

**AFRICA UNIVERSITY**

**(A United Methodist-Related Institution)**

**COPYRIGHT LAWS AND THE VISUAL ARTS INDUSTRY: A  
CRITICAL ANALYSIS OF THE LEGAL FRAMEWORKS OF  
COPYRIGHT ENFORCEMENT IN ZIMBABWE**

**BY**

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## **Abstract**

The primary objective of the study is to provide a critical assessment of copyright enforcement in Zimbabwe with specific attention to the visual arts (stone sculpture) industry of the country. In particular, the study assesses the existing legal frameworks for copyright enforcement in Zimbabwe and explores the challenges and opportunities in the protection of copyright accruing to sculpture works. The study also seeks to establish a relationship between copyright enforcement and the visual arts industry of Zimbabwe and to recommend measures that can be implemented to alleviate copyright infringement in the visual arts industry of Zimbabwe. The research adopts a qualitative approach. The population sample for the research is made up of 20 artists who are stone sculptors and are located in Harare, Zimbabwe as this is the area in which the researcher is currently residing. The researcher conducted interviews on the participants through the use of interview guides. The interview guides assisted the researcher to ask questions which addressed the study objectives. The data analysis and organization process entailed the gathering of the data, cleaning data, categorizing the data according to the research instruments used, and its preparation for analysis. The study finds that there is a lack of awareness among both the visual artists and legal practitioners about intellectual property (IP) as they relate to visual artists. Also, the study finds that a new practice of the use of digital platforms for the exploitation of visual arts is emerging. As such, it has become more important for the visual art industry to protect their copyright closely. Overall, the study concludes that strong regulation of copyright would be of profound importance to visual artists and the overall well-being of the Zimbabwean people. In this connection, there is the need for the Zimbabwean government to have a specialized body of intellectual property practitioners that exclusively deal with copyright infringement issues. There is also the need for nationwide training and awareness campaigns concerning copyright laws on sculpture. This can help both lawyers and visual artists to understand the complex copyright law issues around stone sculpture and visual art generally in Zimbabwe. In addition, the study recommends that all law schools in the country should provide compulsory IP courses. There is also a great need to create extensive awareness in the judiciary and also provide training and capacity building of the judiciary to fully comprehend all relevant laws relating to IP of the visual arts.

**Keywords:** Copyright Laws, Intellectual Property, Sculptures, Visual Artists

## Declaration

I declare that this dissertation is my original work except where sources have been cited and acknowledged. The work has never been submitted, nor will it ever be submitted to another university for the award of a degree.

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## **Dedication**

To God, the author and the finisher of my faith and to my family, Kudzai, Mum, Dad, Anaishe and Rachelle. I thank God for you.

## **List of Acronyms and Abbreviations**

ARIPO	African Regional Intellectual Property Office
IP	Intellectual Property
TRIPS	Agreement on Trade Related aspects of Intellectual Property
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
ZIPO	Zimbabwe Intellectual Property Organization

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# **CHAPTER 1 INTRODUCTION AND BACKGROUND TO THE STUDY**

## **1.1. Introduction**

This study aims to give a critical assessment of copyright enforcement in Zimbabwe with specific attention to the visual arts (stone sculpture) industry of the country. This chapter serves as an introduction to the research and concerns itself with the background to the study, problem statement and justification of the study. It also discusses the research objectives, questions and the delimitation of the study.

## **1.2. Background to the Study**

The visual arts industry encompasses different art forms such as sculpture, paintings, photography and filmmaking (World Intellectual Property Organization, 2003). Such works can be protected under international and national copyright laws. There are also some international treaties concerned with the protection of the arts such as the Berne Convention for the Protection of Literary and Artistic Works, 1886, 1161 U.N.T.S. 3 (World Intellectual Property Organisation, 1982), and the 1970 UN Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property which governs the illicit removal of the art from the borders of origin. Most countries have put in place national laws that set rules for the copyright protection of literary and artistic works. It is important to note that in terms of Section 10 of the Copyright and Neighbouring Rights Act [Chapter 26:05] of Zimbabwe, artistic works, such as paintings and sculpture, are eligible for copyright protection as long as they do not form part of the exceptions provided for by the Act. In addition, the Copyright and Neighbouring Rights Act makes provisions relating to the collective management of copyright. These provisions create the legal mechanism upon which

collective management organizations, such as ZIMCOPY, manage the copyright on behalf of their owners. ZIMCOPY, an affiliate of the International Federation of Reproduction Rights Organizations (IFRRO), is a forum for creators and publishers of literary and artistic, including visual arts, works in Zimbabwe (IFRRO, n.d). It is a reproduction rights organization [RRO], which manages the copyright concerning literary and artistic works, including visual arts, works on behalf of its members in Zimbabwe. ZIMCOPY provides members with the benefits of the organization's administrative and legal expertise in collecting, managing and disbursing royalties amassed from the use of a member's creative work. It also organizes workshops to educate members on copyright and the protection of copyright (Department of Deeds Companies & Intellectual Property, n.d). Copyright laws have a limited impact on the protection of copyright accruing to visual artists in the absence of proper enforcement of the existing laws.

The visual arts industry of Zimbabwe plays a pivotal role in the preservation of the traditional and cultural values of Zimbabwe (Ngara, 2010). It can be noted that there is limited statistical evidence on the contribution of the visual arts industry to the economy of Zimbabwe due to a lack of comprehensive studies having been undertaken. It is, however, apparent that this industry has the potential to make a significant contribution to the country's Gross Domestic Product (GDP) (Winstone, 2019). For instance, the Culture Fund produced a report in 2009 stating that the creative industries in Zimbabwe collectively contribute 100 million US dollars to the GDP and employ 5.4 million people (National Arts Council Zimbabwe, 2016). The UNESCO Cultural Index report on Zimbabwe also pegs the contribution of the Arts to Zimbabwe's GDP in 2012 at 6.96% and employment in the culture industry in 2014 at 1.34% (83 842 persons: 24% female and 76% male) (UNESCO, 2018). This is very significant and

the issue of copyright protection in this industry makes a study such as this present research necessary and pertinent.

This study is mainly concerned with the visual arts industry paying specific attention to the stone sculpture works of Zimbabwean artists. This is because of the rich cultural heritage portrayed in the stone sculpture works of Zimbabwe. The name of our country, Zimbabwe, is derived from the stone structure of Great Zimbabwe, which is a world heritage site located in Masvingo. The name Zimbabwe is loosely translated to mean “house of stone”. It is important to note that the Zimbabwean emblem is derived from one of the relic soap stone bird sculptures that were discovered in Great Zimbabwe. This national emblem appears on the flag of Zimbabwe. Zimbabwe is also known to be home to large deposits of suitable stones such as serpentine, granite and soapstone which are used for making sculpture work. Therefore, Zimbabwe seems to possess both a historical background and the necessary stone deposits that can support the industry to thrive sustainably. It is, therefore, important to ensure that this practice of stone carving is preserved and protected from activities that can lead to its demise. It is important to ensure the growth of this industry through effective utilization of the copyright laws and supporting frameworks provided for under the Zimbabwean context. However, despite the apparent historical value of sculpture works, it is not apparent whether the existing copyright legal frameworks are effectively enforced to ensure the protection of the industry from copyright infringement.

Zimbabwean stone sculpture works enjoy international recognition and support as witnessed by how the tourism sector also benefits from these art pieces (National Arts Council of Zimbabwe, 2007). The visual arts industry has been able to put Zimbabwe on the world map by giving rise to internationally acclaimed sculptors, such as Henry Munyaradzi, Nicholas Mukomberanwa, Bernard Takawira and Dominic Benhura, whose stone sculptures have been

exhibited and sold in different parts of the world. Most artists have complained on various platforms that their works are illegally being replicated and sold (Kanengoni, 2017). The rise in the illegal reproduction of sculpture works can have a detrimental effect on the already struggling industry. It is, therefore, important that infringers are brought to book and that there is effective copyright enforcement measures that safeguard the interest of the artists.

The foregoing forms the rationale for this study, which is equally inspired by the notable copyright infringement case instituted by Dominic Benhura under case *S v Chiadzwa* (HH 28-2004) [2004] ZWHHC 28. This controversial case highlights several copyright enforcement issues concerning sculpture works, thus giving rise to the need for effective enforcement frameworks to address cases of copyright infringement in the industry. The enforcement issues will be unravelled and examined in this study. The brief facts of the matter are that Dominic Benhura, a famous and highly acclaimed sculptor, approached the court of first instance alleging copyright infringement relying on s27(1)(e) of the Copyright and Neighbouring Rights Act. Dominic Benhura had discovered that the Defendant had bought copies of sculptures created by him and proceeded to exhibit the infringing copies. In the court *a quo*, the magistrate ruled in favour of Benhura and ordered the payment of a fine and return of the sculptures. The Defendant proceeded to appeal against this decision in the High court. On appeal, it was held that there was no copyright infringement had occurred although it was apparent from the facts that the copies were even inscribed with the complainant's name. This case and the decision of the appellate court are examined in more depth in chapter two of this dissertation.

### **1.3. Statement of the Problem**

The *S v Chiadzwa* (2004) case highlights some significant problems faced by stone sculptors in Zimbabwe, including the fact that sculptors are facing situations in which their works are purchased from third parties for resale in the market, widespread copyright infringement and weak enforcement of the sculptors' rights. Thus, it was imperative to assess the factors that enhance the enforcement of copyright legislation and those that hinder the enforcement. It is currently not ascertained whether the existing copyright enforcement strategies are effective for protection in cases of infringement. It is also not apparent which key factors ensure an effective enforcement system and how the industry can stand to benefit from such a system. Moreover, most existing research studies have focused copyright enforcement legal frameworks in developed countries (Bouchoux, 2012; Koskinen-Olson & Lowe, 2012). However, no studies have investigated copyright enforcement legal frameworks of visual arts industry. It is on this basis that this study sought to fill this gap by assessing the existing copyright enforcement legal frameworks and whether they can adequately address issues of copyright infringement in the visual arts industry in Zimbabwe.

### **1.4 Research Objectives**

The main objective of the study was to ascertain the factors that enhance, and inhibit, the enforcement of copyright protection in the visual arts industry of Zimbabwe with specific reference to stone sculpture. To achieve this broad objective, the study undertook the following:

1. Assess the existing legal frameworks for copyright enforcement in Zimbabwe.
2. Explore the challenges in the protection of copyright accruing to stone sculpture in Zimbabwe.
3. Explore the opportunities in the protection of copyright accruing to stone sculpture in Zimbabwe.

4. Establish a relationship between copyright enforcement and the visual arts industry of Zimbabwe.
5. Recommend measures that can be implemented to strengthen copyright enforcement in the visual arts industry of Zimbabwe.

### **1.5 Research Questions**

To achieve the objectives outlined in 1.5 above, the study attempts to resolve the following research questions:

1. What are the existing legal frameworks for the protection of copyright of stone sculpture in Zimbabwe?
2. What are the challenges in the protection of copyright accruing to stone sculpture in Zimbabwe?
3. What are the opportunities in the protection of copyright accruing to stone sculpture in Zimbabwe?
4. What is the relationship between copyright enforcement and the visual arts industry of Zimbabwe?
5. What are the measures that can be implemented to strengthen copyright enforcement in the visual arts industry of Zimbabwe?

### **1.6 Assumptions**

The study was based on the following assumptions:

1. The current copyright enforcement frameworks are not strong enough to effectively protect the copyright of visual artists.
2. The persons or representatives of entities that were interviewed had an understanding of the subject matter.
3. The opinions and insights deduced from the findings were a sufficient representation of the study population.

## **1.7 Significance of the Study**

### **1.7.1. To the academia**

The study provides practical and theoretical literature that gives further understanding of copyright issues concerning the visual arts industry of Zimbabwe. The study also provides fresh insights into the existing copyright enforcement frameworks concerning visual arts in Zimbabwe.

### **1.7.2. To the Researcher**

The study sheds light on possible reasons for the lack of copyright infringement cases being brought before the courts of Zimbabwe and shows whether there is a need to lobby for superior copyright enforcement measures to protect the interests of visual artists.

### **1.7.3. To the public**

The findings from the study will be able to inform the policy makers, enforcement agents and different stakeholders on how to effectively assist in the enforcement of copyright and protect the interest of the visual arts industry in Zimbabwe.

## **1.8 Delimitation of the Study**

The study is restricted to the visual arts industry of Zimbabwe with particular reference to stone sculpture. The study is constrained to the enforcement measures of copyright infringement under the Copyright and Neighbouring Rights Act and only reviews regional and international instruments which apply to Zimbabwe.

## **1.9 Limitations of the Study**

The researcher understands that the chosen area of research has limited existing literature and it is difficult to access information pertaining to the study. This is exacerbated by the fact that the study was carried out through distant learning. Some respondents were reluctant to disclose information that they are privy to which may have been relevant to this study. The researcher also experienced time constraints which affected the gathering of all intended information due to competing work, school and personal commitments. Financial constraints also posed a problem for the researcher as she was personally funding her research.

The most significant limitation to this study, however, was the nationwide lockdown imposed due to the state's efforts to curb the rise in COVID-19 infections. This led to limited physical interactions with the respondents and some interviews had to be conducted remotely via telephonic conversations and Zoom meetings. The researcher also followed the COVID-19 regulations whilst conducting physical interviews through wearing of masks and observing a safe distance. Written permission had to be sought and was obtained to collect data during the lockdown.

## **CHAPTER 2 REVIEW OF RELATED LITERATURE**

### **2.1 Introduction**

This chapter provides a review of existing related literature on the subject matter and brings to the fore issues which have framed this research. The chapter seeks to identify the existing theoretical frameworks on copyright enforcement in the visual arts industry through an assessment of the prevailing Copyright laws and enforcement methods. The chapter consists of the following headings; Theoretical Framework, Statutory provisions for Copyright Protection in Zimbabwe, Visual arts industry and Copyright Protection, Copyright infringement in the visual arts industry, Copyright Enforcement measures in Visual Arts Industry, Challenges and Opportunities for Copyright Protection in the Visual Arts Industry and Summary.

### **2.2. Theoretical Framework**

It is commonly agreed upon that a person who has endeavoured on a creative journey that has resulted in the birth of an intellectual work ought to derive a benefit for the creative endeavour. Various theories have been put forward in support of the protection of copyright.

Three examples of such theories are the Utilitarianism theory, the Labour theory and the Personality theory. Utilitarianism, a form of consequentialism, was identified by J.S. Mill and Jeremy Bentham in the nineteenth century in an effort to develop a decision-making rule capable of guiding social policies in a world being transformed by science, technology and the Industrial Revolution (Driver, 2014). This theory supports the notion that it is in the interests of the public that creativity is encouraged through the granting of exclusive rights to creators of creative works as the public makes use of the works, thus creators must derive economic benefit from their works. These economic benefits awarded to creators serve to stimulate more creative works which can be utilized and enjoyed by the public. The Labour theory which is derived from the writings of John Locke is based on the notion that a creator of a useful work has a right to enjoy the fruits of his labour and therefore the state must reward him for the labour expended in the creation of the work. The Personality Theory is derived from the works of Kant and Hegel and is based on the reasoning that an author has the right to ownership of his work as his personality is reflected in his work (Yuan, 2020). All the theories share the common thread that it is reasonable and justifiable that an author of a work receives certain rights and protection for his/her work/s, but they differ in their rational justification as the literature show. The theory that is in alignment with this study is the personality theory.

### **2.3. Personality Theory and Relevance to study**

According to the personality theory, the author has the right to own the work and prevent others from unauthorized use and any distortion of his/her work as the work and his/her personality are tied together (Strauss, 1955). Therefore, the author ought to benefit from this reflection of his/her personality and this theory rings true in the visual arts industry especially in the context of Shona sculpture (The Shona are a people living in Zimbabwe, whose

ancestors built the Great Zimbabwe, a stone city in southern Africa over a thousand years ago. Today, more than 10 million Shona people live around the world (Jarus, 2017)). A sculptor reflects his/her history, culture and tradition in his/her works and the sculpture becomes a depiction of how he/she views his/her surroundings. Mashona sculptors claim to obtain their creativity from visions and inspiration from their surroundings, history and culture (Ngara, 2010). Sculptors are known for their unique works and they gain recognition due to the unique elements incorporated in their works, which help the art fraternity identify and differentiate the works of an artist. Therefore, copyright infringement of sculpture does not only deprive the sculptor of deriving financial benefit from his/her work but can also be viewed as an attack on the personality of the sculptor.

Society has the duty to reward artists for their creative contributions and ensure that their works are protected as they also benefit as a society from the creative works (Moore &Himma, 2011). This is evidenced by how this industry adds to the rich culture and traditions of Zimbabwe which is immortalized in the stone sculptures. Stone sculptures brighten and invigorate our tourism sector and Zimbabwe has obtained international recognition for its Shona sculpture works that are internationally acclaimed in the arts and craft sector. Proper and effective enforcement measures must be put in place to protect and reward the visual arts industry for its positive contributions to the nation.

#### **2.4. Statutory Provisions for Copyright Protection in Zimbabwe**

Zimbabwe is a signatory of international and regional conventions or treaties on copyright and related rights protection, namely: the Berne Convention for the protection of Literary and Artistic works; the World Trade Organisation (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement); and the Lusaka Agreement which was

signed on the 9th of December 1976, which established the African Regional Intellectual Property Organization.

These international agreements, especially the Berne Convention and the TRIPs Agreement, serve to provide minimum standards and guidelines for copyright protection in signatory states. These international agreements also entail that the country must comply with the minimum international standards set forth. The country is free to adjust its laws in a manner that is well suited to the environment in Zimbabwe by utilizing the flexibilities provided for in the agreements.

The Berne Convention provides for the copyright protection of literary and artistic works. It provides examples of different forms of such works under article 2, which include sculpture works. The convention states that for the work to be protected it must be original (World Intellectual Property Organization, 1982). The requirement of originality is left to be determined individually by the contracting countries (World Intellectual Property Organization, 1982). It is also significant that the TRIPs Agreement is the one that provides for domestic law to stipulate protection of copyright through its provision of the minimum standards of enforcement of copyright. (TRIPs Agreement, Art 1).

At the time of this research, plans were underway by ARIPO member states for a Protocol on Copyright and Related Rights under the Lusaka Agreement. The plans are hinged on article III of the Lusaka Agreement, which mandates ARIPO to promote the development of copyright and related rights in its member states and ensure that copyright and related rights contribute to the economic, social and cultural development of its members and the region at large. Although the writer could not cite a draft of the Protocol, it is expected that the Protocol

will not deviate from the minimum standards contained in the Berne Convention and the TRIPs Agreement, especially concerning the protection of visual arts, since ARIPO member states are also signatories to the Berne Convention and TRIPs Agreement. Moreover, section 4(1)(c) of the ARIPO Model Law on Copyright and Related Rights (ARIPO, 2019) recognizes the protection of “artistic works including photographic works, drawings, and other works of fine and applied art”. This is further defined in section 2 of the Model Law to include works of sculpture.

#### **2.4.1. Copyright and Neighbouring Rights Act**

In compliance with its international copyright obligations, Zimbabwe enacted the Copyright and Neighbouring Rights Act [Chapter 26:05]. This Act commenced on 10 September 2004 and it sets the provisions for copyright protection in the country. This Act was created to clearly illustrate the rights and responsibilities of copyright holders, users and enforcement agents.

In terms of the Copyright and Neighbouring Rights Act, copyright protection accrues automatically when the work is fixed as long as it falls within the ambit of the works which are granted protection by the Act. Section 10 of the Copyright and Neighbouring Rights Act identifies the works which are eligible for copyright protection and this list includes literary works, musical works and artistic works. Visual arts fall under artistic works (Copyright and Neighbouring Rights Act). Section 97 of the Copyright and Neighbouring Rights Act also provides for the voluntary registration of copyright and this is beneficial to the right holder as this makes it easy to prove the existence and ownership of copyright over the work. Part X of the Copyright and Neighbouring Rights Act allows for the registration of collecting societies that can act as private enforcement agents of copyright in Zimbabwe. In terms of sections 91

and 92 of the Act, the collecting society must first apply to be registered as a collecting society in Zimbabwe subject to the stipulations set forth under these provisions. ZIMCOPY is a collecting society that helps administer and enforce the economic rights of copyright owners over visual arts works in Zimbabwe.

The public authorities responsible for enforcing copyright laws in Zimbabwe are namely;

- The Director of Customs and Excise
- The Registrar of Copyright
- Copyright inspectors
- Police officers

The judiciary entails the Magistrates court with jurisdiction, a court of first instance in a case of copyright infringement (civil and criminal), and the High court. Zimbabwe has established a specialized intellectual property (IP) tribunal as a division of the High Court for the settlement of IP disputes. This tribunal has the right to hear all IP matters, including copyright in terms of the Copyright and Neighbouring Rights Act and other relevant copyright laws. It must be borne in mind that several considerations must come into play when the decision is taken to establish such a court. This includes whether enough IP disputes exist to warrant such a move (Musiza, 2019).

There is no specific definition provided in the Copyright and Neighbouring Rights Act for what copyright infringement entails but certain actions are viewed to be copyright infringement. Section 51 of the Copyright and Neighbouring Rights Act, gives examples of infringement when a person without authorization does or causes the following acts to be done;

- Making an infringing copy
- Importing or exporting a copy, not for private use
- Possession or exhibition to the public of an infringing copy for commercial use
- Selling or hiring an infringing copy
- Any acts of transmission or distribution to the public which prejudices the copyright owner.

The Copyright and Neighbouring Rights Act provides for both civil and criminal enforcement of copyright. Section 52 of the Copyright and Neighbouring Rights Act provides civil remedies to the copyright owner in the event of any infringement occurring. The civil remedies available that a competent court may grant at the instance of the copyright owner include;

- Damages calculated in consideration of the facts such as the extent and nature of the infringement,
- An injunction,
- Seizure and forfeiture of infringing goods,
- Attachment, delivery of infringing copies or otherwise,
- Rendering of account,
- Any other order that the court may deem appropriate and,
- Special provisional measures such as search warrants and Anton Piller orders (Copyright and Neighbouring Rights Act, s 57).

An infringer is also guilty of a criminal offence which can result in imprisonment for a period that does not exceed two years or payment of a fine not exceeding level ten (Copyright and Neighbouring Rights Act,s59).

The Copyright and Neighbouring Rights Act is one of the few in Africa that provide for the provisional measure of an Anton Piller order in the case of suspected infringement and there is the fear that infringing copies may be destroyed if an alleged infringer is given notice. This order is only granted by a court or tribunal if there is a real risk that the infringing copies may be untraceable and the Anton Piller order gives authority to search a suspected premise in order to obtain evidence without any prior notice being given to the suspected person in possession of the infringing articles (Copyright and Neighbouring Rights Act, s57). This is a very welcome provision as it helps the copyright owner to act swiftly to safeguard his/her rights and the evidence obtained will be valuable in future proceedings concerning the infringement. This is a tool which if utilized by visual artists can help to prove that infringement indeed occurred and also prevent the loss of evidence. The Anton Piller orders have, however, been criticized on the grounds that they may be overreaching the powers of the artists and may cause inconvenience to those using the copyright, among others (Oriakhogba, 2015).

The Copyright and Neighbouring Rights Act goes into a detailed account of the forums in which a copyright owner can approach for recourse and the penalties and orders which a forum can grant in the case of infringement. The way of recourse that a copyright holder chooses depends on many considerations, including the kind of infringement that has been suffered; can relate to the IP rights themselves (grants and registrations) and legal issues that relate to specific rights, for example licensing and infringement (Musiza, 2019).

Copyright laws require proper frameworks and supporting structures for them to effectively protect the copyright owners in a given country (World Intellectual Property Organization, 2012). As shown above, the provisions of the Copyright and Neighbouring Rights Act

stipulate the works that are protected by copyright, the bundle of rights accruing to the copyright owner, infringing actions, the enforcement agencies, the forums for copyright enforcement and the remedies available to a copyright owner. This Act brings to the fore how different players can participate to effectively protect copyright and this shows how the law requires the active participation of others for its enforcement.

## **2.5. Visual Arts Industry and Copyright Protection**

There is no specific definition on the meaning of visual art works, but such works have been described to include creative works that are aesthetically pleasing which may be culturally attached, decorative, functional or traditional (World Intellectual Property Organization, 2003). Examples of such works include sculptures, photography, beadworks, drawings and paintings. As already discussed above, this study is biased towards stone sculptures although it makes mention of the visual arts industry as a whole.

The stone sculpture works in Zimbabwe are an important part of our cultural heritage and also provide a livelihood to the sculptors who are engaged in the trade (Ngara, 2010). Many rural communities are assisted by sculpture-making practices, an example being the Mvurwi Art Centre located in the rural town of Mvurwi (Kanengoni, 2017). This practice also contributes to cultural tourism as art collectors visit Zimbabwe to enjoy our cultural diversity and the unique sculpture works also feed the tourism sector (The National Trade Development and Promotion Organization of Zimbabwe [ZIMTRADE], 2016). Copyright infringement acts as an enemy to the creative arts as it frustrates investments into the industry and distorts the cultural significance of the country (Kerere, 2018). Therefore, the sculpture works must be preserved and protected from infringement as this industry is linked to the cultural identity of

the country (Ngara, 2010). Copyright if utilized can assist in the growth of the industry and help uplift sculptors.

It is important to note that although copyright accrues automatically to visual art works, the visual artists must take active steps to secure their protection and guard against infringement (Ouma, 2010). The visual artists must be vigilant against infringement and in the case of acts of infringement occurring they must be able to select ways in which to enforce their rights and stop the infringing actions. Copyright laws provide different ways in which a copyright owner can enforce their rights but enforcement is only a possibility if the enforcement measures are effective and proper (Ouma, 2010). A copyright holder must have awareness of the rights conferred by copyright, when his/her work is infringed and how to enforce the rights.

When a protected work is created, an artist or copyright owner is conferred with both economic and moral rights which must not be infringed (Copyright and Neighbouring Rights Act, 2000). Examples of economic rights have been discussed under 2.5 above. Moral rights relate to the patrimony and reputation of the artist and this can be construed to mean the right to be identified as the creator of a protected work and to be protected from any actions by a third party that may distort the work or that can be viewed as an affront by the creator of the work (Copyright and Neighbouring Rights Act, 2004, s61; s64). If a copyright owner is unable for any reason to use the laws and remedies availed by the Act, infringers will thrive and this can be detrimental to the owner and the public. Copyright enforcement is a critical component in ensuring copyright protection for visual works in Zimbabwe.

## **2.6. Copyright infringement in the visual arts industry – stone sculpture works**

The Zimbabwe visual arts industry is vibrant, despite the economic setbacks currently being experienced by the country. The visual arts sector is promoted mainly through the National Art Gallery, while several artists have managed to receive international critical acclaim (Session, 2003). In the case of *S v Svondo* 1984(1) ZLR 140(Hon), the accused was arrested on suspicion of CDs without copyright ownership. The conviction could not stand; however, as the discs turned out to be blank and the trial magistrate could not give judgment without the essential knowledge of who the owner of the copyright is.

Given the foregoing, it is important to note that section 14 of the Copyright and Neighbouring Rights Act states, among others, that the ownership of copyright will be vested in the author or co-authors of the work as the case may be, while ownership of a collective work shall vest in the individual under whose direction the work had been duly created or made. For purpose of the present discussion, section 14 also states that the owner of the copyright, in the case where a person commissions the taking of a photograph, drawing of a portrait, the making of a gravure, or making of audio-visual works, and pays for it in money or money's worth, shall be the person who commissioned such works. Furthermore, the section vests ownership of the copyright on the employer of an author over works created by that author in the course of his/her employment under the contract of employment or apprenticeship. However, works made under the directions and instructions of the State or an international organization shall vest in the state or international organization concerned. The original creators of works protected by Copyright and their heirs hold the exclusive right to use or authorize others to use their work on agreed terms. The creator of a work can prohibit its reproduction in various forms.

A copyright owner of visual art work has moral and economic rights towards the work and any action that is committed by a third party without authorization can be construed as copyright infringement (Bouchoux, 2012). Examples of infringing actions in the sculpture works can include;

- The unauthorized reproduction of sculpture pieces that is substantially similar to the works of another sculptor for commercial use.
- Exhibiting the sculptor pieces to the public without authorization.
- Sale, distribution or reproduction of sculpture works without authorization.
- Unauthorized importation or exportation of protected works.

There are specific cases whereby the law allows for the use of a protected work without prior authorization of such action by the copyright owner and falls within the ambit of fair dealing and fair practice (Copyright and Neighbouring Rights Act, 2004, s24-44). Examples in the Act of such exceptions include the use of works for research or educational purposes. The Copyright and Neighbouring Rights Act also provides exceptions that are relevant to visual arts. Section 35 of the Act provides an exception of artistic works that are permanently situated in public places when they are reproduced in other works such as photographs. An example that comes to mind is the sculptures known as the justice balance scales by David Ngwerume which he donated to the High Courts of Harare and Bulawayo. These sculptures are situated at the main entrances of both courts and have gained popularity. Legal practitioners and the public are often photographed next to the sculptures. Most recently registered legal practitioners have their registration pictures taken at these sites as they provide a beautiful background and symbolize the balancing scales of justice. I recall having a picture taken next to the sculpture at the High Court of Harare on the day I was registered as a legal practitioner in Zimbabwe. Section 38 of the Act also allows for the reproduction of

copies of artistic works which are distributed to the public to advertise the sale of the original work. Therefore, it is not all unauthorized use of artistic works that are considered by law to be copyright infringement.

In the event of actions of infringement occurring, the onus lies on the copyright owner to explore the available means for relief which are provided by the Copyright and Neighbouring Rights Act. Therefore, it is highly critical that a copyright owner is aware of the available options to pursue recourse and that he is well-positioned to be able to do so as failure to pursue his rights can result in continued infringement. Copyright infringement needs to be curbed and enforcement should be possible as infringement can have a detrimental effect on the owner as it can result in loss of revenue and can deter making of future works due to limiting of resources and reduced incentive (Musiza, 2015).

A copyright owner has options at his disposal in the case of copyright infringement. The first option is to try and personally engage the infringer for example through sending a letter informing the infringer of his/her infringing actions. This letter can be used to inform the infringer to stop the infringing action/s or obtain permission from the owner to use the work/s through entering into an agreement for example, a licensing agreement. This can assist in stopping the infringing action, seeking compensation for infringing ways or exploring other remedies that can assist the owner. The owner can also pursue civil and/or criminal remedies. An advantage of pursuing civil action against copyright infringement is that if successful, the copyright owner can be awarded monetary damages for the losses incurred due to the infringement. Civil action can also allow the copyright owner to obtain an order which allows for the confiscation of the infringing material. The courts can also exercise their discretion to award an order of the costs of the suit. Criminal action is also advantageous to the copyright

owner as the action is instituted by the state unlike in civil cases whereby action is instituted by the copyright owner and the copyright owner has to pay for the legal costs involved. It is also advantageous for a copyright owner to pursue both criminal and civil remedies concurrently as he/she may be granted both civil and criminal relief from the same infringing actions and will have more options at his/her disposal.

It is, however, interesting to note that very few cases have been brought before the court for copyright infringement although there is overwhelming evidence that copyright infringement has been noted to occur in this sculpture circle (Kanengoni, 2017). The lack of specific knowledge relating to copyright violations has led to very low conviction rates as illustrated by the case, *S v Dube & Anor* 1988(2) ZLR 385(S) where the state seized a computer and the charge was “possession of equipment designed or adopted for making infringed copies” in contravention of section 59(1) (b) (iii) of the Copyright and Neighbouring Rights Act. It was argued that the mere possession of a capable machine does not constitute a violation of the copyright because it was not proven that the mere reason that the machine has the capability does not prove a breach of copyright. It needs to be determined why there are low numbers of copyright enforcement cases in Zimbabwe.

## **2.7. Copyright enforcement measures in Zimbabwe**

This part of the study will look at the different enforcement authorities responsible for copyright enforcement provided for in the Copyright and Neighbouring Rights Act and assess their role in the enforcement of copyright in Zimbabwe. It will also look at the role played by ZIMCOPY in the enforcement of copyright in Zimbabwe. It will also explore the remedies provided by the different authorities. It will then look at the role of the visual artists in enforcing their copyright.

### **2.7.1. Role of the visual artists in enforcing copyright**

As already discussed above, visual artists play an active role in the enforcement of their copyright as they have the choice on whether to pursue matters of copyright infringement. This is not as simple. For visual artists to pursue action against infringement they must be aware of what actions qualify as infringement and the avenues to pursue for relief. The Zimbabwe Online News (2015), states that most copyright infringement matters in the visual arts industry have gone unsettled due to a lack of knowledge and awareness of the laws that protect visual artists. The article goes further to state that visual artists must understand how to protect their copyright as copyright issues confront them on a daily basis and have a direct impact on their sculpture works. A lack of comprehensive knowledge on copyright by visual artists can be one of the reasons why very few copyright matters have been brought to the courts. Although the Copyright and Neighbouring Rights Act has been in operation since 2004, most visual artists that are engaged in sculpture works lack awareness of its existence (Kanengoni, 2017). Training and education on the existing copyright laws for visual artists is important for them to be able to enforce and protect their rights. In civil copyright matters, the copyright owner is the one who institutes a civil matter against the infringer, thus he/she must be aware and well versed with copyright issues.

The visual artists also face the difficult task of having to prove that infringement indeed occurred when a matter is brought before the court, the *S v Chiadzwa* (2004) case, summarised in chapter 1 above, showed how difficult it is for a sculptor to prove that infringement had occurred. The judge in the matter decided that with the evidence adduced, the complainant could not prove beyond reasonable doubt that the alleged infringing works were a reproduction of his work. The case, which is discussed further below, shows that the

copyright holder has an onerous task of proving infringement which may be difficult and lead to the acquittal of the infringer. A copyright holder must always take active steps to ensure that his/her work is protected.

### **2.7.2. Role of the courts in copyright enforcement**

The Magistrates Court and High Court of Zimbabwe can both act as courts of first instance in a case of copyright infringement whether it is a criminal or civil case. The Magistrates Court can act as an appropriate court if the matter complies with its territorial and financial jurisdiction. Effective enforcement of copyright requires the participation of the courts as they are tasked with the role of interpreting the copyright provisions and also determining the appropriate relief (Ouma, 2006). The court has the final say on whether an act of infringement has occurred and also the recourse to which a copyright owner is entitled to. In order to prove infringement, the owner must first show that copyright protection subsists although there is a rebuttable presumption of copyright ownership in the case of a registered copyright (Copyright and Neighbouring Rights Act, s97,s124). It must also be proved to the court that an act of infringement has indeed occurred: that is a violation of the rights accruing to a copyright owner and that there is no valid defence for this infringement.

Ideally, the court will assess a copyright matter brought before it through interpretation of the statutory provisions and linking these to the facts of the matter. The court officers must be well versed in copyright matters and be able to efficiently execute their mandate. The judgments made by courts are of great importance as Zimbabwe follows a common law approach and court decisions can serve as precedence for future decisions. The decisions of the higher courts are binding on the lower courts; thus, the courts must be thorough in

reaching a verdict. However, the cases reviewed in this study exhibit a lack of knowledge on the part of court officers with regards to the finer points of copyright law. For example, in the case of *S v Chiadzwa*, the accused was convicted and charged, but the charge seems to belittle the nature and gravity of the crime of the theft and sale of an artist's work that has been copyrighted. The sentence, in this case, was just a fine of \$400 or 10 days imprisonment. Moreover, the 10 days imprisonment was suspended for five years on condition that during that period, the perpetrator did not commit any offence involving the sale of artifacts (*S v Chiadzwa* (HH 28-2004) [2004]). This sentence has been viewed as patently lenient and not serving as a sufficient deterrent.

The courts also have the task of determining an appropriate remedy. Therefore, a court must pay cognizance to the intricacies of the visual arts industry as the value of art works such as sculptures is not determined by the labour input and capital input but rather its aesthetic value and how it is received on the market. Sculpture works can sell for different amounts depending on the market that they are being sold, the buyer and the reputation of the artist. Most renowned artists can have their artworks sold for high amounts due to their elevated reception on the market. An example is how some stone sculptors such as Dominic Benhura, have managed to have their works sold for thousands of US dollars and exhibited on international platforms. Therefore, the remedies must pay cognizance to the perceived reputation and value accompanying the infringed work. There has been a universal outcry that the fines or damages awarded by courts in the case of infringement do not match the deprivation and loss of income suffered by the copyright owner. Keplinger (2008), states that "Little can be achieved, however, without raising awareness among members of the judiciary of the destructive consequences of IP crimes, and the need to mete out effective and deterrent penalties under national laws".

The interpretation of the law by the courts can either have a positive or negative impact on the enforcement of copyright in the visual arts. The case of *S v Chiadzwa* (2004) properly highlights how a court can decide on a remedy that does not take into account the harm suffered by the copyright owner and the fine may not act as a deterrent for future infringers. I am of the view that the court missed an opportunity to properly interpret and appreciate the provisions of the copyright law in arriving at its decision. This case reveals the difficulties that artists face in proving copyright infringement and how the judiciary might not be adequately equipped to deal with copyright enforcement matters. It is interesting to note that the judge did admit *obiter dictum* that the courts are not commonly exposed to copyright infringement cases and that copyright is an obscure area for them.

The case has been met by criticism and even the lower court decision has not been spared this criticism. The fine that was imposed by the magistrate at the time was equivalent to a paltry US\$50.00 when it was apparent that the works in question could be sold for up to US\$170 000.00. Therefore, the fine imposed seems imbalanced when considering the magnitude of the infringement and also the costs and time incurred by the complainant in trying to enforce his copyright. This case exposes that there is an existing problem in the enforcement of copyright laws in Zimbabwe. Although some artists have complained of illegal imitation of their works by art dealers, institutions and even other sculptors this case can serve as evidence why there may be a reluctance to approach the court for recourse. Therefore, there is a need for effective enforcement frameworks to address cases of copyright infringement in the industry.

The judgments can neither act as a deterrent nor create opportunities for future infringements. People are more likely to commit and continue with acts of infringement when they are

assured that the likely punishment is insignificant compared to the benefit accruing from the infringement (Ouma, 2006). Therefore, the approach of the courts plays a significant role in the effectiveness of copyright enforcement in Zimbabwe.

It is important to note that copyright is a specialized branch of the law that most magistrates, prosecutors, judges and lawyers may not be sufficiently exposed to or possess adequate knowledge and understanding of (Ouma, 2010). For enforcement to be efficient the court officials must be well trained and equipped to deal with copyright matters and possess a good understanding of the laws regulating copyright. Judicial decisions which are made without proper exercise of the mind and limited knowledge on copyright can have a detrimental effect on curbing infringement but rather aid the infringers (Ouma, 2010).

Lack of knowledge by enforcement agents can be used as a loophole by infringers to get away with their infringing actions. This is brought out in the case of *S v Moyo & Another* HC 221/08 & 223/08 whereby the Magistrate failed to identify and rectify the procedural flaws that had been committed by the investigating officers. In this case, the accused persons were charged with copyright infringement for the sale and/or display for sale of infringing copies of the compact discs and DVDs. The initial error occurred with how the charge sheet was improperly drafted and the essential elements of the crime were not included. Although the accused person admitted to the illegal selling of infringing copies the charge sheet had been improperly drafted and stated that the CDs were blank. The Magistrate further erred as he failed to identify that the essential elements of the crime had not been brought out in the charge sheet and as a result, the infringer was released based on this procedural flaw. Prosecutors are also officials of the court that need to properly guide the court in reaching a

decision as they are *dominus litus* in criminal matters. In the above matter, the prosecutors could have identified the procedural irregularities of the matter which resulted in the dismissal of the case and rectified them or guided the police to attend to them when they had initially vetted the dockets.

If Prosecutors had possessed a better appreciation of copyright matters the procedural irregularities which arose would have been solved at the initial stages of the matter. There is a need for prosecutors to be adequately trained on copyright issues and laws for them to better assist in the enforcement of copyright laws. This was a missed opportunity for copyright enforcement and even the High Court judge indicated how there is a need for copyright enforcement as infringement is rife in Zimbabwe but enforcement is extremely low. The judge also indicated how this was the first case of this nature to be brought before **that** court showing how the judiciary has limited exposure to copyright matters[my emphasis]. There is a need for programs and training for court officials such as magistrates, prosecutors, judges, lawyers and even the general public on IP rights, especially copyright in order to be informed and well versed in copyright issues. This will lead to better judgments and effective enforcement of copyright by the courts.

### **2.7.3. Role of the police in copyright enforcement**

The Zimbabwe Republic Police (ZRP) also plays an instrumental role in the enforcement and safeguarding of copyright in Zimbabwe. For copyright to be protected efficiently in a country, the intervention and assistance of law enforcement authorities is critical as they have the duty to ensure that laws are adhered to and maintained by the public. The ZRP is responsible for ensuring that there is an adherence to the laws of the country including copyright laws. The police must ensure that they strengthen the copyright laws of Zimbabwe.

The police have the task of conducting investigations and assisting the courts by collecting evidence in criminal copyright infringement matters. A copyright holder can approach the police to lodge a complaint about copyright infringement against an alleged infringer. The police will now have the task of investigating the matter and creating a charge sheet against the alleged infringer setting out the essential elements of the crime and also referring the matter to the relevant court. The police also gather evidence which they then bring to the attention of the court during the trial. Any evidence and exhibits such as the alleged infringing copies are kept in the custody of the police. Therefore, it is important that the police are well resourced to properly conduct investigations and that they have safe facilities to store any materials that may need to be adduced to the court. Special knowledge of copyright is required to properly canvas the charges and also conduct the investigations diligently. Therefore, the police play a vital role in the proper enforcement of copyright.

#### **2.7.4. Role of the Director of Customs and Excise in copyright enforcement**

The enforcement of copyright may in some cases require the involvement of customs and excise officers to prevent the importing or exporting of alleged infringing articles in Zimbabwe. Such enforcement measures will require the participation of customs authorities to seize and confiscate the copies. This process is provided for under section 60 of the Copyright and Neighbouring Rights Act (2004). For this avenue to be pursued it will be necessary for the copyright holder to first give written notice to the Director of Customs and Excise to disallow the passage of the suspected infringing copies on the borders of Zimbabwe (Copyright and Neighbouring Rights Act, 2004, s60).

The Director must first be furnished with a security fee that is determined by him to effectively perform his mandate and to pay for incidental costs arising from the confiscation and storage of the infringing goods. (Copyright and Neighbouring Rights Act, 2004, s60). The goods are held for ten days for the proper legal procedure of approaching the courts to be done by the copyright holder. This ten-day period seems to be rather difficult to adhere to in practice as it can take a longer period for a matter to be determined by the court. If the copyright holder is successful, the court can grant an order that prohibits any future importation or exportation of the goods.

#### **2.7.5. Role of the Public in copyright enforcement**

The public also has an important role to play in ensuring that the copyright of visual artists is protected in the country. The public perception and awareness of the copyright laws of a country are very critical in ensuring compliance with the laws (Ouma, 2010). For laws to have value and meaning they must be well understood and respected by the public. If the public is not aware of the law there is a high risk of infringement which may be done unknowingly (Ouma, 2010). It is a futile attempt to expect the general public to comply with a law that they lack awareness of. The public must be well equipped with information concerning copyright and its value to society. Public awareness programs must be implemented which can help the public have an understanding and appreciation for copyright laws and this will help with effective enforcement.

### **2.7.6. Role of ZIMCOPY in copyright enforcement**

As previously alluded to in paragraphs 1.2 and 2.4 of the dissertation, ZIMCOPY is a collecting society that can assist in the enforcement of copyright in Zimbabwe. Copyright owners often lack the know-how and resources to enable them to pursue legal and administrative enforcement of copyright. Collecting societies assist copyright owners, users of copyright works, the government and the general populace through their expertise regarding the management and administration of copyright works (Koskinen & Lowe, 2012). ZIMCOPY can be used by copyright owners to monitor the use of their works and ensure that they can reap economic and moral benefits from the use of their artistic works. . ZIMCOPY is known to typically assist in copyright matters to do with literary works but it can also play a role in assisting visual artists with their copyright issues. ZIMCOPY can also assist in the enforcement of copyright by initiating legal proceedings on behalf of visual artists in instances of copyright infringement. This will help ensure that more criminal and civil cases are determined in the courts of Zimbabwe. However, for visual artists such as sculptors to be able to seek the services of ZIMCOPY, there must be first aware of the existence of this organization and the potential ways it can assist. ZIMCOPY must take active steps to ensure its visibility in the visual arts industry through awareness workshops and community training.

### **2.8. Challenges and opportunities for copyright protection in the visual arts industry**

Copyright protection in the visual arts industry, particularly stone sculptures, faces a lot of challenges. The first apparent challenge is the fact that it appears that very few cases have been referred to the court concerning copyright infringement (Chifunyise, 2015). This is alarming as it is apparent from the literature that copyright infringement does occur in the

industry. This can point to the fact that certain factors are at play that is influencing this trajectory.

The visual artists face the challenge that they are not well versed in copyright matters and as a result are not aware of their rights and the forums to approach in the case of infringement (Kanengoni, 2017). There is a need for artist awareness programs to be organized for sculptors and other visual artists whereby they are educated on copyright and other IP matters. This can aid them to be better equipped with ways to protect and safeguard their copyright. Such training can also facilitate artists to have a platform to discuss the challenges they face in the industry and collectively find solutions to tackle those problems and this can aid the growth of the industry (Chifunyise, 2017). In the past, sculptors have complained that they are often taken advantage of in negotiations for their art pieces by art collectors and art dealers alike due to the weak copyright measures and their obscurity in government policy planning (Kanengoni, 2017). Therefore, various stakeholders can create programs that allow visual artists to have their voices considered in policy frameworks. This challenge of lack of information on copyright issues by visual artists and the general public can be taken as an opportunity by organizations such as ZIMCOPY to organize awareness workshops and training. This will aid to their visibility in the visual arts industry and copyright owners can be able to seek their services.

In the court cases that were discussed concerning copyright enforcement in Zimbabwe, it is apparent that copyright protection is weakened due to the lack of adequate copyright information being possessed by judicial officers and other law enforcement agencies. To ensure effective copyright enforcement mechanisms, there is a need for IP education to be given to judicial officers and enforcement agents (Ouma, 2010). They must be sensitized to

copyright matters so that they can reach appropriate verdicts which are informed by proper training and that promote copyright protection in Zimbabwe. The universities in Zimbabwe can fill this void by collaborating with the judiciary and other organizations to organize short courses and training for copyright whereby judicial officers and all interested persons can be enrolled and obtain knowledge on copyright laws and enforcement.

External factors such as political and economic instability in Zimbabwe also pose a challenge for effective copyright enforcement. The sculpture industry has been facing many problems due to the turmoil in Zimbabwe and business has been on a low (Kanengoni, 2017). This means that small-scale sculptors may not afford to institute court proceedings for copyright issues due to them not being able to afford legal fees. Highly successful artists like Dominic Benhura, who once instituted an infringement matter complained about the high legal costs that he incurred and the outcome of this case has the potential to discourage other artists who may wish to pursue matters of copyright infringement. There is also the challenge that due to some artists practicing sculpture work on a small scale and with the prevailing economic problem, some artists have resolved to imitate the works of other artists and infringe on the copyright of others to also sell those designs that will be receiving more sales. This affects creativity and innovation and can result in flooding on the market and the copyright owner losing revenue from his creation.

## **2.9. Summary**

This chapter presents the theoretical framework underpinning the study, which is the Personality Theory. This theory is linked to the study in that the Personality Theory states that an artist's personality cannot be separated from his/her work – therefore any theft or use without authorization of his work is an affront to his/her personality as well. The chapter then

goes on to review the relevant literature that addresses the research objectives. The chapter discussed the literature under the following headings; Theoretical Framework, Statutory provisions for Copyright Protection in Zimbabwe, Visual arts industry and Copyright Protection, Copyright infringement in the visual arts industry, Copyright Enforcement measures in Visual Arts Industry and Challenges and Opportunities for Copyright Protection in the Visual Arts Industry, bringing us to the Summary. The following chapter discusses the study Methodology.

## **CHAPTER 3 METHODOLOGY**

### **3.1 Introduction**

This chapter explores the research methodology adopted in conducting the study. This chapter aims to demonstrate the primary data tools that were utilized by the researcher and to detail how the data was collected and analyzed. The chapter will also depict the measures that the researcher employed to ensure that ethical considerations were adhered to.

### **3.2 The Research Design**

The research took a qualitative approach. A qualitative research design was used to describe the obtaining of data through the use of unstructured, semi-structured and non-numerical data. (Wellman et al, 2005). The qualitative research method sought to interpret and explain and describe a social phenomenon through the use of tools that allow for the perceptions and experiences of the participants to shed light on the study (Creswell & Creswell, 2018). This was suited to the study as it assisted in understanding the factors affecting copyright enforcement in the visual arts industry of Zimbabwe.

It was also able to bring out the perceptions and experiences of the target population that helped the researcher to draw certain conclusions from the study. Further, it allowed the researcher to explore and gather the information that helped achieve the objectives of this study. Through the use of a qualitative design, the researcher was able to obtain results which provided an understanding of the relationship between the visual arts industry and copyright enforcement in Zimbabwe (Creswell & Creswell, 2018).

### **3.3 Population and Sampling**

A study population sample refers to a selected small group of individuals who are used as a representation of a larger group that possesses certain characteristics such as being located in the same area, region or country in which the researcher is interested (Patton, 2000). The population sample for the research was selected from artists who were stone sculptors and were located in Harare, Zimbabwe. This was the area in which the researcher was currently residing. The target population comprised of 20 (twenty) participants from Chapungu Sculpture Park, Tengenenge Sculpture Village and the Shona Sculpture Gallery in Harare. Likewise, the proposed sample size was 20 artists. The sample of 20 was arrived at as a number that fairly represented all the sculptors of the study population.

The researcher also targeted key informants to contribute to the research data. The researcher interviewed a population that is well informed on the subject matter and employed purposive sampling. This allowed the researcher to reach a valid and credible result as the sample chosen acted as a good representation of the study population on which the research is focused. This was mainly participants who possessed a rich background and experience with the visual arts industry an example being some law enforcement agents, representatives from African Regional Intellectual Property Organization [ARIPO], ZIMCOPY and World Intellectual Property Organization [WIPO] based in Harare, Zimbabwe.

The participants comprised visual artists, sculptors, legal practitioners, court officials and other stakeholders in the visual arts industry. This had the advantage that the Researcher was able to obtain valid and credible information that was a representation of the target population

on which the research is based. The purposive sampling method ensured that the researcher was more flexible when gathering data and that she was able to receive a more detailed and informed view concerning the subject matter as the participants were selected based on their perceived knowledge of the research topic (Seltman, 2011).

### **3.4 Data Collection Instruments**

The researcher conducted interviews on the participants through the use of interview guides. The interview guide assisted the researcher to ask questions which addressed the study objectives. This also allowed room for more information to be volunteered by the participants and reveal other areas which may have not been previously anticipated by the researcher that are relevant to the study. The researcher also gathered information through observation by visiting and interacting with sculptors at their place of work. This assisted the researcher to develop a relationship with the participants and gain valuable knowledge through observation of the daily activities of the sculptors. The researcher also made use of secondary sources of data such as newspapers, magazines, journal articles, case law, legislation and any other material that is relevant to the study. These data collection instruments are described in more detail below.

#### **3.4.1. On-site data collection**

On-site data collection was conducted through the Researcher visiting sculptor work sites such as the Chapungu Sculpture Park, Tengenenge Sculpture Village and the Shona Sculpture Gallery in Harare, which was partially open during the COVID-19 pandemic. The researcher observed all the health protocols and guidelines put in place by the government such as social

distancing, wearing facemasks and sanitizing. This also allowed the participants to be more relaxed as they were in a conducive and familiar environment.

### **3.4.2. Conducting of Interviews**

The Researcher conducted personal interviews with participants as this enabled her to collect more information as compared to the use of questionnaires. Through conducting interviews, participants had the opportunity to further explain their answers to the questions posed and also bring out new insights that the researcher had not previously anticipated. Issues were explored to greater lengths as the participants interviewed did not have their responses limited to a fixed answer. Interviews also allowed for flexibility to communicate in the vernacular language with some of the participants who had difficulty communicating in the official language. This data collection method, however, posed a problem in which some participants were shy and embarrassed to be candid and afraid of giving their confidential information on a face-to-face basis and may have ended up giving false information.

### **3.5 Pilot Study**

To verify that the data collection methods were understandable to participants and that they resulted in more accurate information being adduced by the participants, the researcher selected five people who were interviewed using the interview guide. These people were not used for the main study and were interviewed to ascertain if the wording used would not result in any misconception or offend the participants. This helped determine the effectiveness and reliability of the selected data collection tools and also ascertain the time needed to collect data in the actual study.

### **3.6 Data Collection Procedure**

The participants were informed of the research and they were provided with consent forms. Only those participants who had voluntarily agreed to partake in the research were interviewed. The researcher first obtained approval to conduct the research from Africa University Research Ethics Committee. The participants were informed that the interviews would be confidential so that they would be comfortable to share their true opinions without the fear of being exposed. The interviews were held at a time that was suitable for the participants.

The researcher recorded all interviews using a digital voice recorder to ensure that she captured all information disclosed and to later listen to it in case some information may have not been heard during the interview. The researcher also kept notes of the interviews and focus group discussions.

### **3.7 Analysis and Organization of Data**

The data analysis and organization process entailed the gathering of the data, cleaning data, categorizing it according to the research instruments used and its preparation for analysis. Qualitative methods of analysis were used and the findings were presented using thematic charts, tables, photographs, etc. in support. The researcher engaged in a thematic analysis of the data as this method is well suited for analyzing qualitative data as it helps simplify data that has been collected and establish a common thread from the information obtained (Sekaran & Bougie, 2013). The researcher closely evaluated and examined the data obtained from the interviews and focus group meetings through first transcribing the audios recorded, making notes and familiarizing with all data obtained. The researcher then engaged in coding

the data, generating themes through identifying the common patterns deduced from the data. The researcher then reviewed the data, created themes and did a write-up of the data analysis. This method was advantageous to the researcher as it assisted in properly addressing the research questions posed by this study. This method was able to show transparency and help produce satisfactory results.

### **3.8 Ethical Consideration**

The researcher made use of the Africa University Ethics Committee Guidelines and ensured that these guidelines were followed when conducting the study. The researcher first obtained voluntary consent from the participants and furnished them with consent forms. The researcher disclosed the purpose of the study being undertaken to the participants. The researcher also conducted the research observing respect to the cultural, economic, political and other characteristics which shape the participants' thoughts. The researcher kept the names of the participants confidential and did not disclose their personal information.

### **3.9. Summary**

This chapter looked at the research methods and instruments which were used to gather and analyze data when conducting the study. Ethical considerations were also highlighted in this chapter.

## **CHAPTER 4 DATA PRESENTATION, ANALYSIS AND INTERPRETATION**

### **4.1 Introduction**

The following chapter presents findings relating to a critical analysis of the legal frameworks of copyright enforcement in the Zimbabwean visual arts industry. Primary data was collected using focus group discussions and interviews with key informants. The research participants were visual artists, law enforcement agents as well as representatives from African Regional Intellectual Property Organization (ARIPO), ZIMCOPY and World Intellectual Property Organization (WIPO). The data was analyzed thematically.

### **4.2. Data Presentation and Analysis**

#### **4.2.1. Existing legal frameworks for copyright enforcement in Zimbabwe.**

The study participants were asked about the existing legal frameworks for the protection of copyright of stone sculpture in Zimbabwe. Findings from the study revealed that visual artists in Zimbabwe were protected by local and international legal instruments. As revealed during the interviews with key informants from Zimbabwe Republic Police, ARIPO, ZIMCOPY and World Intellectual Property Organization, sculpture works are protected by the Berne Convention and TRIPS Agreement. In addition, the qualitative study revealed that the TRIPS Agreement had been important for the Zimbabwean visual artists, such as sculptures, as it sought to comprehensively integrate intellectual property as part of trade issues. This was emphasized by participant 1 during the face-to-face interviews, as follows:

“I can say that, at the regional level, Zimbabwe has been an active member of the African Regional Intellectual Property Organisation (ARIPO) and its headquarters are also located in Harare. Important is the fact that the country has ratified various treaties within ARIPO which include Harare Protocol on Patents and Industrial Designs, Banjul Protocol on Trademarks, Swakopmund Protocol on the Protection of Traditional Knowledge as well as Arusha Protocol.....”

(Interview with participant 1, from ARIPO, 04 February 2021).

Furthermore, the interviews revealed that visual artists in Zimbabwe are also protected by the Zimbabwe Copyright and Neighbouring Rights Act (2004) that focuses on copyright of all artistic work with regard to importing or exporting from Zimbabwe. The study noted that section 15 (f) of the Act provides legal rights to visual artists and “their heirs in title to benefit financially for a long but fixed period of time”. Participant 5 stated the following about the Zimbabwe Copyright and Neighbouring Rights Act:

“The Zimbabwe Copyright and Neighbouring Rights Act has been important in protecting cultural products and sculpture with value as intellectual property. I can say that the Zimbabwe Copyright and Neighbouring Rights Act protects artistic works such as paintings, sculptures, engravings; works of craftsmanship among other things. However, most sculptures are not aware that their artworks are protected by law.”

(Interview with participant 5, 6 February 2021).

This interview that was held with participant 5, who is employed as a police officer exposed that most police officers are aware of the existence of the copyright laws of Zimbabwe and the protection that is awarded to visual artists such as sculptors. However, despite this apparent knowledge of copyright law, it can still be noted how police officers often lack sufficient skills to enable them to apply their copyright knowledge when faced with a copyright infringement matter. This is evidenced by the previously discussed case of *S v Moyo & Another HC 221/08*, in which the investigating officers failed to properly canvas the essential elements of copyright infringement in the charge sheet. It is not sufficient to be aware of the existence of copyright law but there is a need to have specialized skills on how to properly deal with issues concerning copyright infringement.

The study also noted that the authorities responsible for enforcing the copyright law in Zimbabwe included copyright inspectors, director of customs and excise, Registrar of Copyright, Zimbabwe Republic Police and the judiciary. It was also revealed that the various courts which deal with copyright cases include civil court, criminal court, high court, Supreme Court, Magistrates Court and IP tribunal court.

In addition, it was noted that the paramount importance of intellectual property(IP) to the visual arts have also been underscored through the launch of the Zimbabwe National Intellectual Property Policy Strategy (2018-2022) which has acknowledged the significant role that IP rights play in the economic development of the country. The main objective of the Zimbabwe National Intellectual Property Policy Strategy has been to ensure that the entire IP

governance framework for visual artists, such as robust laws and regulations, treaties and protocols has been used for the benefit of sustainable economic growth and development. Participant 6 made the following observations about the Zimbabwe National Intellectual Property Policy Strategy (2018-2022):

“This policy came at the right time as the country sought to raise and consolidate IP awareness amongst the general public; enhancing IP knowledge; protect IP and also inspire the commercialization of IP. It is important that the country’s cultural heritage and artistic works are protected and become an integral part of Zimbabwe’s IP assets portfolio”.

(Interview with participant 8, an official from WIPO, 06 February 2021).

There was also unanimity among the participants that the Zimbabwe National Intellectual Property Policy Strategy had been crucial for visual artists because of its focus on “the need to protect trade secrets and traditional knowledge” as well as propelling both creativity and innovation for the country’s economic development. Other important considerations under the implementation of the Policy include putting in place reliable IP laws and regulations as well as enforcement mechanisms. In this regard, the policy framework sought to put in place an effective system for the protection of IP assets.

#### **4.2.2. Challenges and opportunities in the protection of copyright accruing to sculpture works.**

The study participants were also asked about the challenges and opportunities in the protection of copyright accruing to sculpture works. From both the focus group discussions and interviews with key informants, there was general agreement that protection of copyright

and IP can greatly enhance the visual artists' chances of growing their business. It was revealed that protection of copyright could help visual artists in establishing the types of IP issues relevant to them; understanding the economic significance of protecting their creative artefacts as well as various types of IPRs and protective measures that best suit their particular sculptures. Additionally, the key informant interviewed showed that protection of copyright can help visual artists to determine the costs and practical business benefits of such protection. The protection of copyright has helped the visual artists to protect their copyright, and also respect the designs of others to avoid possibilities of theft and litigations.

However, it was noted that, despite the provisions of the Act, there had been continuous complaints from many visual artists that sculptures they made were used and copied by others without their authority. In addition, the study noted that third parties were exploiting the designs of sculptures without their authority or mutual consent or even benefit-sharing. The study also noted that there were also some challenges in protecting sculptures under the Industrial Design Act. In particular, study participants pointed out that Part III 6 (2) and (3) of the Industrial Design Act makes it difficult for visual arts and sculptures to qualify as new or cultural. These sections only provided for the registration of visual arts and sculptures unless they are new or original and they should be known or used in Zimbabwe by anyone other than the applicant, or any person from whom the applicant has derived his right.

The study also found that the creators of visual arts were not cognisant of legal possibilities. As such, there has been a high prevalence of ignorance among the visual artists. As a result of this ignorance, the majority of visual artists have been unfairly taken advantage of by art dealers' collectors and copycats concerning using their artworks without consent.

Consequently, various infringement cases had never been resolved due to ignorance of the legal laws that protect them.

The participants also demonstrated the difficulties in proving copyright violations as well as lenient penalties. The study revealed that in the few cases of infringement resolved in the Zimbabwean courts there had been ignorance of the judiciary concerning visual arts and crafts. In particular, the penalties inflicted on the perpetrators had not been quite deterring enough thereby exacerbating the situation. Participant 8 pointed out the following:

“In 2013, we experienced copyright infringement and sought recourse through the law. After spending a lot of money on hiring a good lawyer and other expenses, the perpetrator was only charged a \$50 fine. Imagine, I was the one responsible for picking the police, collecting the exhibits and lost a lot of time and money”.

(Interview with participant 8, an official from WIPO, 06 February 2021).

It was also found from the interviews with members from WIPO and ARIPO that the country’s failure to protect sculptures has been due to a lack of “interdisciplinary team on IPR in the country, politicization in negotiations, poor negotiating skills and lack of technical expertise”. The face-to-face interviews with key informants also revealed that the current registration process for visual artists has been quite frustrating. In particular, there was unanimity among participants that the online registration form was “obsolete, did not work quite well with the software used by photographers, sculptures and graphic artists and also limited the number of art works that could be registered at a point in time”. Another big problem for registering visual artists was to determine whether a work has been “published” or not.

The study also found that there were political and economic factors that have greatly affected copyright enforcement in the country. For instance, it was noted that the sculpture industry had been encountering operational challenges due to low business. Participants pointed out that they can go for 6 months with no single sculpture bought. As a result, small-scale sculptors find it quite difficult to institute court proceedings due to lack of legal fees.

#### **4.2.3. Relationship between copyright enforcement and the visual arts industry of Zimbabwe**

The participants were asked about their opinions on the relationship between copyright enforcement and the visual arts industry of Zimbabwe. There was common agreement among the participants that copyright enforcement can help the visual arts industry of Zimbabwe to grow. As such, most participants expounded that copyright enforcement issues were relevant to them and they should consider protecting their creative sculptures. It was noted that IPRs measures should be best suited to their needs and business. As such, it was pointed out that necessary basic measures and procedures should be put in place to have IP policy and strategy that is an integral part of the visual arts business schemes. Moreover, respecting the copyright of visual artists would ensure that they get proper income concerning their work.

In addition, the study revealed that strong regulation of copyright would be beneficial to visual artists and the overall well-being of Zimbabwean people. This is because copyright laws serve the necessary function of protecting creators of art and their ideas. Thus, the strict legal enforcement of copyright would seek to make sure that there is a good competition of “ideas” and the market would not be saturated with “similar art or counterfeit sculptures”.

With the new digital and social media platforms, it has become more important for the visual art industry to regulate copyright closely. It was noted from the discussion that some people had been greatly benefiting from illegally trading other “people’s work” and these people were the ones who are realizing financial gain from copyrighted works. Another argument that was put in favour of copyright enforcement in the visual art industry was that stricter laws should help in the discovery of alleged infringements. As such, improvement in copyright enforcement would make it easier for lesser-recognized and small-scale visual artists.

### **4.3 Discussion and Interpretation**

The study participants were asked about the existing legal frameworks for the protection of copyright of stone sculpture in Zimbabwe. Findings from the study revealed that visual artists in Zimbabwe were protected by a plethora of both local and international legal instruments. As revealed during the interviews with key informants from Zimbabwe Republic Police, ARIPO, ZIMCOPY and WIPO, sculpture works are protected by The Berne Convention for the Protection of Literary and Artistic Works, Paris Convention and TRIPS Agreement. This was in line with literature which confirmed that Zimbabwe had been a signatory of international and regional conventions or treaties on copyright and related rights protection that include The Berne Convention for the protection of Literary and Artistic works, The World Trade Organisation (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement) and, The Lusaka Agreement (Musiza, 2019). It was noted that these international agreements and protocols serve to provide minimum standards and guidelines for copyright protection in signatory states.

Moreover, it was noted in the study that the Copyright and Neighbouring Rights Act goes into a detailed account of the forums in which a copyright owner can approach for recourse and the penalties and orders which a forum can grant in the case of infringement. The provisions

of the Copyright and Neighbouring Rights Act stipulate the works that are protected by copyright, the bundle of rights accruing to the copyright owner, infringing actions, the enforcement agencies, the forums for copyright enforcement and the remedies available to a copyright owner (Musiza, 2019).

Despite the presence of the Copyright and Neighbouring Rights Act, it was interesting to note that very few cases have been brought before the court for copyright infringement although evidence that copyright infringement has been noted to occur in this sculpture circle. The lack of specific knowledge relating to copyright violations has led to very low conviction rates as illustrated by the case of *S v Dube & Anor* 1988(2) ZLR 385(S) where the state seized a computer and the charge was “possession of equipment designed or adapted for making infringing copies” in contravention of section 59(1)(b)(iii). The lack of comprehensive knowledge on copyright by visual artists can be one of the reasons why very few copyright matters have been brought to the courts. Although the Copyright and Neighbouring Rights Act has been in operation since 2004, most visual artists that are engaged in sculpture works lack awareness of its existence (Kanengoni, 2017).

The study also found that visual artists face the difficult task of having to prove that infringement indeed occurred when a matter is brought before the court. The judge, in the matter of *S v Svondo* (1) ZLR 140(Hon), decided that with the evidence adduced, the complainant could not prove beyond reasonable doubt that the alleged infringing works were a reproduction of his work. This case shows that the copyright holder has an onerous task of proving infringement which may be difficult and lead to the acquittal of the infringer. A copyright holder must always take active steps to ensure that his/her work is protected.

#### **4.4. Summary**

The chapter presented findings relating to a critical analysis of the legal frameworks of copyright enforcement in the Zimbabwean visual arts industry. Primary data was collected using focus group discussions and interviews with key informants. The research participants were visual artists, law enforcement agents as well as representatives from ARIPO, ZIMCOPY and WIPO. The data was analyzed thematically. The following chapter presents conclusions and recommendations.

## **CHAPTER 5 SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 Introduction**

This chapter outlines the summary of findings relating to a critical analysis of the legal frameworks of copyright enforcement in Zimbabwe. The chapter also gives a brief discussion of the study, it provides conclusions, practical and theoretical implications and possible recommendations. Recommendations for further study are also outlined.

### **5.2 Discussion**

The study was premised upon the need to assess copyright enforcement measures in the visual arts industry of Zimbabwe. In an effort to give a clearer picture, the study made specific reference to stone sculpture which is a form of visual art works that is prevalent in Zimbabwe. The study was able to highlight issues affecting copyright enforcement in Zimbabwe.

The study explored possible reasons why copyright infringement cases in the visual arts industry were very few and often led to acquittals. The literature review and findings from the study revealed factors that enhance and hinder copyright enforcement in the visual arts industry of Zimbabwe.

An assessment of the existing copyright laws and enforcement measures in the visual arts industry of Zimbabwe was undertaken. Literature review brought to the fore the pertinent issues affecting copyright enforcement in Zimbabwe. The literature review explored the

visual arts industry and highlighted some cases whereby copyright infringement matters were heard by the court and the issues that affected court verdicts.

The literature review and the findings of the study revealed areas that need to be addressed in order to enhance the current copyright enforcement frameworks in the visual arts industry of Zimbabwe. Through the findings made in the study, the Researcher provides recommendations that can assist in the creation of strong copyright enforcement measures in the visual arts industry of Zimbabwe. The recommendations are highlighted below.

### **5.3 Summary**

The study found that visual artists in Zimbabwe were protected by a plethora of both local and international legal instruments. As revealed during the interviews with key informants from Zimbabwe Republic Police, ARIPO, ZIMCOPY and WIPO, sculpture works are protected by The Berne Convention for the Protection of Literary and Artistic Works, Paris Convention, TRIPS Agreement, Banjul Protocol and Swakopmund Protocol. In addition, the study found that The TRIPS Agreement had been important for the Zimbabwean visual artists such as sculptures as it sought to comprehensively integrate intellectual property as part of trade issues. This was emphasized by participant 1 during the face-to-face interviews.

Furthermore, the qualitative study revealed that visual artists in Zimbabwe were protected by the Zimbabwe Copyright and Neighbouring Rights Act (2004) that focuses on the copyright of all artistic work with regard to importing or exporting from Zimbabwe. It was noted that the paramount importance of intellectual property to the visual artist has been underscored through the launch of the Zimbabwe National Intellectual Property Policy Strategy (2018-

2022), which has acknowledged the significant role Intellectual Property Rights play in the economic development of the country. The main objective of the Zimbabwe National Intellectual Property Policy Strategy has been to ensure that the entire Intellectual Property governance framework for visual artists, such as robust laws and regulations, treaties and protocols has been used for the benefit of sustainable economic growth and development.

More so, the study established that the Zimbabwe National Intellectual Property Policy Strategy had been crucial for visual artists because of its focus on the need to protect trade secrets and traditional knowledge as well as propelling both creativeness and innovativeness for the country's economic development. Other important considerations under the implementation of the Policy included putting in place reliable IP laws and regulations as well as enforcement mechanisms. From the findings, there was general agreement that the protection of copyright and intellectual property can greatly enhance the visual artists' chances of growing their business. It was revealed that the protection of copyright could help visual artists in establishing the types of intellectual property issues relevant to them; understanding the economic significance of protecting their creative artefacts as well as various types of IPRs and protective measures that best suited to their particular sculptures.

Additionally, the key informant interviewed showed that the protection of copyright can help visual artists to determine the costs and practical business benefits of such protection. The protection of copyright has helped the visual artists to protect their copyright, and also respect the designs of others to avoid possibilities of theft and litigations. The study revealed that creators of visual arts were not cognisant of legal possibilities. As such, there had been a high prevalence of ignorance among the visual artists. Consequently, the majority of visual artists had been unfairly taken advantage of by art dealers' collectors and copycats with regard to

using their artworks without consent. Consequently, various infringement cases had never been resolved due to ignorance of the legal laws that protect them.

The study also noted that IPRs measures should be best suited to the needs and business. As such, it was pointed out that necessary basic measures and procedures should be put in place in order to have IP policy and strategy that is integral part of visual arts business strategy. Moreover, respecting the copyright of visual artists would ensure that they get proper income with regard to their work.

#### **5.4 Conclusions**

From the study, it can be concluded that strong regulation of copyright would be of profound importance to visual artists and the overall well-being of Zimbabwean people. This is because copyright laws can help in protecting creators of art and their ideas. The lack of strict legal enforcement of copyright laws in Zimbabwe had meant that there is no competition of ideas and the market would not be saturated with similar art or counterfeit sculptures. Furthermore, it can be concluded from the study that there is a lack of awareness among both the visual artists and legal practitioners on intellectual property as they relate to visual artists and traditional knowledge.

Moreover, the study concluded that there were political and economic factors that affected copyright enforcement in the country. As a result, small-scale sculptors could find it quite difficult to institute court proceedings due to lack of legal fees. The study concluded that as digital platforms for the exploitation of visual art are emerging, it has become more important for the visual art industry to regulate copyright closely. In this regard, improvement in

copyright enforcement would be to make it easier for smaller visual artists to effectively protect and benefit from their creativity.

## **5.5 Implications**

Findings from the study offered suggestions for the promotion of the visual art industry in Zimbabwe. In particular, the participation of the government and civil society organizations would be vital in preventing copyright infringements. The study findings suggested that IPRs measures should be best suited to the needs and business. As such, basic measures and procedures should be put in place in order to have an IP policy and strategy that is an integral part of the visual arts business scheme. Moreover, respecting the copyright of visual artists would ensure that the visual artists get proper income with regard to their work.

A major contribution of this study is that it highlighted the potential factors and challenges faced by visual artists in Zimbabwe especially those involved in making sculptures. This information can be used to come up with a national strategy to curb copyright infringements in the visual arts industry. This study sought to add practical value to every player involved in the enforcement of copyright laws. This is because copyright laws serve the necessary function of protecting creators of art and their ideas. Thus, the strict legal enforcement of copyright would seek to make sure that there is a good competition of ideas and the market would not be saturated with similar art or counterfeit sculptures.

## **5.6 Recommendations**

The study made the following recommendations:

- There is a need for the Zimbabwean government to have a specialized body of intellectual property practitioners that exclusively deal with copyright infringement issues.
- There is also the need for nationwide training and awareness campaigns concerning copyright laws on sculpture. This can help both lawyers and visual artists to understand complex issues related to IP law. More so, all law schools in the country should provide compulsory IP courses. In many cases, the IP courses had been provided as optional courses with poor or inadequate infrastructure.
- There is also the great need to create extensive awareness in the judiciary and also provide training and capacity building of the judiciary to fully comprehend and understand all relevant laws relating to the intellectual property of visual arts.
- The Zimbabwean government needs to streamline the coordination of IPRs at a national level through all various arms of government. More importantly, the government should also take on board all civil society actors in IPR issues at both national and regional levels.
- The Law Society of Zimbabwe should also play an active role in providing legal education on issues relating to IPR and copyright infringements.

### **5.7 Suggestions for Further Research**

The study largely focused only on the visual arts industry. This focus on a single sector means the finding of the study cannot be generalized, even though its recommendations can form a model for the promotion and protection of other forms of copyright. Nonetheless, future studies can go deeper in assessing the legal frameworks of copyright enforcement in Zimbabwe in other sectors such as the cottage industry and could also expand future similar studies using cross-industry levels. More so, the study used a combined analytical and

qualitative research methodology of study to collect primary data. Future studies may consider using other research designs such as quantitative methods to collect primary data and have a better understanding of the research phenomena.

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## **Appendix 1: Focus Group Discussion Guide**

### **COPYRIGHT LAWS AND THE VISUAL ARTS INDUSTRY: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORKS OF COPYRIGHT ENFORCEMENT IN ZIMBABWE**

#### **Facilitator's welcome, introduction and instructions to participants**

**Welcome** and thank you for volunteering to take part in this focus group discussion. You have been asked to participate as your point of view is important. Thank you for taking the time to contribute to this study

**Introduction:** This focus group discussion is designed to assess your current thoughts and feelings about the existing legal copyright enforcement frameworks in Zimbabwe and whether they adequately address issues of copyright infringement in the visual arts industry of Zimbabwe paying particular reference to the stone sculpture works. The focus group discussion will take no more than two hours. May I tape the discussion to facilitate its recollection?

**Anonymity:** Despite being taped, I would like to assure you that the discussion will be anonymous. The tapes will be kept safely in a locked facility until they are transcribed word for word, then they will be destroyed. The transcribed notes of the focus group will contain no information that would allow individual subjects to be linked to specific statements. You should try to answer and comment as accurately and truthfully as possible. Please refrain from discussing the comments of other group members outside the focus group. If there are any questions or discussions that you do not wish to answer or participate in, you do not have to do so; however please try to answer and be as involved as possible.

#### **Ground rules**

- The most important rule is that only one person speaks at a time. There may be a temptation to jump in when someone is talking but please wait until they have finished.
- There are no right or wrong answers
- You do not have to speak in any particular order
- When you do have something to say, please do so. There are many of you in the group and it is important that I obtain the views of each of you

- You do not have to agree with the views of other people in the group
- Does anyone have any questions?
- OK, let's begin

### **Introductory question**

I am just going to give you a couple of minutes to think about your knowledge on the existing legal copyright enforcement frameworks in Zimbabwe and whether they adequately address issues of copyright infringement in the visual arts industry of Zimbabwe paying particular reference to the stone sculpture works.

### **Guiding questions**

- What are the existing challenges and opportunities in the protection of copyright accruing to stone sculpture works?
- What are the existing legal frameworks for the protection of copyright of stone sculpture in Zimbabwe?
- What is the relationship between copyright enforcement and the visual arts industry of Zimbabwe?
- What are the measures that can be implemented to alleviate copyright infringement of stone sculpture works in Zimbabwe?

### **Concluding question**

- Of all the things we've discussed today, what would you say are the most important issues you would like to express about this issue of legal copyright enforcement frameworks in Zimbabwe?

### **Conclusion**

- Thank you for participating. This has been a very successful discussion
- Your opinions will be a valuable asset to the study
- We hope you have found the discussion interesting
- I would like to remind you that any comments featuring in this report will be anonymous

## Appendix 2: Interview Guide – Sculpture Artist

### COPYRIGHT LAWS AND THE VISUAL ARTS INDUSTRY: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORKS OF COPYRIGHT ENFORCEMENT IN ZIMBABWE

#### DEMOGRAPHIC DATA

1. Are you a sculpture artist?
2. How long have you worked in the trade?
3. Where are you based?
4. How old are you?
5. Researcher indicate whether male or female

#### RESEARCH OBJECTIVE 1

*To explore the challenges and opportunities in the protection of copyright accruing to sculpture works*

6. In your understanding, what is the meaning of copyright?

*Mukuziva kwenyu, chii chinonzi copyright?*

7. How far is the infringement of copyright for your sculpture work a problem for you specifically?

*Dambudziko rekubirwa zvivezwa zvenyu rino kubatai zvakadii?*

8. How far is the infringement of copyright a problem in the industry as a whole?

*Dambudziko iri rekubirwa zvivezwa riri kubatawo vese vamuno shanda navo zvakadii?*

9. Are you aware of any measures to protect your copyright by i. Law enforcement? ii. Your industry Association? iii. Any other related organizations?

*Pakuziva kwenyu, pane zvirikuitwa nemapato anotevera pakudzivirira kubirwa zvivezwa zvenyu ne avo vanozviita zvavo? i. Mapurisa? ii. Bato renyu revavezi? iii. Rimwewo kana mamwewo mapato anoona ne zvinoenderana nebasa rekuveza/kuumba?*

### **RESEARCH OBJECTIVE 3**

To establish a relationship between copyright enforcement and the visual arts industry of Zimbabwe

5. How does the enforcement of copyright or lack thereof affect your performance in the industry?

*Kuvako kwekudzivirira kubirwa zvivezwa kana kusavako kwekudzivirira kubirwa zvivezwa kunobata mashandiro enyu zvakadii?*

6. How does the enforcement of copyright protection or lack thereof affect your income generation efforts?

*Kuvako kwekudzivirira kubirwa zvivezwa kana kusavako kwekudzivirira kubirwa zvivezwa kunobata sei mawaniro amunoita muhoro kubva pabasa renyu?*

### **RESEARCH OBJECTIVE 4**

7. What measures do you recommend to be implemented to alleviate copyright infringement in the visual arts industry of Zimbabwe?

*Chii chamunga yambira kuti chiitwe kuti nyaya dzekubirwa kwe basa renyu kudzikire kana kupera?*

## **Appendix 3- Interview Guide – Key Informants**

### **COPYRIGHT LAWS AND THE VISUAL ARTS INDUSTRY: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORKS OF COPYRIGHT ENFORCEMENT IN ZIMBABWE**

#### **DEMOGRAPHIC DATA**

6. What organization do you work for?
7. How long have you worked for the organization?
8. Do you deal with sculpture artists and in what capacity?
9. How old are you?
10. Researcher indicate whether male or female

#### **RESEARCH OBJECTIVE 1**

*To explore the challenges and opportunities in the protection of copyright accruing to sculpture works*

1. How does protection of copyright work in Zimbabwe?
2. To your knowledge, does it apply to all sectors of the creative industry?
3. How is copyright protected in the sculpture art industry?
4. Are there any challenges in the protection of copyright in Zimbabwe?
5. Do any of these challenges extend specifically to the stone sculpture art industry?
6. Do you see any opportunities that can be utilized in the protection of copyright in the sculpture art industry?

#### **RESEARCH OBJECTIVE 2**

*To assess the existing frameworks for copyright enforcement in Zimbabwe*

1. Are you aware of any laws that protect copyright in Zimbabwe?
2. In your assessment are these laws effective in the protection of copyright?

#### **RESEARCH OBJECTIVE 3**

*To establish a relationship between copyright enforcement and the visual arts industry of Zimbabwe*

1. How does the enforcement or non-enforcement of copyright protection affect the performance of individual sculpture artists?
2. How does the enforcement or non-enforcement of copyright protection affect the income generation of individual sculpture artists?

### **3. RESEARCH OBJECTIVE 4**

*To recommend measures that can be implemented to alleviate copyright infringement in the visual arts industry of Zimbabwe*

1. What measures do you recommend to assist in the alleviation of copyright infringement in the visual arts industry in Zimbabwe?

Appendix 4: AUREC Approval Letter



**AFRICA UNIVERSITY  
RESEARCH ETHICS  
COMMITTEE (AUREC)**

P.O. Box 1320 Mutare, Zimbabwe, Off Hwange Road, Off Mutare-Tlo [+263-30] 64079/60020/61611 Fax: (+263 30) 61783 website: www.africauniversity.edu

Ref: AU1867/21

22 January, 2021

**Ngaatendwe D. Ndudzo**  
C/O CBPLG  
Africa University  
Box 1320  
Mutare

RE: **COPYRIGHT LAWS AND THE VISUAL ARTS INDUSTRY: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORKS OF COPYRIGHT ENFORCEMENT IN ZIMBABWE**

Thank you for the above titled proposal that you submitted to the Africa University Research Ethics Committee for review. Please be advised that AUREC has reviewed and approved your application to conduct the above research.

The approval is based on the following.

- a) Research proposal
- b) Data collection instruments
- c) Informed consent guide

- **APPROVAL NUMBER** AUREC1867/21  
This number should be used on all correspondences, consent forms, and appropriate documents.
- **AUREC MEETING DATE** NA
- **APPROVAL DATE** January 22, 2021
- **EXPIRATION DATE** January 22, 2022
- **TYPE OF MEETING** Expedited

After the expiration date this research may only continue upon renewal. For purposes of renewal, a progress report on a standard AUREC form should be submitted a month before expiration date.

- **SERIOUS ADVERSE EVENTS** All serious problems having to do with subject safety must be reported to AUREC within 3 working days on standard AUREC form.
- **MODIFICATIONS** Prior AUREC approval is required before implementing any changes in the proposal (including changes in the consent documents)
- **TERMINATION OF STUDY** Upon termination of the study a report has to be submitted to AUREC.



Yours Faithfully

MARY CHINZOU - A/AUREC ADMINISTRATOR FOR CHAIRPERSON, AFRICA UNIVERSITY RESEARCH ETHICS COMMITTEE

## **Appendix 5: Informed Consent Form**

### **RESEARCH TOPIC: COPYRIGHT LAWS AND THE VISUAL ARTS INDUSTRY: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORKS OF COPYRIGHT ENFORCEMENT IN ZIMBABWE.**

My name is **Deidre Ngaatendwe Ndudzo (student number: 200064)**. I am a Masters in Intellectual Property student at the Africa University and I am currently working on my research dissertation titled, “Copyright Laws and the Visual Arts Industry: A Critical Analysis of the Legal Frameworks of Copyright Enforcement in Zimbabwe”. I am kindly asking for your voluntary participation through the answering of the interview questions and/or participating in the focus group discussion.

The purpose of this study is to assess the existing legal copyright enforcement frameworks in Zimbabwe and whether they adequately address issues of copyright infringement in the visual arts industry of Zimbabwe paying particular reference to the stone sculpture works. Therefore, this study explores the relationship between the legal frameworks of copyright enforcement and the visual arts industry of Zimbabwe. The researcher has selected you to participate in the research due to your perceived knowledge that is relevant to the study.

Please note that your participation in the study is voluntary and can be withdrawn at any time without any repercussions or penalties. Therefore, if you decide to participate you will have the right to withdraw from the research at any time. The information gathered is for educational purposes and your identity will be kept confidential, unless you indicate otherwise. It is estimated that the interview or focus group discussion will take between 40 minutes to an hour of your time.

Please note that the study does not have any foreseeable risks, discomforts or inconveniences to the participant. Unless they indicate otherwise, the identities of the participants will be kept confidential and any information that may pose the risk of revealing the identification of a participant will be avoided and removed from the research.

