

**The Role of Intellectual Property  
in Sustainable Tourism Development  
in Namibia**

Two case studies by Dr. Malan Lindeque  
For the World Intellectual Property Organization



**CONTENTS**

**ACKNOWLEDGEMENTS ..... 5**  
**EXECUTIVE SUMMARY ..... 7**  
**INTRODUCTION..... 8**  
**THE HIMBA COMMUNITY IN KUNENE REGION..... 12**  
**THE NAMIBIA CRAFT CENTER ..... 21**  
**POTENTIAL SOLUTIONS..... 39**  
**RECOMMENDATIONS..... 41**  
**REFERENCES..... 42**



## **ACKNOWLEDGEMENTS**

The following persons and organizations generously contributed their time and information, without which this study would have been impossible: Sophia Snyman, Desert Secrets; Shareen Thude, Namibia Craft Centre and Namibia Art, Craft and Design; Karen Nott, Scents of Namibia and The Kunene Conservancies Indigenous Natural Products Trust; Karin le Roux, Omba Arts Trust; Willem Odendaal, Legal Assistance Centre; Margaret Jacobsohn, author, formerly of Integrated Rural Development and Nature Conservation; Rieth van Schalkwyk, Venture Publications; Koos Verwey, tourism lodge operator at Epupa, Kunene Region; and Bernd Schneider, Chairperson, Tour and Safari Association of Namibia. Some of them have graciously permitted acknowledged use of photographic material from their websites. All other photographs were taken by the author as part of this study. Special thanks go to the World Intellectual Property Organization (WIPO) for commissioning this work, in particular to Ms. Francesca Toso, Senior Advisor, Office of the Deputy Director General, Development Sector, for her vision and support to documenting the use of intellectual property (IP) in the context of Namibian tourism and community development.



Fresh *Commiphora wildii* resin ([www.desertsecrets.com](http://www.desertsecrets.com))



## **EXECUTIVE SUMMARY**

Namibia has outstanding examples of community participation in tourism owing to its communal conservancy registration system, through which rural communities are granted rights over the use of natural resources and tourism. The culture, history and traditional knowledge (TK) of Namibia's people are indisputably as much a part of the country's tourism economy as, if not more so than, its spectacular landscapes, wildlife and national parks. This report highlights two examples of tourism benefits gained by Namibia's rural people who use aspects of their cultural identity and TK to create desirable products for the tourism market. Both examples document links between TK and IP protection, and the ways in which rural people in Namibia have, or have not, been afforded such protection.

The first example concerns the Himba community in north-western Namibia, whose traditional use of an indigenous plant species has led to the development of a wide range of high-value perfume and body-care products. In marketing new products derived from cultural practices, great care is taken to ensure that community interests are safeguarded. The Himba women who harvest the wild plant for their own use as a perfume continue to supply the raw material to a communally owned extraction facility. Some of the essential oils produced at the facility are used to manufacture a range of trademarked products for the tourism market and some are exported to the European Union (EU) for the international perfume industry. A comprehensive product dossier, compiled to meet to EU standards, describes in detail the properties of the product and the manufacturing process, while a Prior Informed Consent statement and a Material Transfer Agreement protect the interests of the Himba people.

The second example concerns assistance to a community of craft producers in selling their products in the tourism market and highlights the informal system introduced to reward use of industrial designs created by some severely disadvantaged people from the Hai/Om San community. Designs derived from this community's TK are used in the textile industry and a royalty is paid to the designer throughout the lifespan of the design. A non-profit company has played a major role in this process. It acts as an essential trade facilitator by providing technical advice and raw materials to more than 450 craft makers and procures craft items for sale at the Namibia Craft Market in Windhoek. The company has recorded two instances of design replication in neighboring countries and is aware of the need to protect designs in future, in particular those of traditional Namibian jewelry. Craft makers are generally unaware, however, of the importance of IP tools and of the means of gaining access to such tools. IP tools are perceived as expensive and as necessitating the services of lawyers, which small companies cannot afford.

Extensive and very clear information on IP tools is nevertheless available on the website of the Business and Intellectual Property Agency (BIPA), but much more public information on available options and mechanisms must be provided. The report contains recommendations on the subject.

## **INTRODUCTION**

This study was commissioned by the WIPO as part of its Development Agenda Project on *IP, Tourism and Culture: Supporting Development Objectives and Promoting Cultural Heritage in Egypt and Other Developing Countries*.

The essential question addressed concerns the means by which an effective IP regime can strengthen the developmental nexus between tourism and socio-economic development in Namibia.

To answer the question, the extent to which Namibian society understands the concept of cultural or IP and the measures taken to protect IP must be assessed. Access to IP protection measures is likely to be yet another major issue owing to their complexity and legal nature, because those who are most in need of such protection, namely the poor and the marginalized, including indigenous people such as the San<sup>1</sup> and the Himba<sup>2</sup>, are unlikely to have any means of access to such tools. This raises the need to assess the importance of inter-stakeholder partnerships, an area in which Namibia is likely to shine, owing to its achievements in community-based natural resource management and tourism, and the strong role played by its international development partners, civil society and Government as facilitators in this regard within the enabling environment of policy and legal frameworks, as noted by the Ministry of Environment and Tourism (MET) (2013; and MET/Namibian Associations of Community Based Natural Resource Management (CBNRM) Support Organization (NASCO) 2018)).

The link between tourism and IP is not obvious in Namibia or in much of southern Africa. The WIPO Project helps raise awareness of the fact that the Namibian people's culture, history and TK must be considered to be part of the dynamics of the tourism economy as much as the landscapes, wildlife and national parks. The ways in which their culture, history and knowledge are marketed to and experienced by tourists open up important economic opportunities for the owners of these "commodities". Culture, history and knowledge form part of the cultural heritage of communities and individuals, and may be protected by appropriate IP tools under certain conditions.

Moreover, as the developmental role or incremental economic value derived from tourism-related IP is not immediately obvious, it is important to reflect on the dynamics of the tourism industry and, indeed, of the tourism economy in Namibia.

---

<sup>1</sup> Alternatively, the First People, the preferred name of the San and of the people formerly known as Bushmen, which is now deemed derogatory.

<sup>2</sup> Technically, the term should be "Ovahimba" but, for the purposes of this report, "Himba", the popular term employed in Namibia, will be used to refer to the people of this community.



Tourism is the country's fastest growing economic sector and is the least vulnerable to factors that still constrain growth in the other important economic sectors, such as volatility in international mining commodity prices and the impact of rainfall variability, climatic including oceanic variability and climate change on agriculture and marine fisheries. Tourism is affected by external factors such as the cost of long-haul travel, which is itself determined by international oil prices, and important internal factors such as peace, stability, safety and security; but tourism has been far more resilient than the other sectors and is much more closely linked to Namibia's competitive advantages in the context of sustainable development.

One of the key developmental challenges facing Namibia is the achievement of more equitable participation in and ownership of the tourism industry. The tourism industry ownership base before independence in 1990 had been limited, but its potential to benefit far more people than merely its fairly narrow owner-operator base had long been recognized. In a country such as Namibia, with high-income disparities and skewed land, and capital asset ownership, priority is given to facilitating access to participation and a share in the benefits arising from such an important economic sector as tourism.

The Namibian Government has initiated broad-based participation in wildlife tourism (the largest component of tourism in Namibia) by granting the rights of utilization of wildlife resources, including exclusive tourism rights conferred pursuant to the Nature Conservation Amendment Act, Act 5 of 1996, to the communities. Those that had attained the status of registered conservancies took up these opportunities and entered into joint ventures with investors and technical partners to develop 54 new tourism lodges, other tourism ventures and 56 hunting concessions on their land (MET/NACSO 2018).

Communities benefit from such operations for, in addition to receiving a substantial annual concession fee, most conservancies hold equity and thus share dividends or additional occupancy-related payments. Furthermore, employment by the lodges of conservancy members is a highly important avenue for community benefit in rural areas where there is a dearth of formal employment. The conservancies' share of earnings from tourism enterprises covers operating costs (mostly the employment and operational costs of game guards and employees such as resource monitors and rhino rangers), and the remainder is allocated as revenue for various development projects that are of benefit to the communities. MET has recently introduced a new guideline requiring that 50 per cent be allocated from conservancy earnings for projects that benefit the broader community.

The tourism industry and its potential socio-economic benefits are therefore accessible to a large proportion of rural communities that participate in, or have been organized to qualify for, the conservancy program.

These communities have successfully attracted tourism investment to their land. Nevertheless, many community members still do not benefit from the program, because they lack suitable land or wildlife resources or tourism potential or simply do not wish to operate as part of a community organization. Importantly, tourism is yet another means of deriving group or individual benefits through individual entrepreneurship in other sectors that provide services to the tourism sector such as transport and, in the particular context of this study, those that produce goods, including arts and crafts.

Almost any Namibian can gain access to economic benefits by this means, in which there are no barriers, such as investment capital and higher education, and in which the only requirements are ingenuity, creativity and hard work. Many people, including some of the most traditional and some of the poorest, can benefit from tourism by making items that are linked to their natural resource base, cultural history and practices and are attractive to foreign visitors.

The national manufacturing of and trade in tourism-related arts and crafts (and the global economic potential of this industry) have never been properly gauged, according to the Ministry of Industrialization, Trade and Small and Medium Enterprises (SME) Development (MITSMED) (2015), but must be quite substantial. Estimates of their potential significance can, however, be produced. For example, if the 250,000 leisure tourists arriving yearly on average in Namibia would each spend a modest Namibian Dollars (N\$)500 (Euros (€)31) to N\$1,000 (€62) on arts and crafts<sup>3</sup>, the substantial amount of N\$125 million to 250 million (€7.63 million to 15.25 million) could be earned by people with little scope for earning any other income. MITSMED (2015) has estimated that there were some 3,200 craft manufacturers in Namibia in 2015, which means that each crafter could in theory earn an average annual income of N\$39,063 (€2,383) to N\$78,126 (€4,766)<sup>4</sup>.

MET has initiated work to assess the biodiversity economy as one of Namibia's green economy initiatives that will quantify all aspects of the tourism economy linked to wildlife and other natural resources, including the craft sector. Moreover, MITSMED has recognized the craft industry as a strategic economic sector for Namibia because of its high accessibility to the average citizen, and to women in particular, and has therefore formulated a growth strategy for this industry (MITSMED 2015).

---

<sup>3</sup> This is merely an estimate, as no data are available on the total spent per tourist on craft products or consumer items in Namibia.

<sup>4</sup> Namibian gross domestic product per capita is around United States Dollars 6,400 (<https://tradingeconomics.com>) or €5,696.

Diversity of culture and traditions and diversity of resources have led to a diverse range of craft products and other goods that are attractive to tourists. Some creations are more successful than others and have thus been copied and imitated on a large scale. Some creative elements of cultural value and intellectual creations are at risk of being lost, or have actually been lost, in the mass production of cultural derivatives, devoid of genuine context, to meet mass demand.

As in other consumer markets, tourist demand for craft items is not static. Crafters must innovate in order to continue to produce interesting and appealing items, and their social and cultural background must be reflected in their *authentic* craftwork. It is therefore more important to recognize the *authenticity of original works*, rather than *authenticated copies* of a specific community's cultural artifact. Buyers of crafts value authenticity highly and such authenticity is derived from knowledge of the craft artisan's cultural and social background. This poses important challenges to the protection of cultural identities and TK associated with such products, given the market demands of the modern world. The question therefore hinges on what can be done to ensure that craft production for the tourism market does not lead to the loss of cultural or intellectual creations.

## **THE HIMBA COMMUNITY IN KUNENE REGION**

The scope of this specific case study on the Himba community's involvement in tourism and of the associated IP issues includes processes that have led to the development of a modern fragrance and cosmetic product value chain that is derived from the Himba people's TK and cultural practices in Namibia's Kunene Region. The Himba community participates actively in and benefits directly from this value chain, which has demonstrably contributed to their livelihoods, owing to its connections with the international tourism market and the international fragrance and cosmetic industry.

Himba women from specific communities have been documented as users of a natural resin exudate from an endemic plant species as a perfume (Malan and Owen-Smith 1974; Craven and Marais 1992; Jacobsohn *in press*). A project was implemented to harvest the plant on a greater scale in support of the extraction of the valuable essential oil from the raw material (Jacobsohn 2011). The oil is used in Namibia to manufacture high-value fragrance and skincare products, which are marketed in the tourism industry, while some is exported for use in the international fragrance industry.

Community-based organizations (CBOs) are key to engagement with the Himba community and to addressing natural resource management issues and livelihoods. The Himba people are organized in tightly knit social or family units under a traditional authority or chief, and their complex use of land and space reflects their formerly purely nomadic ways of life spatially and temporally (Jacobsohn 1990). Namibia's post-independence legal and policy frameworks for land and resource rights and the ways in which the Himba community has adjusted constitute a very complex subject but, for the purposes of this study, the spotlight will be on five Himba communities that have established CBOs, through which they have acquired enforceable legal rights over the use of natural resources and tourism.

Some Himba people have TK of, and have accordingly used, *Commiphora wildii*, a perennial dwarf tree or shrub of the Burseraceae or myrrh family (Mannheimer and Curtis, 2018), known in English as the oak-leaved corkwood and in Otjihimba or Otjiherero as *omumbiri*. The women of five Himba communities (referenced here as Puros, Orupembe, Sanitatas, Marienfluss and Okonjombo, after the names of their respective conservancies) in far north-western Namibia have traditionally used this plant species as a fragrance substance and have in-depth TK of the plant, its distribution and its growth cycle (the same holds for several species of the same genus and other plant genera with valuable characteristics and cultural uses). The *omumbiri* resin is mixed with ochre and butterfat and applied as a fragrant lotion all over the body (Swilling 2014).



A Himba woman with *Commiphora wildii* in the north-western Kunene Region of Namibia (Ministry of Environment and Tourism, [www.met.gov.na](http://www.met.gov.na)).

Interestingly, *Commiphora wildii* occurs over a wider area than the land controlled by the five Himba communities, but it is not widely known to or used by communities in those areas, another five Himba conservancies (Curtis and Nott, 2005; and Nott, K. 2019, pers. comm.). Importantly, this is indicative of localized TK that can be demarcated geographically and socially.

The five Himba communities in question have formed CBOs that are communal conservancies registered under Namibia's national policy on community-based management of natural resources (MET 2013) and the Nature Conservation Amendment Act, Act 5 of 1996. The Act confers the rights of ownership and utilization of wild plant and animal resources (and, interestingly, exclusive tourism rights) to rural communities under specified circumstances. The five conservancies have subsequently been registered, moreover, as community forests under the Forest Act, Act 12 of 2001, which is administered by the Minister of Agriculture, Water and Forestry and grants even more specific rights over plant resources to the registered community forests.

With the support of the Integrated Rural Development and Nature Conservation (IRDNC), a non-governmental organization, the same conservancies have established The Kunene Conservancies Indigenous Natural Products Trust, a charitable trust, in order to represent the five Himba communities' interests in marketing their TK and in using the *omumbiri* plant species. The Trust owns and operates the industrial facility that uses a purpose-designed industrial process to extract the unique and complex essential oil from the raw material. The essential oil has considerable commercial value and is in demand in the domestic and international fragrance industries.

The industrial facility was originally established under a grant from the Integrated Community-based Ecosystem Management Project, a Global Environment Facility funded project implemented by the World Bank and hosted in MET and Millennium Challenge Corporation (an independent United States development agency) in Namibia.



Essential oils produced at the Opuwo processing facility ([www.scentsofnamibia.com](http://www.scentsofnamibia.com))

Profits from the sale of the essential oil, net of operating costs, are distributed to the member conservancies to be used for purposes defined in their benefit distribution plans (as required for registration as a conservancy).



Naturally exuded resin of *Commiphora wildii* ([www.scentsofnamibia.com](http://www.scentsofnamibia.com))

Five companies in Namibia use a portion of the essential oil to manufacture fragrance and skincare products for the tourism market and for export. The company, Desert Secrets Investments CC<sup>5</sup>, hereinafter “Desert Secrets”, is one of the prominent manufacturers and suppliers of tourist market products in Namibia. It has a strong commercial orientation and its business strategy hinges on use of natural products from Namibia, ingredients derived from indigenous plants only and support for rural communities.

Desert Secrets is concerned about the risk of its formulations being copied and about the potential vulnerability of proprietary information on the manufacturing of its products, which are composed of rather unusual and unknown ingredients. The company has trademarked its brand name in Namibia (but is precluded from using the same name in neighboring South Africa, where a similar name is already in use).

The company is also concerned that the marketing of *omumbiri* may spell the end of traditional use of the plant resin<sup>6</sup>. The company is proud of the benefits that it has created for the Himba people of the fragrance products that it manufactures from *Commiphora wildii* or *omumbiri*, because it supports the community, sources its ingredients from a facility owned by the Himba people and uses raw materials collected by Himba people. The company is nonetheless concerned about the general impact of tourism on the Himba people and considers that the best safeguard against exploitation is community empowerment to make its own choices and protect its freedom of choice (Snyman, S. pers. comm. 2019).

The company is fully conversant with the potential benefits and opportunities open to businesses that use IP tools, namely improving their marketing identity, increasing the value of products and enhancing their corporate reputation. It has consulted an IP lawyer, but considered that the cost of registering an industrial process or names and trademarks in other jurisdictions was prohibitive.

---

<sup>5</sup> Close Corporation, registered under the Close Corporations Act, Act 26 of 1988.

<sup>6</sup> The point here is not that all available resin will be consumed in the manufacturing process, but that cultural practices may change as the result of the marketing process.

This small Namibian company is taking action to meet stringent EU requirements, as reflected in various EU regulations and directives on the import and trading in cosmetic products. In this process, the properties of the product and the manufacturing process are described in detail. To be certified as an approved exporter, it must produce a material data safety sheet, a certificate of analysis and a technical data sheet (based on expensive laboratory work). Products containing essential oils require, moreover, an allergen declaration and certification by the International Fragrance Association (IFRA). This information is collated into a product dossier. Further requirements include adherence to Good Manufacturing Principles (GMP), compliance with GMP audits, adherence to specific EU product labelling requirements and identification of a Responsible Person in the EU who would list the label and conduct a safety assessment of the entire dossier (Snyman, S. pers. comm. 2019). Such documentation and certification all amount to strong assertion of property rights in specific products.



Perfume and cosmetic products made from the essential oil extracted from *Commiphora wildii* resin (including raw resin) sold in the domestic tourism market and likely to be exported in future ([www.desertsecrets.com](http://www.desertsecrets.com)).



A further proportion of essential oil extracted from *omumbiri* is exported under the Scents of Namibia trademark by The Kunene Conservancies Indigenous Natural Products Trust to *V. Mane et fils*, the company in France that produces fragrance formulations for Estée Lauder Companies Inc., based in New York City, United States of America. The Scents of Namibia product is used in Estée Lauder's high-end Jo Malone range (Nott, K. pers. comm. 2019).

The value chain of perfume products is striking. Essential oil accounts for only 0.5 per cent of the product, yet the price differential between the bulk essential oil and the final perfume product, volume for volume, could be an order of magnitude owing to the IP-added values of the fragrance house.

Pursuant to arrangements under the Nagoya Protocol to the Convention on Biological Diversity, as enshrined in Namibia's Access to Biological and Genetic Resources and Associated TK Act, Act 2 of 2017, additional financial benefits accrue to the participating conservancies if the essential oil is further refined or modified.

This case study is therefore a good example of the interface between traditional IP considerations on the protection of TK and related by-products under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), related provisions in other World Trade Organization instruments, multilateral, regional or bilateral trade agreements, the newer generation of recognition of cultural ownership and TK such as the Convention on Biological Diversity and the Nagoya Protocol.

Effective compliance with regulatory access and benefit sharing (ABS) requirements is a matter of considerable complexity, especially as Namibia has not yet finalized the Regulations for implementing Act 2 of 2017. Nevertheless, IRDNC has worked (in good faith) in anticipation of the future requirements of the Namibian legislation. Accordingly, IRDNC obtained prior informed consent from the five Himba conservancies that are the repositories of the TK of the use of *omumbiri*. It subsequently conducted three years of field research on the resource, documented traditional use and posted all of this information on the IRDNC website and thus in the public domain, essentially staking its claim as the sole owner of knowledge of the traditional use of this indigenous plant product. Furthermore, it has negotiated a Materials Transfer Agreement under which the right to investigate and research the specified product for a period of three months only, but not to use it commercially, may be granted to a third party.

In the high-stakes ABS world, IP protection is crucial. A comprehensive dossier must be compiled for exports to the EU (hub of the international fragrance industry). The dossier is the main instrument for asserting IP ownership of a product, but compilation of a similar dossier on the essential oil extractive methodology was not deemed worthwhile because each distillation facility yields a unique end product (from the same raw material). The cost of compiling such a product dossier was approximately N\$1 million (€62,000) (Nott, K. pers. comm. 2019).

Traceability, too, is very important in the international cosmetics industry, especially when natural products have been obtained through TK, and it entails ascertainment that a product can be traced back to a trade arrangement that has been beneficial to the relevant community. Traceability mechanisms, which ensure that the sustainability of resource use, legal acquisition and fair-trade arrangements can be verified, protect not only the reputation of the company concerned, but also the interests of the producing community. Such traceability mechanisms become part of the *de facto* IP associated with a product.

Apart from direct sales of its essential oils to domestic manufacturers and international buyers, the Trust derives benefits from the attractive visitor center that it has established at its processing facility in the town of Opuwo. The variety of products containing essential oils and other plant extracts sold at the center has helped the processing facility to be self-sustaining since 2014 (Nott, K. pers. comm. 2019).



Visitor center at the Opuwo processing facility ([www.scentsofnamibia.com](http://www.scentsofnamibia.com))



Products made from essential oils for sale at the Opuwo processing facility ([www.scentsofnamibia.com](http://www.scentsofnamibia.com))

The Himba community has gained social benefits from tourism (and international trade) owing to exemplary partnership between the participating communities and a range of civil society and private sector entities. The institutional structures and safeguards that were introduced to protect the Himba community's interests underpin this partnership.

Consideration must nevertheless be given to the broader situation of the Himba community in the context of tourism. The Himba people are internationally renowned for their unique cultural practices, continuing use of traditional attire and their lifestyles in a very harsh but scenically spectacular wild landscape, which together constitute the internationally renowned "Himba brand". The Himba people are a 21st century anachronism, which makes them the focus of significant attention and a major attraction for tourists to Namibia (as well as photographers, filmmakers, media houses and academia). This attention has brought benefits to the community under certain circumstances (e.g. as outlined above).

The community's vulnerable tourism-driven exploitation has nevertheless consistently given cause for concern. Since Namibia's independence in 1990, the tourism sector has grown rapidly and the Himba people have held center stage in a type of voyeuristic tourism that has taken advantage of these very photogenic and scantily dressed people and their very interesting cultural settings in a harsh environment. Neither the human rights community nor the tourism industry can confirm that measures are in place to prevent such exploitation (Odendaal, W. pers. comm. 2019; Van Schalkwyk, R. pers. comm. 2019; and Schneider, B. pers. comm. 2019). Kraak *et al.* (2015) has confirmed the potential impacts of invasive filming on a Himba community.



Popular Himba armbands made from polymerizing vinyl chloride (PVC)



Himba photographs, taken by a reputable and ethical Namibian photographer, on sale in the Namibia Craft Centre

## **THE NAMIBIA CRAFT CENTER**

The second case study covers a long-standing collaborative program between the private sector and civil society, which has been designed to advance social development through the craft industry. It hinges on the Namibia Craft Centre in the center of Windhoek, the capital of Namibia, and consists of the converted remains of a large brewery that ceased operations several decades ago. The owners of the old brewery (Olthaver and List (Pty) Ltd.) requested the Rössing Foundation, a charitable foundation established by the first uranium mining company in Namibia, Rössing Uranium (Pty) Ltd., to take over the management of the Namibia Crafts Centre in 1996.

The Namibia Craft Centre was established to provide retail space for Namibian arts and crafts and to improve quality and design. Operated by Namibia Art, Craft and Design (Pty) Ltd, a non-profit (or Section 21) company, it provides a wide range of services to some 40 small enterprises that sell their arts and crafts at the Centre. It conducts product audits to ensure that authentic Namibian products account for 90 per cent of the items on sale (the allowable limit for products from elsewhere in Africa is 10 per cent). It also provides a range of business support services, utilities such as security and cleaning and, importantly, card payment facilities (which small enterprises typically cannot afford individually). The costs of these services are recovered from a nominal rental fee for the retail areas and a small commission on credit card payments.

The concentration of craft-selling companies in the Centre permits rapid assessment, based on the products on display, of parameters such as marketing, branding and design, which are relevant to a discussion of IP and the use of IP tools. The Namibia Craft Centre has become an important tourist attraction in Windhoek in terms of the number of tourist visitors per year (around 35,000 to 45,000, MITSMED 2015; Thude, S. 2019 pers. comm; and Le Roux, K. 2019 pers. comm.). A full economic impact assessment is yet to be performed, but around 60 persons are employed at the Centre, which sells the crafts of many hundreds of craft producers, thus benefiting the same number of family livelihoods and contributing significantly to the livelihoods of the craft manufacturers<sup>7</sup>.

---

<sup>7</sup> OAT alone sells the products of more than 450 craft manufacturers (Le Roux, K. pers. comm. 2019; [www.omba.na](http://www.omba.na)).

The Namibia Craft Centre has become a very popular destination for guided tour groups, and it is a peaceful, clean and safe shopping environment, with amenities such as a café-restaurant, bookshops, an art gallery and, on the same premises, a theatre (specializing in audience-participatory performances aimed at the international tourist market)<sup>8</sup>, and other retail outlets<sup>9</sup>. It is in the city center and within walking distance of two major hotels (and a third that is under construction).

It is therefore one of the most important marketplaces, where tourists can purchase authentic Namibian arts and crafts (supplemented by a limited selection of arts and crafts from other African countries), and it is advertised in various tourism and travel directories.

OAT (formerly Mud Hut Trading CC) is a specialist craft developer and trade facilitation service provider that operates from the Namibia Craft Centre. The Trust, which aims to support the sustainable livelihoods of marginalized communities in particular, through the craft industry ([www.omba.na](http://www.omba.na)), specializes in developing and marketing exclusive ranges of Namibian hand-made crafts, thus supporting the work of more than 450 crafters<sup>10</sup>, 60 per cent of whom are San and, importantly, 95 per cent are women.

**“Our knowledge and expertise + producer’s skills and creativity = jobs, food on the table, healthy children and confident adults. This is OMBA.” ([www.omba.na](http://www.omba.na))**

This very impressive initiative specializes in exclusive ranges of Namibian hand-made crafts, including ostrich eggshell beads and jewelry made by several Ju/'hoansi and !Kung San communities in Namibia, various types of baskets woven by women in northern and north-eastern Namibia and by Khwe San women in the western part of Zambezi Region, iconic bracelets made from recycled PVC by the Himba people<sup>11</sup>, and contemporary art and textiles by San communities in Namibia’s Omaheke, Ohangwena and Zambezi regions.

To elaborate on only one of these culturally embedded product ranges and production initiatives (which all deserve further reading at [www.omba.na](http://www.omba.na)), the Trust supports various San communities that use modern media, such as oil and water color painting, in contemporary art work in support of their livelihoods. Some of their designs have been integrated into a commercial textile range that is printed and produced in Cape Town, South Africa. Importantly, each San artist is paid a royalty on every meter of fabric printed and sold throughout the lifespan of the design<sup>12</sup>.

---

<sup>8</sup> The Warehouse Theatre.

<sup>9</sup> This does not mean that the facility does not require major and far-reaching upgrades and renovations.

<sup>10</sup> It is safe to say, on the basis of multipliers used by the Namibia Statistics Agency (<https://nsa.org.na>), that 450 families and more than 2,500 individuals benefit from this work.

<sup>11</sup> Polyvinyl chloride, in the form of water reticulation pipes.

<sup>12</sup> Typically, N\$2.50 (€0.153) per meter of fabric sold.



Omba products on display at the Namibia Craft Centre



Intricate basketry items from different regions of Namibia, including, at the bottom right, baskets derived from a lost technique used in the brewing of beer in north-eastern Namibia. This is an example of a tradition which was nearly lost and which OAT has helped to revive.



Sophisticated ostrich shell jewelry made by San women using traditional techniques but following a modern design.





Some artists earn more than N\$30,000 (€1,830) from their designs. Artists can earn more than N\$3,000 per year (€83) for paintings and in some instances (i.e. limited edition lino prints) for as long as 12 years. This is very important to the livelihoods of people who do not have any other cash income (apart from Government social security grants. Interestingly, this works out to be more than the price of a standard design in the textile industry, which is approximately N\$8,000 per design (Le Roux, K. pers. comm. 2019).

*“With no formal training, San artists thus retain the purity of their innate visions, and are able to express and give insight into their rapidly fading culture and way of life straight from the heart. For these artists, composition, choice of color, and other principles and elements of art, form an intuitive part of subject choice and the manner in which they are depicted. They use contemporary art materials and techniques to originally represent animals, weather, insects, the hunter, mythological creatures and many edible plants familiar from the stories passed down from their elders or their daily existence. They reveal what they consider to be distinctive about their culture.” - Cheryl Rumbak, Kalk Bay Modern Gallery, Cape Town, who produces the fabric known as Art-i-San in collaboration with OAT (www.omba.na).*

Moreover, the royalty payment system includes a mechanism to ensure that the artist’s family continues to receive payments in the event of death. Designs are sold, moreover, as framed works of art, for which artists earn 40 to 50 per cent of the revenue, depending on the type of art materials used, the cost of which is recovered from the remaining portion.

This system of royalty payment for the commercial use of a design is an example of informal recognition of individual artists’ or designers’ IP and is particularly exemplary, as none of the designs has been registered formally as the property of the individual artists. OAT has not applied any IP tools to protect any designs or trademarks, for it has no confidence in the value of IP tools. The people with whom it works are illiterate and have no conception of IP. The Trust is nevertheless aware of the risks of imitation in as much as its designs have been copied twice by companies in Eswatini<sup>13</sup> and South Africa. It is therefore cautious about displaying designs on social media. The Trust was not aware of BIPA’s existence or IP protection role, nor did it know that a design could be protected, in Namibia at least, at relatively low costs and without recourse to a lawyer. The Trust is interested in learning to use IP tools to protect the interests of the communities that it serves, especially if the information can be made more accessible (Le Roux, K. pers. comm. 2019).

---

<sup>13</sup> Formerly Swaziland.

Uniqueness is clearly a critically important requirement for arts and crafts. It is important to protect unique designs and techniques, owing to the high degree of innovation in designs and techniques and the high risk of imitation (Thude, S. pers. comm. 2019). Traders monitor items produced and offered for sale by others and adapt their own products to those that are successful in the marketplace, regardless of the ownership or origin of design ideas. The highest priority could be given to the protection of the unique Himba jewelry, which is absolutely distinctive in traditional African jewelry because it has not yet been copied and is not yet well known outside Namibia (Thude, S. pers. comm. 2019). OAT has nonetheless recently recorded an instance of Himba bracelets being copied and produced in South Africa (Le Roux, K. pers. comm. 2019).

It is evident that the arts and craft community at the Namibia Craft Centre generally has no understanding of IP as a concept nor of the need for IP tools. With a few exceptions, (primarily the larger and more established enterprises), the concept of IP is limited to the name of the enterprise and a degree of brand development through a logo, all largely facilitated by the Centre. Publicity material, such as banners and leaflets involving these names, brands and logos, is used in marketing and advertising. There is no evidence, however, that any formal IP tools are used, and no trademark or copyright notice is to be seen anywhere.



Vibrant fabrics, for which each San designer is paid a royalty per meter of fabric sold under the ART-i-SAN brand of Omba Arts.



Product logo used for a range of home crafts and the name of the manufacturing company.



Project rather than product name



Project rather than product name



Company name used as product brand



Marketing material developed by the Namibia Craft Centre

This situation prevails despite training provided by the Centre in aspects of IP protection, branding, trademarking and marketing through SME Compete, one of the leading enterprise development agencies in Namibia (Thude, S. pers. comm. 2019). Training could not be institutionalized properly and recurrently, owing to the costs of providing such specialized training, which are compounded by company and personnel turnover. There is no evidence that the Namibian Government has managed, through MITSMED or the more recently established BIPA, to raise broad awareness of the need to use IP tools and of the means of doing so, especially among the smaller creative enterprises or rural communities that rely on their TK or cultural practices to create products for the tourism market. Ironically, these enterprises and communities are possibly the ones most at risk, inasmuch as IP has already been thoroughly internalized by the formal business sector as a critical factor of success in its business strategy or as a condition precedent for financing arrangements.

## **AVAILABLE IP GUIDANCE**

Nor is the dearth of awareness solely the Government's fault. Very clear information on the entire IP regime in Namibia, with details on the legal basis, application and process, is provided on the BIPA website ([www.bipa.na](http://www.bipa.na)), as shown in the boxes below.

### **Industrial Designs**

#### **How to Apply**

#### **What is an industrial design?**

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

A design is the appearance of an article produced by any industrial process or manually. It is that shape and decorative ornaments of a finished article to the eye that constitutes an industrial design.

To be protected an industrial design must be new or original and non-functional. This means an industrial design is primarily of an aesthetic nature, and any technical features of the article to which it is applied are not protected by the design registration.

Industrial designs protect the ornamental features associated with articles used in commerce.

#### **What kind of designs can be protected as industrial designs?**

Industrial designs are applied to a wide variety of products of industry and handicraft: from technical and medical instruments to watches, jewelry, and other luxury items; from housewares and electrical appliances to vehicles and architectural structures; and from textile to leisure goods.

#### **Advantages of registering a design**

- Registration gives the owner the sole/ private rights to exploit the design commercially.
- Anyone who makes any product bearing a shape similar to a registered design can be sued for infringement.
- If the owner has lost interest in the design or has no means to produce products bearing the design, he/she may decide to assign the design to others through licensing or contractual arrangements.

#### **Why protect an industrial design?**

Industrial designs are what make a product attractive and appealing; hence, they add to the commercial value of a product and increase its marketability.

When an industrial design is protected, this helps to ensure a fair return on investment. An effective system of protection also benefits consumers and the public at large, by promoting fair competition and honest trade practices.

Protecting industrial designs also helps economic development, by encouraging creativity in the industrial and manufacturing sectors and contributes to the expansion of commercial activities and the export of national products.

## National Law on Designs

In Namibia industrial designs are administered under the Industrial Property Act 1 of 2012.

### How to protect your design nationally and abroad?

- **National** Register with the BIPA.
- **Regional** Apply through the Lusaka Protocol with the African Intellectual Property Organization (ARIPO).
- **International** You may want to register your design abroad to obtain protection in other territories. The Hague System for the International Registration of Industrial Designs administered by the WIPO provides a centralized registration system where you can e-file up to 100 designs and target over 66 territories in one single application which you could use to claim priority on in further filings. Namibia is a Member of the 1999 (Geneva Act) of the Hague Agreement. Any individual or business in Namibia can file an international application either with BIPA or directly with WIPO under the Hague System. For more information on filing an international application, geographical coverage and fees, and to get started, go to [www.wipo.int/hague/en](http://www.wipo.int/hague/en).

*For further information on industrial designs, contact:      Manager: Trademark Services*

### How to apply for Industrial Designs?

#### Who is eligible to apply for registration of a design in Namibia?

- The originator of the design.
- His<sup>14</sup> assignee, who may be an individual, group of people or a company as long as they can prove their vested right in the design with respect to Namibia.

#### Conditions for registering a design:

- A design can only be registered if it is new or original.
- It cannot be registered if a similar one exists on the register.
- It cannot be registered if it resembles another that has been published before.
- A design cannot be registered if it is the subject of an earlier application by another applicant.

#### How to apply for the registration of an industrial design?

- Application forms are available at BIPA Offices and MITSMED Regional Offices free of charge.
- The application should state the article to which the design application refers.
- It should also give a brief description of the features of the design for which novelty is being claimed.
- Four copies of drawing or pictures of the design should be submitted with the application forms.
- The applicant or the agent is allowed to complete the application form (referred to as Form D1).
- After completion of the form, go to BIPA cash hall and pay N\$200.00 for the single design and N\$50.00 for each additional design in multiple applications.
- Submit your application at design office with the proof of payment.

---

<sup>14</sup> This covers all genders.



### **Time frame within which a design is registered**

- Applicants for designs are given a one-year period within which to complete registration.
- If registration is not completed within 12 months, an extension of three months is given in which to complete registration.
- If the applicant still fails to register, the application is considered to have lapsed irretrievably.
- Design registration in Namibia is valid for five years from the date of filing the application.
- However, to maintain the validity of the registration for the full fifteen years, designs must be renewed each year.
- If the design is not renewed, the registration will lapse and fall into public domain.
- When a design is registered in Namibia, protection is only valid in Namibia because protection is territorial. To acquire protection in other countries, applicants are encouraged to file under the Hague Agreement or the Harare Protocol (both administered by WIPO).

The BIPA website is equally clear about trademarks, another important IP tool that could benefit small companies and craft manufacturers.

## **Trademarks**

### **How to Apply**

#### **What is a trademark?**

A trademark is a sign, symbol or a business identity, which helps businesses to distinguish/differentiate between goods or services of one business/undertaking from those of the others. A trademark may consist of a device, label, name, signature, word, letter, numeral or any combination thereof or a container for goods. The life span of a trademark is 10 years and renewable after every 10<sup>th</sup> year.

#### **What does trademark protection?**

Trademark protection ensures that the owners of marks have the exclusive right to use them to identify goods or services, or to authorize others to use them in return for payment. The period of protection varies, but a trademark can be renewed indefinitely upon payment of the corresponding fees. Trademark protection is legally enforced by courts, which, in most systems, have the authority to stop trademark infringement. Trademarks promote initiative and enterprise worldwide by rewarding their owners with recognition and financial profit. Trademark protection hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables enterprises and people with skills to produce and market goods and services in the most equitable market conditions, thereby facilitating international trade.

#### **What kinds of trademarks can be registered?**

Trademarks may be one or a combination of words, letters and numerals. They may consist of drawings, symbols or three-dimensional signs, such as the shape and packaging of goods, provided that they are used to identify the commercial source of goods or services. In addition to identifying the commercial source of goods or services, several other trademark categories exist. Collective marks are owned by an association whose members use them to indicate products with a certain level of quality and agree to adhere to specific requirements set by the association. Such associations might represent, for example, accountants, engineers or architects. Certification marks are given for compliance with defined standards but are not confined to any membership.

## How extensive is trademark protection?

The BIPA Trademark Office maintains a Trademark Register containing full application information on all registrations and renewals, which facilitates examination, search and potential opposition by third parties. Trademark protection is territorial; therefore, one is protected only in the jurisdiction for which protection was applied.

### National, regional and international applications

- **National** All national applications are administered by the BIPA.
- **Regional** ARIPO administers a regional trademarks system under the Banjul Protocol. An applicant can thus file a single application seeking protection in a number of designated countries.
- **International** WIPO administers an international registration system for trademarks called the Madrid System. The Madrid System enables an applicant to submit a single application designating countries in which the applicant seeks protection.

*For further information, contact: Manager: Trademark Services, 061 299 4400*

The guidance on the trademark application procedure is particularly detailed and indicates that a trademark may be registered without recourse to a lawyer, which small companies tend to consider unaffordable.

## How to apply for Trademarks

### Requirements for registering a trademark

- A trademark must be distinctive, meaning it must distinguish itself or be fit enough to differentiate goods/services of the business it represents from those of other businesses in the same industry or beyond.
- A trademark must not be laudatory/self-praising e.g. first class..., best quality..., top quality....., best ever, etc.
- A trademark must not consist of offensive, derogatory, immoral or confusing elements/phrases or any words perceived to be an insult in some cultures/beliefs/communities/traditions, etc.
- It must also not be identical or confusingly similar to an already registered trademark by another applicant in respect of similar goods/services.
- A trademark should not consist of coat of arms, seal or national flags or any indication of State patronage.

### Procedures for registering a trademark

- Firstly, it is advisable that trademark applicants conduct a trademark similarity search on the BIPA trademark database to confirm availability of the mark for which they intend to apply.
- On ascertaining that the trademark is indeed available, the applicant must obtain a Trademark Application form (Form TM 1) from the IP Office or the MITSMED Regional Offices.

## How to complete the trademark application form (Form TM 1)

- Next to Particular of Trademark, write your trademark or paste a representation of your mark (in case of logos or combination of logos and wordings).
- Class Select from the list of classes attached the class (one or more classes per form) that best describes the goods/services you intend to offer through your trademark.
- Specification of goods/services Indicate the goods/services you intend to offer through the trademark as per the classes selected. Even if wordings might not be the same as those listed under the classes selected, let the goods/services relate to the selected classes (strictly enforced).
- I/we write your company name or your own name, if you do not yet have an existing company name.
- Indicate the nationality of the applicant.
- Company of Write the business's physical address or your own personal residential address or the address of the place where business is being conducted, depending on whether the applicant is an individual or a company.
- Address for service Give the name of the applicant (if an individual) or company or the name of the legal representative (in the case of application through a law firm) and the postal details of the law firm or the individual applicant.
- Signature of applicant Self-explanatory.
- Acknowledgement of Application After the dotted lines and next to Name of applicant, write the applicant's name again (whether a company name or an individual name).
- Particular of Trademark Enter the trademark. If it consists of a combination of words and logos or even a logo, write a short description of the mark (this facilitates entry in the trademark database (IPAS) system, for which a description is required).
- Address for service Give the name of the applicant (if an individual) or company or the name of the legal representative (in the case of application through a law firm) and the postal details of the law firm or the individual applicant.
- After completing the form, go to BIPA cash hall and pay N\$600.00 for the first class and N\$480.00 for each additional class in application fees, and submit your application at the Trademark Office with proof of payment.
- If the trademark takes the form of an emblem/logo or a combination of emblem/logo and wordings, please attach four copies of the representation of the mark to the completed trademark application form.
- Lastly, make two copies of the completed trademark application before submission to the Trademark Office.

## The process from filing of the application until registration

- Once a trademark is received in the Industrial Property Office (IPO), it is first of all captured or received on the IPAS. During capturing, the system or the database generates a unique number reflecting the year in which the trademark is received followed by a sequentially allocated four-digit number. After this important exercise, the trademark is forwarded to the examiners for examination. The examiners, officials in the IPO determine whether the trademark complies with the requirements for trademark registration.
- Examiners produce an examination report and forward it to the applicants directly or through their legal representatives or IP agents.

- On receipt of responses from the applicants directly or from their legal representatives (IP agents), examiners prepare and issue a Preliminary Notice of Acceptance which allows the trademark to be advertised in the Industrial Property Bulletin by the applicant or by his/her legal representative (IP agent).
- After advertising the trademark in the Industrial Property Bulletin, the applicant must, directly or through IP agents, inform the examiners (IP officials) of the date on which the mark was advertised in the bulletin. It is crucially important for the examiner to receive this information (bulletin date) in order to calculate accurately the two-month opposition period.
- Once a trademark has been advertised in the Industrial Property Bulletin, an opposition/objection may be raised by any person during a period of two months.
- Once the two-month opposition period has elapsed and the advertised trademark remains unchallenged on any grounds of opposition, the examiner will grant protection by issuing Registration Certificate to the applicant or through the IP agent. If the trademark is opposed, however, opposition proceedings are initiated as stipulated in the Industrial Property Act No. 1 of 2012.

#### **Maintenance of a trade mark before registration**

- This refers to any alteration that the applicant may wish to make directly or through the IP agent to the filed trademark application while pending, such as changes to the physical or postal address of the applicant or IP agent, to the goods/services covered by the particular trademark application and to the trademark itself.
- IP officials ensure that all such changes are effected in the Trademark Register as per the request of the applicant or the IP agent.

#### **Maintenance after registration**

- This refers to the renewal of the trademark on or before expiration (after 10 years).
- This also refers to any alteration that the applicant may wish to make directly or through the IP agent to the filed trademark application in its granted/registered/protected status, such as changes to the physical or postal address of the applicant or IP agent, amendment to goods/services covered by the particular trademark application and amendment to the trade mark itself.
- In other instances, applicants who lose interest in their trademarks file for the cancellation, abandonment, withdrawal of the marks.
- Should the applicant fail to renew the trademarks on or before the expiration date, IP officials are obliged, in accordance with provisions in the Industrial Property Act No. 1 of 2012, to remove the marks concerned from the Trademark Register.

The BIPA website states that the Industrial Property Act, 2012 (Act 1 of 2012) is yet to enter into force, but the Act commenced on August 1, 2018 (Government Notice 114 of June 1, 2018), and other internet sources list the date of entry into force as August 1, 2018 (Malherbe 2018). It is to be noted that the **TK and Cultural Expressions** section of the BIPA website is unpopulated and that the reference to the Swakopmund Protocol on TK and Expressions of Folklore is not followed by any useful information. BIPA could remedy these few shortcomings.

It is likely that BIPA<sup>15</sup> is still relatively unknown and that the Namibian public has not yet begun to use its IP services (although all business enterprises established since 2016 have been registered by BIPA, which is, moreover, the Registry of Companies and the Registry of Close Corporations). When need be, the public probably refers to MITSMED, BIPA's line ministry.

---

<sup>15</sup> Established in 2016 under the BIPA Act, Act 8 of 2016.

Surprisingly, neither IP nor BIPA's IP responsibility is mentioned on the MITSMED website home page or in its main links ([www.mti.gov.na](http://www.mti.gov.na)), nor is there a link to BIPA. The Directorate of Commerce page of the MITSMED website does, however, list the following core functions, the last of which relates to IP.

“The core function of the Directorate of Commerce is to ensure the development of a vibrant and competitive domestic economy and market conditions. This function entails the following:

- Formulation and administration of laws and policies geared towards creating and enhancing an environment conducive to the effective establishment and operation of businesses and commercial activities in the country;
- Promotion and protection of consumer rights through regular inspections and enforcement of product standards, weights and measures at retail levels as well as consumer awareness campaigns;
- Promotion and enhancement of nationally and internationally competitive industrial and product quality and standards at factory levels (Standards Act, 2005);
- Promotion of fair competition in the domestic market (Competition Act, 2003);
- Promotion and registration of innovations, inventions and technology transfer – copyright, patents, trademarks and designs – for the enhancement of industrial capacity and productivity.”

There is nevertheless no active link in this part of the website to further information on any IP or BIPA services or process. The MITSMED website does, however, provide a link to BIPA, under Services of the Ministry and the industrial development section. It is very unlikely that a member of the public would take this less than obvious route to access IP information or services.

The BIPA website information is nevertheless a very useful starting point and could be complemented by a specific IP brochure and information campaigns at trade fairs, business events or large concentrations of small businesses such as the Namibia Craft Centre and various industrial parks. Importantly, such campaigns should be conducted recurrently because of the high turnover in the SME sector.

Most rural communities could not, however, access any information reliably from the Internet, but some would perhaps attempt to obtain such information from MITSMED regional offices or BIPA offices (Erongo Region only), if they knew that the information was held there. Internet portals and assistance are available at those regional offices but more user-friendly and illustrated brochures or posters would probably be more appreciated. Realistically, it would be more efficient to target rural communities' civil society partners to ensure that they held all of the required information.

It is noteworthy that, although the craft sector has been identified as a strategic sector by the Government and is one of the ten industrial sectors for which a growth strategy has been formulated (MITSMED, undated), the growth strategy does not refer at all to IP issues. This omission can be remedied in a future revision.

Lastly, it is very likely that concerns about the concepts, procedures, access and costs of obtaining intellectual property rights (IPRs) in Namibia will lessen as the public becomes more familiar with and begins to use the provisions of the Industrial Property Act, Act 1 of 2012. Malherbe's (2018) summary of the scope of the Act and its likely impacts is provided below.

"The Namibian Industrial Property Act, 2012 will finally come into effect on 1 August 2018 and will have far-reaching implications for the protection, use and enforcement of trade mark and other IPRs in Namibia.

This Act provides for the registration and protection and administration of patents, utility model certificates, industrial designs, trademarks, collective marks, certification marks and trade names. It repeals the Patents, Designs, Trade Marks and Copyright Act 1916, the Patents and Designs Proclamation 1923 and the Trade Marks in South West Africa Act 1973, making it one of the most anticipated pieces of IP legislation in Namibia, aimed at ensuring compatibility of national laws with the international legal framework.

The Act provides for the protection of well-known trade marks in Namibia under article *6bis* of the Paris Convention. This is an effective manner of providing protection for international brands which are yet to enter the Namibian market.

There has been considerable uncertainty in Namibia regarding the validity and enforceability of registrations filed under international and regional systems, such as the Madrid Protocol and the Banjul Protocol to which Namibia is a signatory. The new Act recognizes Namibia's obligations in terms of these systems and provides legislative clarity as to the manner in which they are to be administered within Namibia's borders.

A further noteworthy development is the attachment of trade marks for the purposes of providing security to creditors and to confirm jurisdiction. This is a useful tool when instituting legal proceedings in Namibia against foreigners."

Infringement proceedings under the new Act will now be brought before the newly established Industrial Property Tribunal consisting of various academics as well as Namibian legal practitioners knowledgeable within the field of IP, which will hopefully result in well-informed, timeous decisions. Decisions of the Tribunal may further be appealed to the High Court of Namibia.

Another noteworthy amendment is the period of non-use which has been amended from five years to three years, effectively making it easier to remove trademarks that are not used in Namibia.

In respect of patents, the Act repeals the Patents and Designs Proclamation 1923, and provides for the substantive examination of patents, whereas the previous legislation merely provided for a very rudimentary formal examination. The Act further introduces an extended patent term of 20 years. Any patent or design registered prior to the new Act will remain in force for the unexpired portion of the period of protection."

As the Act (241 sections, more than 100 pages) and the Regulations (around 200 pages) are understandably lengthy, information material must be compiled in order to facilitate comprehension and implementation.

## **POTENTIAL SOLUTIONS**

Namibia does not have a national strategy for the promotion of IP protection, although it has adopted legislation and is a Member of international IP protection organizations (WIPO and ARIPO). It is unlikely that anything will change unless the country takes a more targeted approach to the promotion of awareness and to the use of IP tools. The strategy should include:

- Improving access to information on what IP protection entails, the ways in which it is established, and the provisions of the Industrial Property Act, Act 1 of 2012, which only entered into force in 2018;
- BIPA, with the support of MITSMED, should be far more active in providing information and developing other more widely accessible information material on IP tools; both BIPA and MITSMED could improve their websites;
- Developing teaching materials on IP protection for Namibia's universities;
- Ensuring that SME support organizations, such as SME Compete and the Namibia Business Innovation Institute, include IP regimes and tools in their support programs;
- Ensuring that IP regimes and tools are included in the entrepreneurship component of vocational training; and
- Exploring means of improving access and affordability in the use of IP tools, including maximum simplification of the process and the provision of technical assistance to SMEs.

The experience of the Namibia Craft Centre has revealed a clear need in Namibia for a craft industry “go to” place that will provide a wide range of services, including IP concepts and tools, in order to achieve the growth and competitiveness that the Government expects from the sector (Thude, S. p ers. comm. 2019). The Craft and Design Institute (CDI) ([www.thecdi.org.za](http://www.thecdi.org.za)), a non-profit joint venture of the Western Cape Government and the Cape Peninsula University of Technology in Cape Town South Africa, is an impressive regional example of such a facility. Its website shows the importance that it attaches to IP issues, including public lectures and free legal advice on IP, and an innovation fund for investigating IPRs. Namibia Art, Craft and Design or OAT could, if properly capacitated, develop into this role.

The evident impact of OAT clearly demonstrates the importance of a trading facilitator that can both buy and sell articles produced by communities that cannot do so themselves, build capacity and engage in product development. The exemplary facilitation achieved through royalty payments to San designers for the exploitation of their designs shows what can be done and where additional resources should be directed.

With regard to the risk of tourism-driven exploitation of the Himba people, much more can be done to sensitize the tourism industry, and the media and filming industry in particular, in order to ensure the highest level of ethical behavior in relation to the Himba, and all other, people. Consideration should be given to the conduct of research on the impact of tourism on the Himba, as perceived from their own standpoint, as the basis of measures that could include the drafting of a code of ethics.



## **RECOMMENDATIONS**

1. The craft sector should be assisted in increasing its competitiveness on the design, production, marketing and IP protection fronts.
2. External support should be sourced to enable Namibia Art, Craft and Design or any similar entity (possibly OAT) to become a facility that provides integrated support for the craft industry.
3. OAT (and any other entity that provides the same services) should be assisted in expanding production and trade facilitation programs and in improving quality and the designs of marginalized communities and indigenous people, while using IP tools, such as design registration or the use of copyright, to protect the individuals and communities with whom they work.
4. Namibia should, through MET, finalize the implementing Regulations of the Access to Biological and Genetic Resources and Associated TK Act as a matter of urgency. MET should subsequently conduct a public information campaign targeting, in particular, the registered conservancies and community forests as the most important management units for the exploitation of natural resources based on TK.
5. Technical assistance should be provided in order to protect the designs of traditional Himba jewelry, which is distinctive in traditional African jewelry, and subsequently other iconic Namibian traditional jewelry, ornaments and crafts such as the ostrich eggshell jewelry of the San, the basketry of several communities in northern and north-eastern Namibia and the *omakipa* (carved ivory amulets) of the Owambo people.
6. Research should be conducted on the impact of tourism (including filming and international media) on the Himba people from their standpoint, as the basis for considering further steps to protect them from all forms of exploitation.
7. MITSMED's craft sector growth strategy, which does not refer at all to IP issues, should be revised to remedy that omission.
8. The BIPA and MITSMED websites should be updated and corrected continuously, as necessary.

## **REFERENCES**

- Craven, P. and Marais, C. Damaraland Flora. Gamsberg MacMillan. 1992. Windhoek.
- Curtis, B.A. and Nott, K. *Preliminary survey of Omumbiri (Commiphora wildii) and other Commiphora species in Sanitatas and Orupembe conservancies, Namibia*. IRDNC. Windhoek (Unpublished).
- Hazam, J. *Namibia's Progress on Access and Benefit Sharing Legislation and Policy. Voices for biojustice*. IRDNC. 2018. Darwin Initiative.
- Jacobsohn, M. *Himba, nomads of Namibia*. Struik. 1990. Cape Town.
- Jacobsohn, M. (ed). *Lessons from the field*. IRDNC. 2011. Windhoek.
- Jacobsohn, M. *Life is like a kudu horn*. Jacana, Johannesburg. To be published in April 2019 (*In press*).
- Kraak, M., van Tuinen, R. and Poortman, K. "Authenticized. Authenticity comes at a price." Zuis Film. 2015. [www.zuis.nl](http://www.zuis.nl).
- Malan, J. S. and Owen-Smith, G. L. "The ethnobotany of Kaokoland." *Cimbebasia*. 1974. (B) 2: 131-178.
- Malherbe, K. "Namibia: Introduction of the long anticipated Industrial Property Act, 2012." ENS Africa. 2018. [www.ensafrika.com](http://www.ensafrika.com).
- Mannheimer, C. A. and Curtis B. A. (eds). *Le Roux and Müller's field guide to the trees and shrubs of Namibia*. 2nd ed. Namibia Publishing House. 2018. Windhoek.
- MET/NACSO. *The state of community conservation in Namibia – a review of communal conservancies, community forests and other CBNRM activities (Annual Report 2017)*. MET/NACSO. 2018. Windhoek.
- MET. *National Policy on Community Based Natural Resource Management*. Ministry of Environment and Tourism. 2013. Windhoek.
- MITSMED. *Growth strategy for Namibia's Handicraft Industry and Associated Value Chains*. Ministry of Industrialisation, Trade and SME Development. 2015. Windhoek.
- Nott, K. *Report on the second commercial harvest of Commiphora wildii resin in Marienfluss, Sanitatas Okondjombo, Puros and Orupembe conservancies*. IRDNC. Windhoek (Unpublished).
- Swilling, R. "The scent of the women." Nightjar Magazine. 2014. [www.nightjartravel.com](http://www.nightjartravel.com).