire action, foster empathy, and raise awareness on a global scale.
- ▶ *Conservation finance and sustainable funding models:* developing innovative and sustainable funding models is crucial for conservation in the future. Conservation organizations are exploring diverse financial mechanisms, including impact investments, payments for ecosystem services, crowdfunding, and public-private partnerships. These approaches can diversify funding sources, encourage private sector engagement, and ensure long-term financial sustainability for conservation projects. These models can attract investment capital, align financial incentives with conservation goals, and support sustainable livelihoods for local communities.
- ▶ *Policy and governance:* strengthening policy frameworks and governance mechanisms is crucial for effective conservation. Future developments will likely involve advocating for stronger legal protections, enhanced enforcement mechanisms, and international agreements that prioritize conservation goals in favour of human rights. Promoting policy coherence and addressing the drivers of biodiversity loss will be vital for creating an enabling environment for conservation action.
- ▶ *Education and public awareness:* education and public awareness will continue to play a pivotal role in conservation. Future developments will focus on expanding environmental education programs, integrating conservation principles into school curricula, and leveraging digital platforms and social media to engage and inform the public. Increasing public awareness and fostering a sense of environmental responsibility are essential for building a broader conservation movement.
- ▶ *Digital conservation:* leverages technology to preserve and protect cultural and natural heritage by digitizing and archiving artefacts, documents, and ecosystems. This innovative approach

(Figure 6) ensures the longevity and accessibility of valuable resources, fostering a sustainable method for safeguarding our shared global heritage.

These prospects and potential developments hold significant promise for advancing conservation efforts. By embracing technological advancements, engaging communities, developing sustainable funding models, addressing climate change, strengthening policy frameworks, and implementing effective conservation communication, conservation can make substantial progress in protecting biodiversity, ecosystems, and the planet for future generations.



Figure 6: Five key dimensions of digital conservation designed by Arts et al. (2015) in their article Digital technology and the conservation of nature. *Ambio*, 44, 661-673.

7.2 Conservation AI

AI is revolutionizing conservation efforts by offering advanced tools for monitoring, analysing, and managing ecosystems. By harnessing the capabilities of AI, conservation stakeholders can analyse vast datasets, model ecosystems, and implement data-driven strategies to enhance biodiversity preservation and sustainable resource management.

- ▶ *Data analysis and pattern recognition:* AI algorithms are used to analyse large datasets, such as satellite imagery, camera trap photos, and acoustic recordings, to detect patterns and identify key conservation indicators. This helps monitor (He, 2020) biodiversity, track species populations, and identify habitat changes. AI can quickly process vast amounts of data, enabling conservationists to make data-driven decisions and respond to emerging threats more effectively (Chalmers et al., 2019).
- ▶ *Predictive modelling and species distribution:* AI algorithms use existing data to develop predictive models that estimate species distribution and habitat suitability. This information is valuable for identifying areas of high conservation priority and planning conservation interventions. AI can also help forecast the impacts of climate change on species and ecosystems, aiding in adaptation planning (Reckling et al., 2021; Zhang and Li, 2017).
- ▶ *Wildlife monitoring and anti-poaching efforts:* AI-powered technologies such as drones, cameras, and sensors can be used for wildlife monitoring and anti-poaching efforts. AI algorithms can analyse real-time video and image feeds to detect and identify wildlife, including endangered species, and trigger alerts for potential poaching activities. This helps law enforcement agencies respond quickly and effectively (Bondi, 2018; Kuruppu, 2023).
- ▶ *Environmental DNA (eDNA):* eDNA sampling involves collecting and analysing DNA traces present in environmental samples, such as water or soil, to detect the presence of species. Advances in eDNA technologies and AI analysis techniques (Beng and Corlett, 2020) can improve species detection, especially for elusive or cryptic species. This approach can provide valuable information for conservation planning and monitoring biodiversity.

- ▶ *Ecosystem restoration and conservation interventions:* AI supports ecosystem restoration efforts by analysing ecological data and recommending appropriate restoration techniques. AI algorithms can optimize interventions like reforestation, invasive species management, and ecosystem monitoring, increasing the efficiency and effectiveness of conservation efforts (Shivaprakash et al., 2022).
- ▶ *Climate change modelling and resilience planning:* AI algorithms can analyse climate data, ecological variables, and species distributions to model the impacts of climate change on ecosystems. This information can aid in developing climate change adaptation strategies, identifying climate refugia, and enhancing ecosystem resilience to changing environmental conditions (Lee and Bharati, 2021) Leal et al., 2022).
- ▶ *Smart resource management:* AI can optimize resource management in conservation, such as efficient deployment of park rangers, predictive maintenance of conservation equipment, and intelligent monitoring of conservation projects. AI-powered systems can automate routine tasks, improve data collection efficiency, and enhance the overall effectiveness of conservation operations (Krishnan et al, 2022; Wu et al, 2021)).

Other conservation areas in which AI is used are wildlife trafficking, habitat monitoring and restoration, disease surveillance, and citizen science and engagement. Despite the observed utilizations of AI in conservation, its integration remains relatively new. There is a pressing need for more professionals in the field who possess the latest technological knowledge to advance the integration of the fourth industrial revolution tools in conservation efforts. Additionally, several urgent areas within conservation are expected to undergo significant developments, including technology-driven advancements.

- ▶ *Conservation planning and decision support:* AI can assist in optimizing conservation planning by considering various factors, such as ecological connectivity, habitat fragmentation, and the effectiveness of protected areas. AI algorithms can suggest optimal locations for protected areas, wildlife corridors, and habitat restoration efforts, considering multiple ecological and socio-economic variables (Xu et al., 2023).
- ▶ *Natural language processing and communication:* AI-powered natural language processing (NLP) can help analyse and understand large volumes of text data, such as research papers, reports, and social media discussions related to conservation. This allows conservationists to extract valuable insights, detect emerging issues, and understand public perceptions and sentiments regarding conservation topics (Tamrakar et al., 2023).
- ▶ *Public engagement and education:* AI-powered chatbots and virtual assistants can engage the public, answer conservation-related questions, and provide educational resources. These AI tools can facilitate interactive learning experiences, disseminate accurate information, and raise awareness about conservation issues, promoting a more informed and engaged public (Wilson, 2022).

While AI has immense potential in conservation, it is crucial to consider ethical considerations, such as data privacy, bias, and human-AI collaboration. The responsible integration of AI should prioritize human decision-making, local knowledge, and community involvement to ensure that AI supports and enhances conservation efforts while respecting human values and ethical standards.

According to Xu et al., “effective conservation management is a planning, implementation, and adaptation cycle consisting of three key steps. (1) We must understand the world; proximal and remote sensing technologies can help monitor land cover and animal populations. (2) We must act in the world; algorithmic decision making can help optimize and prioritize conservation efforts. (3) We must evaluate the impact of our actions; causal inference can help understand the direct effect of our actions.

8. CONCLUSION

Southern Africa's sustainable use approach to conservation emphasizes the involvement of local communities in natural resource management and aims to balance environmental protection with socioeconomic development. This approach has been implemented through community-based natural resource management (CBNRM) programs and sustainable wildlife management practices. It recognizes that involving communities in decision-making processes leads to more effective and equitable conservation outcomes. Communities are given rights and responsibilities to manage and benefit from their natural resources, including wildlife.

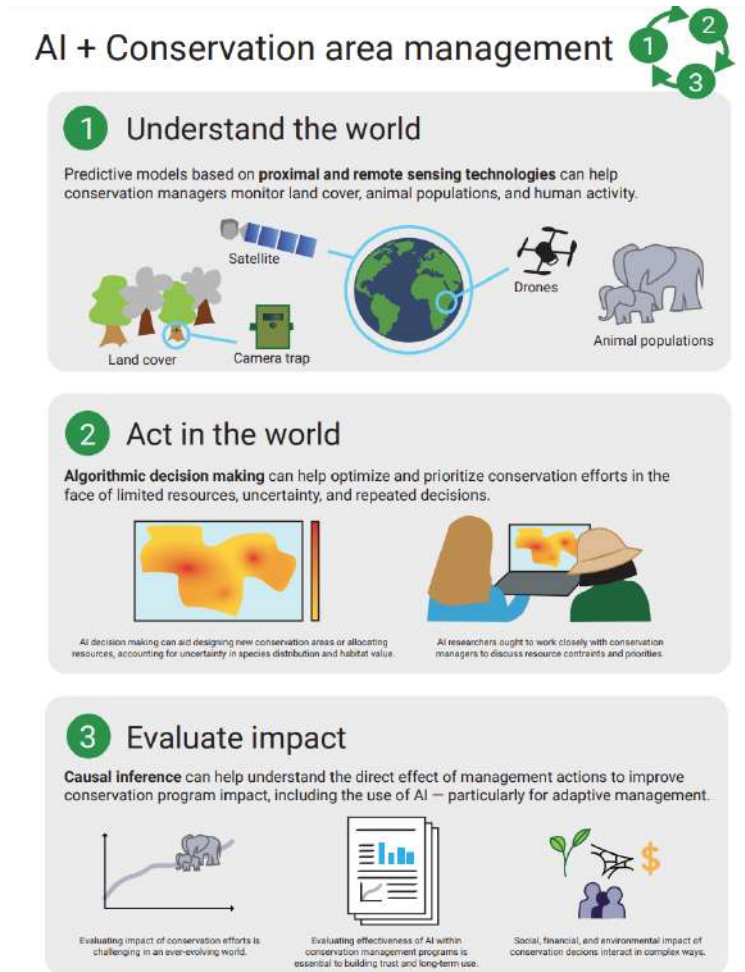


Figure 7: Extracted from - Reflections from the Workshop on AI-Assisted Decision Making for Conservation. arXiv preprint arXiv:2307.08774

However, the Western understanding of sustainable use can sometimes overlook cultural and ecological dimensions, prioritizing a preservationist approach over community well-being. Effective conservation communication is crucial in addressing misunderstanding between supporters of these diverging conservation models, promoting awareness, building trust, empowering communities, and fostering collaboration to achieve sustainable outcomes that respect diverse perspectives. Incorporating digital literacy into conservation strategies in Southern Africa will empower local communities to participate in decision-making, access conservation knowledge, and adopt sustainable practices. It will enhance their ability to implement initiatives, access sustainable markets, and communicate effectively.

Finally, collaborative approaches between Southern African and Western stakeholders are crucial for achieving sustainable conservation outcomes through knowledge sharing, mutual learning, and addressing cultural and ecological aspects. These collaborations will bridge gaps in approaches and contribute to effective conservation synergies across geographical boundaries.

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Author's Contributions (in accordance with ICMJE criteria for authorship)

<i>Contribution</i>	<i>Author 1</i>	<i>Author 2</i>
Conceived and designed the research or analysis	Yes	Yes
Collected the data	Yes	No
Contributed to data analysis & interpretation	Yes	Yes
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The author(s) solemnly declare(s) that this research has not involved any human subject (body or organs) for experimentation. It was not a clinical research. The contexts of human population/participation were only indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or ethical obligation of Helsinki Declaration does not apply in cases of this study or written work.

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The Doctrines of Margin of Appreciation and Evolutive Interpretation: A Review of the European Court of Human Rights

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ABSTRACT

The European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR) - the focus of this work - in its conceptualisation as a “living instrument” and a bulwark against human rights abuse in Europe, has been construed with different canons of interpretation by the European Court of Human Rights (the Strasbourg Court), including the doctrines of the Margin of Appreciation and the evolutive interpretation. This work aims to review the doctrines of the Margin of Appreciation and Evolutive Interpretation from the jurisprudence of the Strasbourg Court by attempting a foray into the debates emanating from the court’s interpretative jurisprudence. It also interrogates how the ECHR is interpreted in the context of the Vienna Convention on the Law of Treaties (VCLT). The method adopted is doctrinal, with a critical and analytical approach that involves desk and library research. The work relies on primary and secondary materials such as relevant case laws of the Strasbourg Court, legislations, textbooks, journal articles, conference proceedings/papers, online documents, and news to critically evaluate the significance of the doctrines of the Margin of Appreciation and Evolutive Interpretation to the realisation of the objectives of the ECHR. The article investigates how the Strasbourg Court employs the doctrines of the margin of appreciation and evolutive interpretation in achieving the objectives and purpose of the ECHR. The work finds that regardless of their criticism as judge-made doctrines without normative basis, the doctrines of the Margin of Appreciation and Evolutive Interpretation as applied by the Strasbourg Court align with the rules of treaty interpretation as per the VCLT and, thus, remain the best canon of interpretations befitting for the ECHR. This is so considering that interpretation and applications of laws are undertaken in an ever-changing world that requires dynamic laws that could adapt to new situational contexts that are not initially contemplated at the time of treaty negotiations and formations.

Keywords: Margin of Appreciation; Evolutive Interpretation, European Convention on Human Rights, Strasbourg Court, Treaty Interpretation

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1. INTRODUCTION

Since there is no instrument in international law codifying and specifying the process of law-making, interpretation, and application (Klabbers, 2021, p. 24), recourse is often had to the Statute of the International Court of Justice (ICJ)¹, particularly Article 38(1), which listed “treaties” as the first source of international law (Spiermann, 2017) and has been described as the workaholic source of the international legal order (McNair, 1961). Hence, rules have evolved in customary international law on treaties’ interpretation, effect, application, and validity (Briggs, 1979, pp. 471–472; Klabbers, 2021). These rules also have received recognition in Article 31 and 32 of the Vienna Convention on the Laws of Treaties 1969² (VCLT), making its provisions well established in international conventional and customary laws (Klabbers, 2021, pp. 28–29).

Treaties have been interpreted in three ways: textual, subjective, and teleological or objective interpretation. The textual approach as per Article 31(1) of the VCLT emphasises the ordinary and literary meaning of the texts. It has been esteemed as the primary tool of treaty interpretation (Sinclair and Sinclair, 1984, p. 115). The subjective approach of treaty interpretation also referred to as the supplementary means of interpretation as gleaned from Article 32 of VCLT, employs the initial intention of the parties from the preparatory work to interpret the treaty. The teleological or objective approach, as deciphered in Article 31(1) of VCLT, invokes the object and purpose of the treaty in interpreting it (Jacobs, 1969, pp. 318–319). It has been argued that the textual approach to treaty interpretation is the traditional approach with a restrictive effect and does not foresee the possibility of expansive or evolutive interpretation (Jacobs, 1969, p. 326; Sinclair and Sinclair, 1984). This school of thought also believes that the textual approach is the primary interpretative technique that should be given precedence over others except where it’s utility leads to an absurd, ambiguous, and unreasonable result (Watts, et al., 1999, p 687).

Contrary to the above submissions, the practice and judgments of the ICJ and other international tribunals, however, reveal that none of the interpretative tools is placed on a higher pedestal above the other as they are often mutually and inclusively applied by courts to clarify and elucidate treaties without distinction as to which one is primary, secondary, or supplementary (Sinclair and Sinclair, 1984, p. 124). Moreover, there is no express provision in the VCLT clothing the textual approach with a restrictive effect, just as the assertion that the VCLT does not envisage an evolutive or expansive interpretation cannot hold water again (Sinclair and Sinclair, 1984, p. 116) because Article 31(1) of the VCLT, which is the most relevant provisions of the VCLT to this discussion, states that ‘a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of their object and purpose’.

In the foregoing context, this work aims to investigate the significance of the doctrines of margin of appreciation and evolutive interpretation to the realisation of human rights norms such as the ECHR³ by reviewing the jurisprudence of the European Court of Human Rights (the Strasbourg Court). The work revisits the question of whether these interpretative techniques, with the potential of creatively expanding the normative contour of the ECHR (Brems and Gerards, 2013) and treaty obligations of member states (Wessel, 2004, p. 149), will not amount to a capricious and obnoxious interpretation of the ECHR (Dzehtsiarou, 2011), offend the concepts of the universality of human rights (Brems, 2001; Greer, 2010) and the rule of law (Shany, 2005, p. 912), contradict the principles of treaty interpretations as enshrined in the (VCLT), oppose the intendment of the citizens of Europe and in the process impair the legitimacy of the Strasbourg court (Dzehtsiarou, 2011). In achieving this, the paper unpacks the debates and controversies emanating from the interpretative jurisprudence of the Strasbourg Court. It examines how the ECHR is interpreted in the light of the VCLT. The method adopted is doctrinal, with a critical and analytical approach that involves desk and library research. The work is bifurcated into five sections, commencing with an introduction in the first; section two revisits the principles of treaty interpretations enshrined in the VCLT and explores their interactions with the doctrine of evolutive interpretation. Sections three and four, respectively, investigate how the Strasbourg Court employs the doctrines of the margin of appreciation and evolutive interpretation in

¹ Statute of the International Court of Justice (Adopted 26 June 1945, entered into force 18 April 1946)

² Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331

³ European Convention for the Protection of Human Rights and Fundamental Freedoms (Adopted 4 November 1950, entered into force 3 September 1953).

achieving the objectives and purpose of the ECHR. Section five ends the work with concluding remarks.

2. THE VIENNA CONVENTION ON THE LAW OF TREATIES (VCLT) AND THE DOCTRINE OF EVOLUTIVE INTERPRETATION.

The implication of the usage of the words “good faith”, “ordinary meaning”, “their context”, and “object and purpose” in Article 31(1) of the VCLT is to create room for evolutive interpretation so that interpreters don’t get restricted to the text of the treaty (Rogoff, 1996, pp. 568–569). Hence, the community effect of Articles 31 and 32 of the VCLT is a mutual and inclusive application of all interpretative approaches, thus making the traditional and restrictive approach to treaty interpretation outdated under the VCLT’s regime (Jacobs, 1969, pp. 326–327). International tribunals have also shifted from a restrictive treaty interpretation approach to an evolutive interpretation (Lauterpacht, 1949, p.70). Impliedly, evolutive and expansive treaty interpretation has come to stay in international law (Orakhelashvili, 2003, p. 534). Illustratively, the ICJ in the maritime boundary dispute between Guinea-Bissau and Senegal (Guinea-Bissau v Senegal, 1991)⁴ upheld the underlining principles of flexible and evolutive interpretation of treaties against a restrictive or purely textual approach.

A further argument that has been advanced in justification of a restrictive approach towards treaty interpretation is that apart from Article 31(1) of the VCLT that recognised a textual approach as the first and primary treaty interpretation approach, Article 32 of the VCLT also recognises the intention of the parties. This is as contained in the preparatory work in clarifying the ordinary meaning of a treaty, especially where the application of the textual approach *simpliciter* may result in an absurd, ambiguous, and unreasonable outcome (Bernhardt, 1999, p.14). The challenge with this school of thought is that it fails to stipulate which intention of the parties should be considered as part of the preparatory work that should be relied on in treaty interpretation. The intention of new party members or old ones? During treaty negotiations, parties often register different intentions in different forms, written and unwritten, precise and ambiguous-intentions, and poorly and properly documented ones, with the stronger parties having their way (Bernhardt, 1999).

Moreover, reliance on preparatory work could also cause difficulty in interpreting the treaty when a dispute involves new parties that join the treaty and, thus, are not a party to the preparatory work. Experience from different treaties has shown that the number of parties joining most multilateral treaties after the treaty has come into force usually exceeds the number of initial negotiating states. For instance, the United Nations (UN) Charter⁵, with an initial 50 party states (United Nations, n.d.-b), now has 193 members (United Nations, n.d.-a). The ECHR, with an initial 12 high contracting states (The European Convention on Human Rights, n.d.), now boasts 46 members (Council of Europe, n.d.). A reliance on preparatory work will, thus, be disadvantageous to the new joining members; hence, the need to make recourse to evolutive interpretation. Moreover, if treaty ratification itself is evolutive to accommodate new contracting states, then why not the interpretation to meet up with contemporary developments and realities of the new states? (Bernhardt, 1999, pp. 14–15). While the following section continues with this discussion through the Margin of Appreciation doctrine, section four resumes the discussion on the principle of evolutive interpretation from the jurisprudence of the Strasbourg Court.

3. THE DOCTRINE OF THE MARGIN OF APPRECIATION AND THE ECHR

Although the doctrine of the Margin of Appreciation was a brainchild of the Strasbourg Court (Legg, 2012; Spielmann, 2012; Arai-Takahashi, 2002), it has gained recognisance in other international tribunals (Arato, 2013; Bjorge, 2015; Shany, 2005) and human rights treaty bodies (Cullen, 2009; UNHCR, 2005, p. 32), just as arguments have been advanced for its application in all UN judicial and quasi-judicial institutions (Bantekas and Oette, 2020; Shany, 2005). It should be noted that though the doctrine of Margin of Appreciation has received legislative enactment through Protocol 15 of the ECHR (2014), purporting to add the doctrine to the preamble of the ECHR, it is initially not a statutory

⁴ Case concerning the Arbitral Award of 31 July 1989 (in respect of the Maritime Boundary between Guinea-Bissau and Senegal), 1991 ICJ Reports 53, 69 et seq., 72

⁵ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16

right under the ECHR (*Stella v. Italy*, 2014)⁶; it is instead a judicial doctrine endorsed by states and developed by the Strasbourg Court to enable it to exercise a supervisory and subsidiary role to national courts of high contracting states (Cot, 2013). While George (2018) criticised the doctrine of the Margin of Appreciation for enabling the Strasbourg Court to defer on the normative contour of the ECHR and by implication become a threat to the ability of the court to decide cases with consistency and guarantee victims' protection against abuse by powerful states (George, 2018, p. 308); other scholar contends that the doctrine of the Margin of Appreciation is significant to human rights protection in Europe because it provides a platform for European human rights norm integration in a world where norm fragmentation renders human rights regimes ineffective (Arai-Takahashi, 2013, pp. 104-1-5). Tripkovic (2022) argued that the adaptation of the doctrine of the Margin of Appreciation for the Strasbourg Court should be applauded because the doctrine makes the application of the ECHR 'context-sensitive' in a pluralistic Europe where 'domestic understanding of human rights' norms needed to be mainstreamed into norm interpretation and application (Tripkovic, 2022, p. 234). Its application was originally in the context of derogation (Lavrysen, 2018; *A and Others v. UK*⁷), and limitations of rights (Bakircioglu, 2007; Kratochvíl, 2011) but has now evolved into an interpretative technique employed for expanding the substantive and procedural obligations of ECHR (Arnardottir, 2014; Skinner, 2014) as a living instrument (Bratza, 2014). Its significance and essential ingredients were lucidly established in the *locus classicus* case of *Handyside v. UK* (1976)⁸, where the Strasbourg court, among others, states that it is a margin donated to domestic lawmakers and judges that "goes hand in hand with European supervision." Impliedly, no matter how wide the margin might be, it is not absolute and ubiquitous, as the Strasbourg Court has a supervisory power to restrict, delineate, and redefine its use and contour (*Hirst v UK*⁹; *Alajos Kiss v. Hungary*, 2008¹⁰).

In exercising its supervisory power over the utility of the Margin of Appreciation by the high contracting states, the Strasbourg Court evaluates whether an urgent social need has arisen to necessitate the invocation of the doctrine and, more specifically, whether the element of proportionality has been satisfied by the interfering state (Skinner, 2014; Tsakyrakis, 2009). This proportionality test becomes necessary to ensure that states do not exceed and abuse the margin granted to them in implementing and enforcing the provisions of the ECHR (Spielmann, 2012; Arai-Takahashi, 2002). In assessing whether the interference was proportionate, recourse is often had to the "fair balance" (Christofferson, 2009) needed to be struck between the different competing variables. Hence, the Strasbourg Court is often faced with complex and complicated situations that demand it to determine which interest to protect; the sovereign right of the high contracting state that has been donated a Margin of Appreciation to implement the ECHR or that of the individual citizens whose rights are protected under the ECHR? (Christofferson, 2009). Thus, in *Schindler v. United Kingdom* (2013)¹¹, the Strasbourg Court held that restricting the parliamentary franchise to citizens with a close connection with the UK is a fair balance. In *A, B, and C v. Ireland* (GC)¹², the Strasbourg Court determined a fair balance concerning abortion. In *Parrilo v. Italy* (GC) (2015)¹³, the Strasbourg Court was confronted with striking a fair balance about donating embryos for scientific research. Other cases where a need to strike a fair balance between the parties in the Strasbourg Court includes *Couturon v. France* (2015)¹⁴, and *Chitos v. Greece* (2015)¹⁵.

In deciding whether the fair balance has been struck, the Strasbourg Court often recourse to the interfering states' domestic measures to confirm if there are equivalent protections and, after that, weigh such equivalent protections with the ones offered by the ECHR to arrive at a decision (*Fernandez-Martinez v. Spain*, 2014¹⁶; *Nicklinson v. UK*, 2015)¹⁷. Hence, the court's jurisprudence has recorded instances where states have been held to violate the doctrine of the Margin of Appreciation

⁶ *Stella v. Italy*, A. 49169/09 and 10 other applications

⁷ *A and Others v. UK* [GC], A. 3455/05, para 173

⁸ *Handyside v. UK* (1976) 1 EHRR (1979-80) 737, para 48

⁹ *Hirst v. UK* (No. 2) [GC], A. 74025/01, para 82

¹⁰ *Alajos Kiss v. Hungary*, A. 38832/06, (27 March 2008) para 42

¹¹ *Schindler v. United Kingdom*, A. 19840/09 (7 May 2013)

¹² *A, B and C v. Ireland* (GC) A. 25579/05, para 23

¹³ *Parrilo v. Italy* (GC) 46470/11 (27 August 2015)

¹⁴ *Couturon v. France* 24756/10 (25 June 2015)

¹⁵ *Chitos v. Greece* 51637/12 (4 June 2015)

¹⁶ *Fernandez-Martinez v. Spain* [GC], A. 56030/07, paras 123-153, (12 June 2014)

¹⁷ *Nicklinson v. UK*, A. 2478/15 (16 July 2015)

(Kratochvíl, 2011) for exceeding the margin afforded, for lack of fair balance, or on the grounds of disproportionality (Popelier and Van De Heyning, 2014). States are usually granted a narrow Margin of Appreciation with a heavy burden to adduce justifiable reasons for the allowance of the restriction if the victims are members of any vulnerable group (*Shtukaturov v. Russia*)¹⁸. This has been the attitude of the Strasbourg Court in restrictions about gender (*Abdulaziz, Cabales and Balkandali v. the UK, 1985*)¹⁹, sexual orientation (*EB v. France*)²⁰, mental disability, (*Alajos Kiss v. Hungary, 2008*)²¹ and race (*DH and Others v. the Czech Republic*)²².

Another factor taken into consideration by the Strasbourg Court in determining the Margin of Appreciation is any common consensus or imminent values among member states to the ECHR (Legg, 2012; Dzehtsiarou, 2011). The effect of an acceptable consensus by the Strasbourg Court is that it narrows the Margin of Appreciation afforded states, depending on whether it is a strong consensus (Spielmann, 2012, pp. 18–25). Thus, in *Schalk and Kopf v. Austria (2010)*²³, the right to same-sex marriage was not afforded to a party for lack of consensus and has since been a subject of critique for not being used to expand the scope of the rights of marriage and family life under the ECHR to meet up with emerging circumstances (Hamilton, 2013).

No other instance demonstrates the intricacy and dynamism of the Margin of Appreciation order than its application in regulating religious dresses and activities. The “Burqa ban” on the wearing of religious attires designed to conceal faces in public places imposed only by France and Belgium, thus far, is a case in point here (Beaman, 2015). The Strasbourg Court was provided with the opportunity to adjudicate on the Burqa ban in *SAS v. France (2014)*²⁴, where the court found that there was yet to be a European consensus on the utility of a complete religious face veil in public places. Regardless of this finding, the Strasbourg Court, relying on the Margin of Appreciation granted to France, held that the Burqa ban in France was proportionate and justifiable to preserve the conditions of “living together” to protect and actualise the rights and freedom of others in public (Marshall, 2015). Also, in *Mann Singh v. France (2008)*²⁵, the Strasbourg Court, on the grounds of public safety per Article 9(2) of ECHR and having regard to the margin afforded France, has earlier held that MS Silk, contrary to his religious norms, will have to show his photograph on his driving license bareheaded to the authorities to confirm the identity of the driver or ownership of the vehicle.

Noticeable from the preceding, especially the case of *Schalk and Kopf v. Austria*, is that while the Strasbourg Court accommodates common consensus in applying the doctrine of the Margin of Appreciation, it does not allow the lack of such consensus to hinder it from applying the ECHR as a living instrument, especially where the act of interference or restriction is proportionate to the aim being pursued. Hence, with the doctrine of Margin of Appreciation as applied in the *SAS v. France* case comes room for judicial innovation and activism (Mahoney, 1990).

4. THE PRINCIPLE OF EVOLUTIVE INTERPRETATION AND THE ECHR

The Strasbourg Court is unique because, unlike other international tribunals, most of its cases are initiated by individual applicants seeking to enforce their human rights under the ECHR. Also, the court creates institutions that interact and function within it rather than seeking to regulate inter-state entanglement like other international tribunals (Popovic, 2009). Rather than serving as a contract between member states, the ECHR is a law-making instrument that puts in place a normative framework for the human rights protection of European citizens. It is because of these unique features that the Strasbourg Court opts for an evolutive interpretative technique to be able to achieve the objectives and purpose of the ECHR effectively (*Wemhoff v. Germany, 1968*)²⁶. The Strasbourg Court consequently adopted the principle of effectiveness as espoused by the International Law Commission to interpret the ECHR (Lavrysen, 2018). By implication, evolutive interpretation aids the Strasbourg

¹⁸ *Shtukaturov v. Russia*, A. 44009/05, para 95.30141/04 (24 June 2010)

¹⁹ *Abdulaziz, Cabales and Balkandali v. the UK*, A. Nos. 9214/80; 9473/81; 9474/81, (1985) para 78

²⁰ *EB v. France* [GC], A. 43546/02, para 94

²¹ *Alajos Kiss v. Hungary*, A. 38832/06, (27 March 2008) para 42

²² *DH and Others v. the Czech Republic* [GC], A. 57325/00, para 182.

²³ *Schalk and Kopf v. Austria* 30141/04 (24 June 2010). For a critique see F Hamilton

²⁴ *SAS v. France* A.43835/11, paras 106–159 (1 July 2014)

²⁵ *Mann Singh v. France* A. 24479/07 (13 November 2008)

²⁶ *Wemhoff v. Germany (1968)* 2 Eur Court HR, para 8

Court in doing away with a restrictive approach (*Minelli v. Switzerland*, 1983)²⁷ and relying on a progressive approach deployed to protect human rights depending on different circumstances. In this manner, the court judicially and innovatively expands the contour of the rights in the ECHR by widening its scope to fit new and contemporary developments (*Soering*, 1989)²⁸.

To achieve the above purpose, states are required to cooperate so that the Convention's human rights provisions are enforced with different yardsticks depending on the different circumstances in the different high-contracting states (*Artico v. Italy*, 1980)²⁹. In this manner, obligations are also created for private individuals to implement the Convention's provisions (*X and Y v. Netherlands*, 1985)³⁰. It jealously protects individuals' rights by interpreting the exceptions and limitations in the ECHR narrowly. States are prevented from not fulfilling their obligations under the Convention, just as public interest litigation is allowed to invoke the provisions of the ECHR in human rights protection (*Van der Mussele v. Belgium*, 1983)³¹. Hence, in *Fairfield and Others v. United Kingdom* (2005)³², the Strasbourg Court held that relatives of a deceased victim could institute cases about the violations of the deceased right to life under Article 2 of ECHR. The doctrine of evolutive interpretation did not limit state obligations to their territory, it held them responsible for violations outside their immediate jurisdiction. In *Al-Skeini and Others v. United Kingdom* (2011)³³, the Strasbourg Court held that states' jurisdiction extends to territories under their control even if such states are not member states of the ECHR. The doctrine has also evolved from giving declaratory judgments to actionable judgments (Jackson, 2006, pp. 783–784).

The preceding implied that the ECHR is not restrictive in approach but rather evolutive and progressive, taking cognisance of contemporary developments in each European state and applying different strokes to different folks (*Tyrer v. United Kingdom*, 1978)³⁴. It does not achieve this by ignoring consensus and imposing a self-serving will on people; it embraces European consensus in protecting certain rights once such consensus strongly emerges.

5. FINDINGS AND CONCLUDING REMARKS

This work started with an exploration of the interaction between the general principles of treaty interpretation as per the VCLT and the doctrine of evolutive interpretation per the ECHR and finds that the doctrine of evolutive interpretation as applied by the Strasbourg Court is not normatively alien to the VCLT as it is within the riverbank of Article 31(1), which provide for the need to expand the scope of treaties during interpretation to achieve their objectives and purpose. The work thereafter revisits the doctrine of the Margin of Appreciation and finds that it is a suitable technique for the Strasbourg Court if it will continue to function as a living instrument and bulwark against human rights abuse and impunity in continental Europe. This is so because the doctrine affords the Strasbourg Court the platform to mainstream European consensus into norm interpretation and application; ensure that the ECHR remain relevance in the face of changing societal norms and values without a formal amendment process that could be at times prove abortive. This ultimately ensure that the interpretation and application of the ECHR do not become static with insensitive and outdated results in an ever-changing world where cultural values and norms are subject to change.

The significance and outcome of the utility of the principle of evolutive interpretation in the jurisprudence of the Strasbourg Court was also examined in the final part of the work with findings that it serves the cause of justice and achieves the objectives and purpose of the ECHR, particularly considering that unlike other regional human rights system where the dispute settlement procedure are designed to be inter-state, the European human rights system enable individual victims to have their human rights matters entertained by the Strasbourg Court in a manner that empower the court to judicially review the decisions of national courts. Thus, applying different strokes to different folks through the instrumentalities of the doctrines of the margin of appreciation and evolutive

²⁷ *Minelli v. Switzerland* (1983) 4 Eur Court HR

²⁸ *Soering* (1989) 14 Eur Court HR,

²⁹ *Artico v. Italy* (1980) 4 Eur Court HR

³⁰ *X and Y v. Netherlands* (1985) 4 Eur Court

³¹ *Van der Mussele v. Belgium* (1983) 13 Eur Court HR (ser A), para 15

³² *Fairfield and Others v. United Kingdom* [2005] VI Eur Court HR 4

³³ *Al-Skeini and Others v. United Kingdom* [2011] 53 Eur Court HR 18

³⁴ *Tyrer v. United Kingdom* (1978) 2 Eur Court HR

interpretation remains the best method to maintain this unique feature of the European human rights system. Overall, the work finds that the doctrines of the margin of appreciation and evolutive interpretation are unique and suitable for the ECHR as applied by the Strasbourg Court, just as they are of normative basis and on four with the VCLT principles of treaty interpretation.

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AUTHORS' DECLARATIONS AND ESSENTIAL ETHICAL COMPLIANCES

Author's Contributions (in accordance with ICMJE criteria for authorship)

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Research involving human bodies or organs or tissues (Helsinki Declaration)

The author(s) solemnly declare(s) that this research has not involved any human subject (body or organs) for experimentation. It was not a clinical research. The contexts of human population/participation were only indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or ethical obligation of Helsinki Declaration does not apply in cases of this study or written work.

Research involving animals (ARRIVE Checklist)

The author(s) solemnly declare(s) that this research has not involved any animal subject (body or organs) for experimentation. The research was not based on laboratory experiment involving any kind of animal. Some contexts of animals are also indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) does not apply in cases of this study or written work.

Research on Indigenous Peoples and/or Traditional Knowledge

The author(s) solemnly declare(s) that this research has not involved Indigenous Peoples as participants or respondents, with the documentation of their Indigenous Knowledge. Some other contexts, if any, of Indigenous Peoples or Indigenous Knowledge are only indirectly covered through literature review. An Ethical Clearance 'to conduct research on indigenous peoples' Indigenous knowledge is also not relevant. Therefore, an Ethical Clearance (from a Committee or Authority) or prior informed consent (PIC) of the respondents or Self-Declaration in this regard does not apply in cases of this study or written work.

Research involving Plants

The author(s) solemnly declare(s) that this research has not involved the plants for experiment or field studies. The contexts of plants were only indirectly covered through literature review. Thus, during this research the author(s) obeyed the principles of the Convention on Biological Diversity and the Convention on the Trade in Endangered Species of Wild Fauna and Flora.

(Optional) Research Involving Local Community Participants (Non-Indigenous)

The author(s) solemnly declare(s) that this research has not involved local community participants or respondents belonging to non-Indigenous peoples. This study did not involve any child in any form directly. The contexts of different humans, people, populations, men/women/children and ethnic people are also indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or prior informed consent (PIC) of the respondents or Self-Declaration in this regard does not apply in cases of this study or written work.

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