

AN ANALYSIS OF NAMIBIA'S INTELLECTUAL PROPERTY SYSTEM FOR
POLICY DEVELOPMENT

BY

SELMA NINGENI ALFEUS

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ABSTRACT

The main objective of this research study was to do a situation analysis of the IP system in Namibia, identifying its strengths and weaknesses. It also sought to review progress in IP system of selected African countries namely Ghana and Kenya in comparison to Namibia so as use them as future benchmark in the development of the Namibian IP system. The study also sought to make possible recommendations to the Namibian policy makers for future IP policy development. The study was conducted in Windhoek, the Republic of Namibia. The participants in the study were respondents from universities, research institutions, public institutions and the general public. The data collection method that was applied included interviews, questionnaires and reviewing of relevant literature on the subject matter under review. Purposive sampling techniques were used to analyse and interpret the data collected for the respondents to achieve the objectives of the study. Both the qualitative and quantitative research methods were used to collect data which enabled the researcher to answer the research questions on the analysis of the Namibian IP system for policy development. Notable limitations to a successful completion of the study included but not limited to time, lack of ICT infrastructure, financial resources and work commitment. The research found that the Namibian IP system lags behind in terms of the availability of relevant ICT infrastructures that are needed to manage IP assets. It was also found that there is no national IP policy in place to guide and direct IP-related national development objectives. On a positive side, the target population showed a satisfactory level of knowledge and understanding of IP, in particular and policy formulation in general. Lastly, the research found that IP is more advanced in Kenya and Ghana compared to Namibia. The study was concluded by making several recommendations including the government's commitment to formulate a national IP policy, use Ghana and Kenya as benchmarks for the development of the Namibian IP system and effective protection, enforcement of IPRs. The study also recommended that statutory IP institutions should be more pro-active in advocating IP-related matters to all corners of the country. Finally, the researcher recommended that further researches on the subject matter be encouraged so as to continue where this specific study has ended.

Key words: Intellectual Property System, Policy, Policy Development

DECLARATION

This research project is my original work except where sources have been acknowledged. The work has never been submitted, nor will it ever be, to another University in the awarding of a degree.

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STUDENT

DATE

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SUPERVISOR

DATE

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“The lord is my shepherd....” Psalm 23

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DEDICATION

This work is dedicated first and foremost to Almighty God, secondly to my parents Ms Sara Amutse and Mr Lazarus Amutse. Your courageous inspiration has always been instrumental to my success. To the Kwenani family, my niece Nelao and aunties, white boy and my handsome brothers Alf, Koffi and Asante.

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LIST OF ABBREVIATIONS

AGOA	African Growth and Opportunity Act
ARIPO	African Regional Intellectual Property Organization
BIPA	Business and Intellectual Property Authority
CBD	Convention on Biological Diversity
CISAC	International Confederation of Societies of Authors and Composers
CMO	Collective Management Organisations
COMESA	Common Market for Eastern and Southern Africa
DALRO	Dramatic, Artistic and Literary Rights Organisation
ERS	Economic Recovery Strategy
FDI	Foreign Direct Investment
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
ICTSD	International Centre for Trade and Sustainable Development
IFRRO	International Federation of Reproduction Rights Organisations
IP	Intellectual Property
IPA	Intellectual Property Assets

IPAS	Industrial Property Automated System
IPRs	Intellectual Property Rights
KAMP	Kenya Association of Music producers
KIPI	Kenya Industrial Property Institute
KECOBO	Kenya Copyright Board
KOPIKEN	Kenya Reproduction Rights Organisation
KEPHIS	Kenya Plant Health Inspectorate Service
MCSK	Music Copyright Society of Kenya
MFN	Most Favoured Nations
MICT	Ministry of Information and Communication Technology
MTI	Ministry of Trade and Industry
NASCAM	Namibian Society of Composers and Authors of Music
NAMRRO	Namibia Reproduction Rights Organisation
NCI	National Cancer Institute
NCCI	Namibia Chamber of Commerce
NDPs	National Development Plans
NDP4	Fourth National Development Plan
NEPRU	Namibia Economic Policy Research Unit
NGOs	Non-Governmental Organisations
NIPPS	National Intellectual Property Policy and Strategy

NP	National Policy
OECD	Organisation for Economic Co-operation and Development
OPM	Office of the Prime Minister
PCT	Patent Cooperation Treaty
PoN	Polytechnic of Namibia
PRSK	Performers Rights Organisation of Kenya
R&D	Research and Development
RTOs	Research and Transfer Offices
SA	South Africa
SACU	Southern Africa Customs Union
SADC	Southern African Development Community
SAMRO	Southern African Music Rights Organisation
SSC	Sub Saharan Countries
SWAPO	South West Africa People's Organisation
TISC	Technology Innovation Support Centres
TK	Traditional Knowledge
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNAM	University of Namibia
UNESCO	United Nations Educational, Scientific and Cultural Organisation

UNCTAD	United Nations Conference on Trade and Development
UIPP	University Intellectual Property Policy
UK	United Kingdom
USA	United State of America
UPOV	Union for the Protection of New Varieties of Plants
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WHO	World Health Organization
WTO	World Trade Organisation
WPPT	WIPO Performances and Phonograms Treaty

CHAPTER I

Introduction

The Intellectual Property (IP) it includes the rights relating to literary, artistic and scientific works, performances and performing artists, photographs and broadcasts, inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service marks, commercial names and designations, protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. The IP is notably growing rapidly worldwide but Namibia has not developed a national IP policy yet. Furthermore, Black Law Dictionary (1999) defines IP as a category of intangible rights protecting commercially valuable products of the human intellect. The category comprises primarily trademarks, copyright, patents and trade secrets.

Shahid & Raghunath (2008) defines an Intellectual Property system as the entire gamut of IP laws, procedures, practices and institutions responsible for protecting, administering, enforcing, and using intellectual assets for social, cultural and economic progress. IP system ought to provide a balance of interests between creators of new knowledge and original creative expression and development plus uses of technology. Historically, the IP system is divided into two parts: patents, utility models (petty patents/utility innovations), trademarks, Industrial designs, geographical indications, integrated circuits and on other hand is copyright and related rights, trade secrets, International Union for the Protection of New Varieties

of Plants (UPOV), database rights. ..According to the Journal of the World Intellectual Property (2012) IP is about freedom, economic democracy and it is not surprising that IP has emerged as spontaneous tool and is the essence of a competitive economy.

Namibia has acceded to most international and regional IP conventions, treaties and protocols that are relevant to the country's economic and social development aspirations. At present, Namibia does not have a national IP policy to dictate and provide guidance on how the country should go forward with the utilisation of IP creations. However, the Namibian IP system is advanced in terms of membership, signatory status, ratification and accession to international and regional IP instruments. According to the WIPO (2004) the aims of developing countries, Namibia included, to adopt policies on science and technology, which are also a bigger component of IP that facilitate their acquisition and use of IP creations remains present and important.

Bently and Sherman (2009) and TRIPS (1994) states that although the IP instruments that have been developed at the international level have occasionally recognized the peculiar needs of the developing and least developed countries, the globalisation of IP standards has largely been a process whereby the wish-list of various developed world lobby groups are inscribed into public international law. Efforts to improve economic infrastructure whether administrative or legislative and

to develop the human resources which operate IP systems are almost in vain without the availability of an effective IP policy development on all significant creations of IP, a scenario that exists in Namibia.

1.1. Background to the study

Shahid & Raghunath (2008) point out that the first reported grant of IP rights was in Italy in 1421 and the IP system has evolved substantially in scope, content and coverage since then. IP system has made deep inroads into the total system of governance of a country be it in trade and commerce, education and research, amongst the bureaucracy and judicial etc. Promotions of inventive activity are a *sine qua non* and helping acceleration of innovation promotion, economic growth and technology development.

Being a former colony of South Africa, Namibia acquired most of her IP legislations and systems from the former colonial masters as is the case with most African countries. Most of those IP legislations have been amended to date, to fit the country's post-independence legal system: The Access to Genetic Resources Act of 2001; The Copyright and Neighbouring Rights Protection Act, No. 6 of 1994; The Competition Act of 2003; The Industrial Property Act of 2012. Namibia requires laws and a legal framework through which a stand-alone and autonomous authority is mandated to give effect to all its functions in respect of administering, promoting and registering business and IP rights.

According to WIPO Lex Database, Namibia is a member of World Health Organizations (WHO) and its main IP Laws are enacted by the Legislature: Copyright and Neighbouring Rights, Trade Marks, Patents, Industrial Designs. Pending IP Legislation of Namibia is as follows: Industrial Property Bill on Patents, Utility Models, Industrial Designs and Trademarks (introduced in the National Assembly on April 6, 2010, prepared by the Ministry of Trade and Industry). Once enacted into law, it will repeal the Patents, Industrial Designs, Trade Marks and Copyright Act.

On international level, Namibia is a contracting state or member to World Intellectual Property Organization (WIPO) and to the following treaties which are also administered by WIPO itself: The Paris Convention for the protection of Industrial Property; The Berne Convention for the protection of Literary and Artistic Works; The Patent Cooperation Treaty (PCT); The Madrid Agreement concerning the International Registration of Marks; Protocol relating to the Madrid Agreement concerning the International Registration of Marks; The Hague Agreement concerning the International Deposit of Industrial Designs; African States members of the Patent Cooperation Treaty; WIPO Copyright Treaty (WCT); WIPO Performances and Phonograms Treaty (WPPT); Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

Namibia is also part of IP-related Multilateral Treaties, entry into force of the Treaty for the contracting party. Namibia on IP Regional Treaties (Entry into force of the Treaty for the Contracting Party) are as follows: Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization (ARIPO), Harare Protocol on Patents and Industrial Designs within the framework of the African Regional Industrial Property Organization (ARIPO), Banjul Protocol on Marks Within the Framework of the African Regional Industrial Property Organization (ARIPO), Lusaka Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO).

Theoretically, the Namibian IP system is advanced in terms of membership, signatory status, ratification and accession to international and regional IP instruments. The decision of Namibia acceding to too many international treaties must be of importance and have impact on the national laws, since it's a monist country. Shahid & Raghunath (2008) states the IP system in every country should proactively encourage the development of links between research and development institutions, business enterprises and universities.

This would help in shifting the responsibility of generating new IP creations and technologies from the government to the private sectors. The ultimate purpose of IP system approach is essential as existing IP laws, IP commercialization, IP

Generation, IP Administration and IP enforcement. The IP system contributes to social, economic, and cultural/political development of the country. It encourages individuals, institutions and enterprises to invent innovate and create, by offering incentives which are commercially attractive. This should be guided by a strong and effective IP policy. Namibia's overall economic and social development is guided through the National Development Plans (NDPs) implemented over a period of five years each. At the present moment, the country is in the fourth phase called the NDP4. However, NDPs mentioned IP as one of the objective development goals hence the country aims to become an industrialised and a knowledge-based economy in the near future.

The first National Research Symposium of its nature on 15-17 September 2010 was organised by government in Namibia as an initiative from the Ministry of Education, Directorate of research, science and technology. As part of its *Vision 2030*, Namibia aspires to become a knowledge-based industrialized country by 2030. To a larger extent, a knowledge-based economy is driven by IP and the results can only be achieved when there is a proper framework in the development of a policy.

Pursuant to the aspirations enshrined in the *Vision 2030*, the Business and Intellectual Property Authority (BIPA) was established. BIPA is an autonomous body, one-stop centre for all business and IP matters. It is mandated to improve

service delivery and the effective administration of business and intellectual property rights registration.

1.2 Statement of the problem

Although numerous efforts have been made with Namibia's development partners in the area of capacity building, technical assistance and economic development, necessary public education and awareness efforts on the part of relevant public institutions which are the custodians of IP activities have often fallen short of making a notable impact on the ordinary citizen in terms of the importance and status of the country's IP system. It is believed that tremendous progress could have been made if these efforts were guided by a national IP policy. An IP policy development is therefore required to provide a framework in which all IP stakeholders can contribute towards IP development in a coordinated manner.

1.3 Purpose of the study

The purpose of the study is to assess the status of the IP system in Namibia and identify the strengths and weaknesses in the system, as a basis for IP policy development. In expressing the need for the development of IP policy in Namibia, the study would strive to emulate notable progress made by other African countries namely, Ghana and Kenya. Ghana and Kenya's respectively national IP policies will therefore be used as review progress to develop and implement Namibia's own IP policy. Finally, the study would make possible recommendations for the IP policy development.

1.4 Objectives of the study

The objectives of the study include but not limited to the following:

- i) Do a situation analysis of the IP system in Namibia, identifying its strengths and weaknesses.
- ii) Review progress in IP system of selected African countries.
- iii) Make possible recommendations to the Namibian policy makers for IP policy development.

1.5 Research questions

The research questions are as follows:

- i) What is the current situation of the IP system in Namibia?
- ii) What are the strengths and weaknesses of the Namibian IP system?
- iii) What is the current status of the IP system of selected African countries?
- iv) What are the possible recommendations to the Namibian policy makers for IP policy development?

1.6 Significance of the study

The significance of the study might contribute to develop a knowledge and information base on the current status of the Namibian IP system for the purposes of

IP policy development. The IP policy is a very important aspect of any economy as it establishes a proper framework for the creation, protection, administration, management and exploitation of IP assets.

In consideration of the scarcity of related literature focusing on Namibia, the study will also be of great significance in creating a starting point for further studies and builds an awareness of the status of the Namibian IP system and related challenges that need attention. All the information might be used as a basis for IP policy development in relation to the *Vision 2030* which has a larger inclination to industrialisation.

1.7 Scope of the study/Delimitation

The study will be conducted in the Capital City Windhoek only where relevant offices which form a significant part of the population samples are located.

The following entities will primarily form part of the population samples of the study that have a direct bearing on the status of IP system in Namibia:

- i) Universities
- ii) Research Institutions
- iii) Public Institutions
- iv) General public

1.8 Limitations of the study

- 1.8.1 Access to relevant literature, as there is no national IP policy in place yet.
- 1.8.2 Limited time, work commitment and challenges to access official documentation /information available on the subject matter of this research.
- 1.8.3 Lack of technical resources such as transport and ICT research materials to carry out the research effectively.

1.9 Outline of the study

This paper consists of 5 chapters, the first chapter deals with brief historical background, the current status and rationale for the existence of IP system as well as how it is in Namibia. Chapter II focuses on examining related literature review and writing of recognize experts, both of which have a significant bearing to the problem under study. Chapter III deals with the methodology research that was implemented to gather the required data for the subject matter under investigation. The necessary data, its presentation and analysis has been dealt with under chapter iv. In the last part of the paper that is, chapter v, contain findings, summary, conclusions and recommendations of the study. In the same chapter, recommendations as to what needs to be done in the researcher's view to develop a national IP policy are outlined.

Conclusion

This chapter looked into the background of Namibian IP system as a framework and foundation for research project. Also highlighted in this chapter is the degree of importance of the research project as a way of creating the much needed knowledge based for the purpose of national IP policy development. To achieve an industrialised economy as enshrined in the Namibian *Vision 2030* goals. The next chapter of the study will lead us to the Literature review.

CHAPTER II: REVIEW OF RELATED LITERATURE

Introduction

The section presents literature reviewed and their relevance to the research study. This includes books, journals, articles and researchers. This chapter was written against the background of the study and what is in the introduction chapter of the study. It aims to provide a critical analysis of various publications on the issue under consideration namely; status, development of IP framework (system and policy). Inadequate IP system alone would not be sufficient to drive the country's economic, social and cultural/political development efforts forward. An IP policy development which would provide guidance on how IP related issues should be dealt with at national level is of essence.

The aforesaid IP publication would be reviewed and analysed critically to determine whether respective information contained therein could be utilised in the process of formulating a Namibian's own IP policy. The knowledge and weaknesses are known and find connections, analogies and relationships between different research results by comparing different investigations. Literature for the study is to reveal the gaps that are there in terms of data for IP system and policy development. There is a limited literature between IP and National Agenda in developing countries. This chapter will incorporate views from other scholars in the area of IP system for policy development.

2.1 Policy defined

Dovers (2005) defined a policy as a guide for making decisions in the future, providing clear directions and identifying priority areas for support and implementation of strategic objectives. It includes the statement of beliefs, goals, objectives and recommendations for suitable implementation strategies. Policy can be used as a framework to guide development. Most policy documents especially in industrialised and low and middle-income countries address production, growth, employment creation, social inclusion, environment sustainability, manufacturing, agriculture. Policies need to compliment each other in terms of industrialisation efforts, education initiatives, science and technology. It has to be monitored and evaluated. For a policy to be successful there must be a consensus and coordination of activities.

An IP policy is that kind of policy that directs and guides all national activities related to IP. It should provide an approach to all matters of intellectual property, being a future guide and make recommendations on how all IP matters should be handled by all IP institutions, be it public or private institutions. The IP policy will contribute and strengthen the IP system in Namibia and bring it in line with the country's international obligations. Effective policy should have a technical assistance and financial capacity to strengthen national authorities, legislative, administrative, public awareness, capacity building and detailed assessment.

Dovers (2005) noted further that a policy is a position taken and communicated by government to the general public that recognises a problem and in general terms state what could be done about it in terms of finding a possible solution to a particular problem. In the overall process of policy formulation, a network or sub-system there are those who are often referred to as “policy makers” or decision-makers. These policy makers are responsible authority who has legal competence or responsibility within relevant jurisdiction to make formal policy decision. It can be an individual minister, senior official with delegated authority from a government organisation e.g. government ministry, department, institutions, firms or industry. Policy makers should belong to a field of practice such as policy analysis, policy science, political science, public administration, public policy with different intentions and directions evident. Over the years thinking about policy has expanded with a myriad of sub-sets and competing approaches.

Policies around the world vary significantly across jurisdiction, issues and sectors. OECD (1992) state that a policy is complex, sometimes simple and linear, chaotic mess. Whereas, UNSECO/IFLA (1994) state that a clear policy must be formulated, defining objectives, priorities and services in relation to the local community needs. The researcher feels that national policies supporting institutions need to harness potential of institutions to contribute to socio-economic development.

The integration of development policies or national agenda into IP policy will be a huge challenge due to assessment which needs to be taken into consideration. IP has several components which play different roles. One of the major hindrances to IP policy is financial constraints for effective implementation. The development of an IP policy even at international participation is often left to the custodian offices with or without participation of representatives from other key contributing factors such as public health, agriculture, fishing, mining, education.

Howlett and Ramesh (2003) state that there are stages in a policy cycle such as agenda-setting (where problems come to the attention of government); policy formulation (policy options are developed within government); decision-making (government adopts a particular course of action); policy implementation (government puts policies into effect); policy evaluation (results are monitored and problems and solutions reconsidered).

According to Bridgman and Davis (2001) there is a policy cycle which contains an identification of issues, policy analysis, policy instrument, coordination, decision, implementation and finally evaluation. A policy is composed of many parts, learning from a policy experience through monitoring and evaluation through focusing on sub-program detail, policy program and policy style.

If a policy is to be responsive to the values and understanding of issues of the nation, then policy makers need to be more creative in terms of identifying the real needs of the nation at large. It has to be reviewed after a certain period of time or years due to

change or trends in technology and laws and also when failure or obviousness is detected. A policy should be developed bearing in mind its broad impact on society or nation both looking at short and long term impacts not forgetting the international compliance, hence the accession to the World Intellectual Property Organisation which administer treaties on IP. There is no universal model of IP policy that suits all countries because every country has different priorities and needs.

Namibia as an independent country it is vital that a national IP policy should be developed to direct and guide all areas of IP throughout the country. A policy should be all inclusive of all development facilitators such as science, research and development, creative industries and innovation. Creating awareness of the existence of a national IP policy is crucial since IP needs to be integrated in the national agenda.

2.2 Policy formulation and development

According to Ncube (2003) IP is a cross-cutting subject where complementary policies on development agenda of the country are equally important. National development needs to be undertaken coherently with the country's international commitments based on conventions, treaties and protocols. Developing a domestic or national policy to align it to digital era in global economy will contribute to the country's overall economic, social and technological development. The IP policy is often referred to as a "one size fits all" in terms of the many IP components that it

normally represents. Ncube (2003) further stresses that the IP policy development should be based on the legislative framework and economic stand of the country and it should have stronger IPR protection criteria. There is a need to calibrate the national IP policy with the existing national legal framework in order to enable the country to achieve set socio-economic goals.

IP legislations of many countries need to be reviewed especially due to colonial regimes and in turn abide to international obligations for them to be in the country's best interest at heart. WIPO (2005) states that it is a mechanism among many countries for development and support or enhances legitimate economic aspiration of developing country. It should be a complimentary not detrimental to individual national efforts development. Upon request, WIPO offers technical assistance for instance even in developing countries IP policy and WIPO toolkit to be followed in order to assist member states. A policy that do not look at socio-economic stand or not depending on based evidence are likely or will fail because they not achieve their national goals.

Other scholar noted that policies are better off promoting IP systems that are flexible for innovation, competition, creativity and enforcement. Developing an IP policy, policy-makers especially the custodian government ministry or department should critically take into consideration the country's socio-economic status and based on objective evidence (clear, verifiable and peer-oriented). The IP policy needs to be developed by having a right steering committee in place, balanced and very well

coordinated. The policy should be associated with development goals and industrial policy of those respective countries. The emphasis should be on IP as core dimension. The IP policy will enhance attractiveness and accessibility of scientific and technological assets.

Southcliffe and Court (2005) states that understand dynamic policy environment, assess probable consequences of policy adjustments, reveal connection between strategic directions, intended outcomes and policy objective, establish steps achieving strategic goals or objective and finally get support for policy suggestions. Leveraging WIPO technical assistance through IP policy development and research agenda, there's capacity building tools such as Development Agenda for creations of tools to be used in policy development cycle and framework on designing IP policy through a toolkit.

Siyanbola *et al* (2012) state that the role of effective policy development cannot be undermined. Past academic works give credence to this fact and how any attempt to ignore this could spell economic doom for such a nation. There must be a steering committee which can spearhead the IP policy from different sectors and keep the policy current. Availability of appropriate IP infrastructures highly desirable such as appropriate IP patent regimes; IP policies at national level and various industrial sectors, Research and Development (R&D) institutions, pharmaceutical industries, conformity to international patent regimes and standards; appropriate enforcement laws and mechanisms; an effective IP office which is a repository of IP titles; an

institutional framework for inventors including R&D institutions and incubators, technology packs, inventor's associations, etc.; A formidable institute of patent attorneys; government support for inventively and creativity. Pursuing development of policies can create a potential for a series of tensions within policy process. The researcher agrees with Siyanbola *et al* (2012) in that those policy makers that are involved in policy formulation should make careful analysis of what is available, what is required and how it should be implemented.

Bennett (1997) state that uncoordinated policies between different governance levels sharing same economic space can lead to lack of policy coherence and multiplying conflicts within the national and regional levels of governance. Policies can be developed using also two key axes, the spatial scale of competitive advantage within industries or as a national and the spatial scale of governance within institutional level. The assertions by Bennett (1997) are particularly in line with what has been emphasised by Siyanbola *et al* (2012) on the issue of coordination. Taking into consideration the full cycle of IP which is the creation, utilization, protection and administration of IP. The IP policy development will provide priorities, form intervention. Incentive and conducive rights to be able to make decision within a structured framework. Policy should fit with practical and theories. The development of policy need to be assessed and examined because policy maker have a different overview on intention of actual implementation. The legislation need to be looked into, when developing a policy so that international and national laws are harmonised and ensure maximum and fair benefit sharing among inventors.

Therefore, policy makers need to deliberate the intent and formulation of the IP policy which will be identified for policy comparison based on the situation at the time.

However, development of IP policy is also a big challenge due to national agenda programmes, domestic laws, regulation and practices with international obligation. IP policy development can reward inventors and creators for their innovative ideas. It protects everyone and not only individuals. CIPR (2002) state that IP has changed over decades especially in area of patents, where it is mostly well-documented. Historically it changed and differs as an instrument for achieving its objectives. In the case of Namibia with her development policy directives such as *Vision 2030*, the way forward is to look at specific stipulations in the Constitution and relate them to other development agendas of the country. There is a need for consolidation and harmonization of roles to be played by the different institutions and ensure that the IP policy development is all encompassing and touches on all areas of IP and all IP related matters. Due to the inevitable demands of the digital era, a country needs to come up with a system that is respected internationally. IP evolved around the world and there's a need for finding equilibrium within a policy development.

Finally there should be financial support and technical assistance by all stakeholders to support the development of a national IP policy and covering all policy linkages between IP and the national development agenda of the country and to abide by international treaties and protocols such as the TRIPS Agreement, the Doha

Declarations, Trips flexibilities and General Agreement on Tariffs and Trade (GATT), to mention but a few.

2.3 The benefits of IP in Namibia

IP benefits could be derived from various institutions, activities, establishments and initiatives such as social, economic, political stability and cultural activities. IP is not necessarily new in Namibia with the country being among the first nations to accede to the Berne Convention for the Protection of Literary and Artistic Works in 1886, through Germany. However, it is new to the post-independence developments whereby the country's prime resources and development efforts were geared more towards other social impediments such as education, health, employment creation and fostering international relations. Like any other government policies, IP policy needs to be developed, properly monitored and evaluated. Branstetter *et al* (2006) state that policy makers may be motivated to reform policies to boost development of new domestic IP and improve access to existing IP from abroad due to TRIPs.

IP is at the heart of economic development, social and political and cultural development of the country. For Namibia to be a successful in terms of industrialization, an IP policy as a primary tool needs to be developed and should embark on transformations that update regulatory and institutional framework and remove obstacles. The IP is the output of creative ideas in literary, artistic, industrial, scientific, technological which can be protected. The IP can contribute to technical progress with disproportionate impacts in economic growth (Warsh 2006).

The IP is an area that has grown in importance over the past few decades, to such an extent that private business, institutions, parastatals; SMEs can now reflect value of their IP on the balance sheet. IPRs benefit to the creators and that IP is a strong feature of the international, regional trade arrangements and national legal instruments (Kameri-Mbote 2005). The researcher concurs with Warsh (2006) in that IP can safely be regarded one of the possible tools for economic development mostly in developing countries. However, this is only possible in countries where IP infrastructures are suitable to support the target development agenda with the assistance of IP initiatives.

Promoting of Attracting Foreign Direct Investment (FDI) export will benefit the country. For example the manufacturing of pharmaceutical, textiles and garments, cotton, leather, furniture, steel, electronic. The Intellectual Property Rights (IPRs) are not favourable in low paid income developing countries. IP has important impact in stimulating the country's economy. IP protection and enforcement need to be of high importance and harmonised throughout the world. A well-crafted and coordinated IP policy can facilitate, steer and reinforce IP by providing incentive and structure for individuals, National Governmental Organisations (NGOs), Research Transfer Offices (RTOs) and public institutions. IP can contribute to the economy through creativity and sustaining a competitive advantage.

It has been satisfactory since Independence, the growth of Gross Domestic Product (GDP), rate has been positive. The economy average annual growth rate of the

country was 4.0% and these is respectable to other developing countries especially the Sub-Saharan Countries (SSC). IP is an economic asset, the combination of IP and human capital is a potential economic force in today's knowledge based economy. Intellectual Property Assets (IPA) are collections of intellectual properties that are strategically chosen for their business value and they have economic value because of their capability to boost the value and financial return form technologies, products and services and it can be enhanced by active and strategic policies. Hence if Namibia wishes to be a knowledge based economy and an industrialised nation by the year 2030 as envisaged in *Vision 2030*, a lot needs to be done in terms of introducing guided innovation, harnessed technology and improved education especially at tertiary level. Proactive IP policy can be developed owned managed to create economic returns.

According to Idris (2001) countries use IP as a tool for economic growth as indicated earlier. WIPO was requested to conduct a study on how IP can contribute to objective of promoting economic growth and development. Namibian companies can gain royalty revenues from licensing their Intellectual Property Assets (IPA) that are strategically chosen for their business value. For instance Universities can support their budget and sustain continued use IP assets to recognise their value and in addition of human mind to maximize their benefits/profits. This would automatically increase a Gross Domestic Product of the country. Knowledge has become greater degree than before the principle source of competitive advantage. Trade in high technology goods and services which are knowledge-intensive and

where IP protection is most common tend to be fast growing in international trade. Based on literature provided, economic development through IP is that countries have advantage due to IP Assets. Consequently for IP Assets there must be development of a system e.g. *Sui generis* system due to no moulded IP. *Sui generis* basically refers to a nationally recognised system of dealing with IP assets that are not recognised under international IP regimes. Most developing countries, including Namibia have to strengthen their IP protection and comply with international obligation such as TRIPS for enhancing policy development of sustainable growth and this is vital.

The Agenda 21 profile, which is also one of Namibia's development agenda initiatives adopted by many if not by all member states of the Southern African Development Community (SADC), states that Ministries of Trade and Industry should be involved in decision making and spearheads economic development in member countries. In the case of Namibia, this is done in consultation with private sector represented by Namibia Chamber of Commerce and Industry (NCCI). Namibia's Trade Policy and Division regulate bilateral and multilateral trade relations. In recognition of socio-economic role of sector and potential contribution to country economic development, the Trade policy, Industrial Development Policy and SMEs were introduced through recognition of the socio-economic role of the sector and its potential contribution to the country economic development. All these involved the benefits of IP.

The large source of revenue for any country through IP is application fees for Patents, Trade Marks, Industrial Designs, and Utility Models. According to Christina (2010) state that Namibia faces multiple challenges in economic development. The legacies of apartheid policies have type in all Industrial Policy. To date it has not played a proactive part in fostering new economic activities. This is why as a developing country we need to find ways which can benefit our nation in terms of availability of unused and wasted resources.

In order to be industrialised nation it cannot happen overnight neither within a blink of an eye. A lot need to be taken into consideration, be it development. National development objectives needed to be guided through the country's IP policy so that valuable resources cannot go unnoticed. The Small and Medium Enterprises (SMEs) need to be included in policy making while the government is the policy framework setter, to allow, promote, encourages innovation and competition and lastly contribute to the economy. Although Research and Development (R&D) is very low funded in and seen as fastest growing economy especially in Kenya. Therefore, more initiative needed to be put in place to encourage R&D.

World Bank (2009) categorizes Namibia as a middle income country with *per capita* income of US\$4.210 per year in 2008. Macro-economic stability is important for sustained economic growth and development. Integrated development is of most importance (market, infrastructure, and industrial) plus ensuring market access for

natural produced products and services. In the changing environment, consumer protection is needed and has a green economy. The development is a shared responsibility between the government and smart partnership with private sector. The one size fits-all approach is not supported by Namibia and mostly in Africa as whole tends to be put in one basket. At regional and national level increased awareness of IP through cross-border cooperation to extend supply and value chains is needed.

The social, economic, political stability and cultural concern is the rate of high unemployment rate in Namibia. Social well-being of the nation and opportunities arises depend on ethnic group, geographical region. High HIV/AIDS prevalence and inequality level population. According to Christina (2010) Namibia is divided into a small and highly productive modern sector and no linkage between SMEs and big companies. The political stability in Namibia benefits the Namibian nation. The leading party which has been forefront of the country, South West Africa People's Organisation (SWAPO) have provided free democracy and adopted the UK law, through its policy of reconciliation. It has contributed to high rate of potential investors from abroad through stable political in the country (WEF 2008).

The Agenda 21 profile, Namibia at national level will update the century's profile information submitted annually by the government. Trade, industry, energy, transport and sustainable tourism are treated as distinct in country's profile as they

are importance of IP. Namibia has developed sectoral strategies, policies and plans that reflect broader sustainable development issues through allocating responsibilities to relevant ministry. Ministry of Trade and Industry is the focal point and network with information and regional organisation while the Namibian Cabinet is the highest decision making body with regard to International Cooperation. Article 96 of Namibian's constitution stipulates that state will strive in its international relations to achieve the broad policy objectives: adopt and maintain a policy of non-alignment; promote international cooperation; peace and security; create and maintain just and mutually beneficial relations among nation; foster respect for international law and treaty obligation; encourage the settlement of international disputes by peaceful means depending on the situation.

The policies of SWAPO impose their own imperatives on the conduct of foreign policy. In this context, SWAPO is committed to: an equitable redistribution of wealth both nationally and internationally; a policy of reconciliation in the domestic and international context; protection and development of Namibia human resources through affirmatives action and natural resources through conservation theories and practices; safeguarding of national interest implies that the foreign policy must aim at upholding the sovereignty and territorial integrity of the state, enforcing respect for national symbols of the state and reducing any unilateral and dependencies.

2.4 The strengths and weaknesses of IP in Namibia

IP is of great importance in Namibia but the overall system is somewhat incapacitated in terms of coordination, suitable infrastructure and law enforcement mechanisms. A lack of coordinated activities in the administration of IP in Namibia is visible in one way or another. For instance the Ministry of Information and Communication Technology is spearheading copyright while the Ministry of Trade and Industry is in charge of industrial property (trademarks, patents, utility models, designs and others). Other IP issues such as biodiversity and genetic resources are handled by the Ministry of Environment and Tourism. Nonetheless, a success story of late has emerged from the establishment of a semi-autonomous body known as the Business and Intellectual Property Authority (BIPA). BIPA is expected to operate as a one-stop-centre for all IP related matters so as to lessen the burden off government's shoulders.

A coordinated IP system is necessary because it is through IP that the country's economy on which all national development activities are linked, can be developed. Where the IP system is not capable of safeguarding other IPRs that are not recognised under conventional IP laws worldwide, a *sui generis* system is needed. An integral part of developing an IP policy is that public domain is a construct of IP system.

Should the government decide to introduce a *sui generis* system to cater for special isolated IP cases, it has to be guided by a powerful judicial system. IP could only be seen to be valuable or useful when proper protection is in place to protect inventors and enforce their rights.

If there is cohesion of different offices that deal with IP issues and their core activities are coordinated and comprehensive even to an ordinary citizen, then the situation will contribute positively to the development of IP in general and also educate the nation on the economic importance of IP. If rights holders realise that more money is spent on pursuing court cases as a result of IPRs infringements, the system would have failed in its quest to fulfil its mandate of stimulating innovation and reward creativity (Odela 2003). However, the researcher is of the view that as much as Odela (2003) could be correct in his assessments, it should be noted that most rights holders were not aware of the possible predicaments that come with the whole issue of creating, managing and protecting their IP assets from the beginning.

Although IP is widely used, some IP national systems in developing countries do systematically misrepresent and complicate key IP issues with their vain implementation strategies. In Namibia, a current IP legislation, the new Industrial Property Act of 2012 was passed in Parliament and it touches on a wide range of IPRs including utility models. The new Industrial Property Act repealed all IP legislations that existed in the pre-independence era. The enforcement of IPRs in Namibia is necessitated through relevant IP legislations to applicable laws. Most of the

enforcement activities are carried out through a form of civil remedies obtained through a court action. The overall enforcement system is rather weak due to gaps in existing IP laws, staffing, lack of automation in IP offices, ineffective IP associations, lack system of registration of IP professionals, lack of financial support for creators, lack of IP assets appreciations, poor policing, inadequate border control measures and lastly IP officers themselves are not well informed on IP matters. The generation and commercialization of IPR assets is slow due to low IP awareness. The absence of IP policies specifically for the regulation of the creations, acquisitions, mergers, protection and commercialization also hinders IP development in general.

2.5 Review of progress on IP systems at international level

IP became a strong feature in international trade and legal instruments. The introduction of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement has necessitated fair trade activities between nations. WIPO Development Agenda cluster is a partial solution to trade and it includes technical assistance and capacity building, norm setting, flexibilities, public policy technology transfer, ICT access to knowledge-based assessment and the evaluation of impact that IP related trade have had on national economies. However, the researcher believes that the introduction of TRIPS did not come and go without problems of its own. While developed countries seem to have embraced TRIPS in its entirety,

developing countries including Namibia are struggling to adopt the important provisions of TRIPS and the following factors come into play:

- Lack of institutional capacity in developing countries
- Conflicting priorities areas between developed and developing countries
- Reluctance by developing countries to incorporate basis provisions of TRIPS into their domestic laws

Namibia also use the UK law which contain two legal systems each operating in tandem, but being derived very differently. First is the statue law, which is the set of laws written down and approved by Parliament. It has enacted laws which relate to IP and provide a fully codified framework within which the law relates to. Secondly is Common law which is a set of laws that are not expressly approved by Parliament but are followed by the courts. Aspects of IP are protected specially by the common law and depending upon the nature of the IP it is necessary to consider either specially statue law or common law and sometimes both.

The role of IP varies from countries to country and from continent to continent according to productive structure levels of development, economic needs and cultural and social values. World Bank (2001) noted that one size does not fit all in areas of IP. For instance in the United States of America during the 19th Century weak IP protection was aimed at promoting development of domestic printing

industry. Section 204 of the Bay-Dole Act a preference for industry exploitation of publicly funded invention is granted.

IP is shared across borders. The non-rivalries nature of ideas, output depends on total stock of ideas in the economy (Jones, 2004). During the WIPO Diplomatic Conference, 51 countries signed a new international treaty called Marrakesh Treaty for improving access to published materials for the visually impaired. This treaty was signed in Morocco and amending current legislation so that visually impaired and print disabled people could enjoy same rights as unimpaired and abled bodies. Access to IP material is aimed at educational materials, employment opportunities and social inclusion network activities.

The researcher's argument in this regard is that, as much as the Marrakesh Treaty is long overdue in terms of sharing crucial IP information with the rest of the world, it can only be implemented successfully by countries who have prepared for it long in advance. For instance, in the case of Namibia, the country's education system does not have suitable infrastructure to cater for the high technology equipment advocated by the Marrakesh. Even if such high-tech equipment were to be acquired today, funds permitting, the majority of the beneficiaries are concentrated in rural areas where such equipment could not be utilised as a result of enabling infrastructures such as electricity and ICT-related apparatus.

WIPO (2012) stated further that IP is not an end in itself but a means to achieve public policy goals and development objectives, relevant to all countries both developing and developed countries. The one size-fits-all approach does not work and the integration of IP in National Development Policies is imperative for development.

The statistic below indicated by International Centre for Trade and Sustainable Development (ICTSD) & United Nations Conference on Trade and Development (UNCTAD) project on IPRs and Sustainable Development. ICTSD-UNCTAD (2003) indicated sources of Patent Cooperation Treaty Patent Application in 1998 and 2000. Most patent application was from North America and Europe and less in Africa.

Table 1: PCT application between 1998 and 2000

<i>Region</i>	<i>Country of Origin</i>	<i>Number of Patents Filed, 1998</i>	<i>Number of Patents Filed, 2000</i>	<i>Percentage of Total 1998</i>	<i>Percentage of Total 2000</i>
North America	United States of America (USA)	28,356	38,171	42.3	42
	Canada	1,315	1,600	2.0	1.8
Total North America		29,671			43.8
Western Europe/European Union (EU)	Germany	9,112	12,039	13.6	13.2
	United Kingdom (UK)	4,383	5,538	6.5	6.1
	France	3,322	3,601	5.0	4.0
	Sweden	2,554	3,071	5.0	3.4s
	Netherlands	2,065	2,587	3.1	2.8
	Switzerland	1,293	1,701	1.9	1.9
	Finland	1,092	1,437	1.6	1.6
	Italy	925	1,354	1.4	1.5
	Denmark	624	789	0.9	0.9

	Austria	421	476	0.6	0.5
	Norway	394	470	0.6	0.5
	Others	1,101	1,463	1.6	1.6
	<i>Total Western Europe/European Union</i>	<i>27,286</i>	<i>34,526</i>	<i>40.7</i>	<i>38.0</i>
East Asia and China	Japan	6,098	9,402	9.1	10.3
	Republic of Korea	485	1,514	0.7	1.7
	China	322	579	0.5	0.6
	<i>Total East Asia and China</i>	<i>6,905</i>	<i>11,495</i>	<i>10.3</i>	<i>12.6</i>
Eastern Europe	Russian Federation	429	590	0.6	0.7
	Others	402	627	0.6	0.7
	<i>Total Eastern Europe</i>	<i>831</i>	<i>1,217</i>	<i>1.2</i>	<i>1.3</i>
Australasia	Australia	1,048	1,627	1.6	1.8
	New Zealand	178	264	0.3	0.3
	<i>Total Australasia</i>	<i>1,226</i>	<i>1,891</i>	<i>1.9</i>	<i>2.1</i>
	<i>Total Middle East</i>	<i>707</i>	<i>925</i>	<i>1.1</i>	<i>1.0</i>
	<i>Total Rest of Asia</i>	<i>146</i>	<i>473</i>	<i>0.2</i>	<i>0.5</i>
	<i>Total Latin America/Caribbean</i>	<i>209</i>	<i>252</i>	<i>0.3</i>	<i>0.3</i>
	<i>Total Africa</i>	<i>26</i>	<i>398</i>	<i><0.1</i>	<i>0.4</i>

<i>Total Number of Patent Applications</i>		<i>67,007</i>	<i>90,948</i>	<i>100.0</i>	<i>100.0</i>
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Although few patents were filed in Africa, still the international commitments must be fulfilled. Developing countries are rich in resources and they need to be protected and enforce their rights.

While according to WIPO Statistic Database 2012, patent filing passed 2 million marks in 2011, sharing a significant growth of 7.8 and over 2010. For the first time in 2011, more patents were filled at patent office of China than other office in the world. In the 100 years before 2011 only Germany, Japan and United States of America had occupied that position of number one in patent filling.

The researcher agrees with the information contained in the table showing the PCT applications with developed countries leading the way in terms of a number of applications per country. However, it should be noted that developing countries such as Namibia will always occupy the bottom spot in terms of a minimum or no applications filed with the PCT for obvious reasons. No one should expect a notable amount of PCT applications from a country that is just trying to climb the industrialisation ladder.

Table 2: WIPO statistics on Industrial Designs in 2011

Office	Resident	Non Resident	Total	Growth rate (%): 2010-2011	Non Resident Share (%)	Income Group
Namibia (1)	_____	168	168	75.0	_____	UM
Ghana (1)	_____	139	139	139.7	_____	LM
Kenya (2)	69	7	76	-15.6	9.2	L

The table reveals that:

(1): Only Hague designation data available; therefore data on application design maybe incomplete.

(2): 2010 data; and growth rate refers to 2009-2010.

UM: Upper Middle Income

LM: Low Income

Using IP system which is the administration, protection and utilization, the IP policy will provide a clear guidance and ensure a balanced development goal. There will be more tangible results, increasing synergies among concerned parties. Therefore, there is a need to create an effective and optimal use that contributes to national development goals.

2.6 Review on progress of IP systems in Ghana and Kenya

Ghana and Kenya are both Sub-Saharan Countries (SSC) and monist countries. Sub-Saharan Countries are part of the WTO which was established in 1995 and the formulation of TRIPS Agreement. These countries have to abide by the international obligation and need to amend or revise their laws according to TRIPS minimum standards complaint. The important aspect of innovation system in the developing countries is the indigenous or traditional knowledge. Protection is needed through *sui generis* system hence knowledge is tacit and in the past Sub-Saharan countries lost on profit since they don't utilize the IP protection regime on their Traditional Knowledge (TK).

In Ghana, the legislation have seven Acts and laws which includes Industrial Design, Patent, Geographical Indication, Trade Secrets, Copyrights, Layout designs of integrated circuits but it lack legal and policy framework for traditional knowledge, plant varieties, genetic resources. These Acts are as follows: Patent Act, 2003 (Act 657), Trade Marks Act, 2004 (Act 664), Industrial Designs Act, 2003 (Act 660), Copyright Act, 2005 (Act 690), Geographical Indications Act, 2003 (Act 659), Layout Designs (Topographies) of Integrated Circuits Act, 2004 (Act 667) and finally Protection against Unfair Competition Act, 2000 (Act 589). There are international and regional obligations which Ghana is abiding and comply with in Paris Convention, Berne Convention, WIPO, ARIPO, Swakopmund Protocol, Patent

Cooperation Treaty, WIPO Copyright Treaty, Hague Agreement, Lusaka Agreement and Madrid Protocol.

Protection of IP is through administration of Registrar General's Department for Industrial Property Offices while Ministry of Justice and Attorney General's Department is in charge of Copyright Office. This is almost the same as in Namibia whereby Industrial Property Office is not in the same office as Copyright but both administer by the Ministries in Ghana. The two offices need to be integrated to ensure smooth operation of IP. IP offices in those countries, the findings are that there is lack of enough staff, automation of IP registration process is incomplete, system for registration of IP professional service providers is lacking, no special programmes for training and awareness, IP professionals and stakeholder is weak.

IP enforcement is also frail, border measure need to be effective; personnel have little knowledge about IP through civil remedies obtained through court action and ensure expeditious trials. The generation and commercialization of IP is very low and contributed with lack of IP awareness or education, SMES support structure is not in place, innovation at university and research institutions is not motivated, no IP policies for creation, protection, generation, acquisition and commercialization so that it can be utilized to ensure maximum benefits.

In Kenya, a Key strategy for economic growth, noted that University Intellectual Property Policy (UIPP), aimed at promoting creativity and innovation, ensuring a fair and equitable sharing of the rights and benefits of IP among the researchers or

inventors, the institution and other stakeholders. Like any other public universities has been affected by loss of many teaching staff who quit to take up better positions. Integration IP in Kenya is sustainable growth and creates an enabling environment for maximum utilisation of IP for technological, industrial, social and economic development. In terms of the economic growth, for two decade economic growth was weak, high unemployment rate, and low productivity.

The government had to commit and maintain a stable economic and create a competitive environment for sustainable development through the Economic Recovery Strategy (ERS). In Namibia, government developed policy instrument and flagship projects and IP is regarded as one of the enabling tools for implementation. This is implemented alongside the popular concept of *Vision 2030* to achieve their goals of knowledge-based and industrialised nation. All these can be attained through stimulate and promote innovation. Developing a national IP policy to guide the nation and also reap the fruits of access benefit sharing.

The Kenyan legislation has been enacted on IPRs. It is also part of international and regional bodies which they abide to them such as Paris Convention (1883), Nairobi Treaty (1981), Trademark Law Treaty (1994), WIPO Convention (1971), Madrid Agreement (1891), Protocol relating to the Madrid Agreement (1989), Patent Cooperation Treaty (1970), Lusaka Agreement (1976), Harare Protocol (1982), WIPO Treaty (1970), International Union for the protection of New Plant Varieties (UPOV) (1978), TRIPs (1995), Geneva Convention, Brussels Convention (1979),

WIPO Performances and Phonograms Treaty (1996), WIPO Copyright Treaty (1996), WIPO Copyright Convention (1952), Swakopmund Protocol, Beijing Treaty.

According to the Kenyan Industrial Property Act of 2001, covers patents for inventions, certificates for Industrial Designs, Utility models, Trade Marks, Service Marks, Geographical Indication, Registration of technology transfers, Topographies of integrated circuit whose bill are underway to be enacted into law by parliament. All these are administered by Kenya Industrial Property Institute (KIPI), which is autonomous and so far in terms of administering these IP tools is positive. While Copyright Board administer copyrights and related rights under Copyright Act of 2001, covers literary and artistic works as well as cinematographic works, performers rights, broadcasting rights, producer of phonograms rights. Kenya Plant Health Inspectorate Service (KEPHIS) under Seeds and Plant Varieties Act administer Plant Breeder Rights.

The KIPI and Kenya Copyright Board (KECOBO) are both autonomous. KIPI is an Industrial Property Office which is autonomous and serves to be a receiving office for ARIPO and WIPO. They undertake formal and substantive examination. Incomplete automation and modernization process but still there is an Industrial Property Automated System (IPAS) which is used to be able to change from the manual system, ARIPO-KIPI Data Link to electronically access and exchange IP data among themselves and it improves the communication efficiently. Technology and Innovation Support Centres (TISC) also facilitates access by users through

technology knowledge, patent and non-patent information. An IP Tribunal which is a competent authority was created and deals with disputes, ensure enforcements of IPRs. Human capacity resources is not enough, no IP Academy and low level of IP awareness contribute to bottleneck of IPRs.

The KECOBO has 13 board members who are working on the legal and administration to protect traditional knowledge, genetic resources and traditional cultural Expressions. Strengthen IP staff capacity and put a lot of emphasis on staff training. It have partner with international offices such as WIPO, United States of America (USA) Embassy in Kenya and Korean Embassy. It trained police officers on copyright infringement cases and established an enforcement unit. There are 4 Collective Management Organizations (CMOs) which are weak due to ineffective, financial operation and weak management. The CMOs are Music Copyright Society of Kenya, (MCSK), Kenya Association of Music Producers (KAMP), Performers Rights Organization of Kenya (PRSK), and Kenya Reproduction Rights Organization (KOPIKEN). They are private entities and they collectively administer rights of their members through collections and distribution of royalties which is due to them.

2.7 The status of IP system in Namibia

The IP system is a basic system for developing and utilizing knowledge-based resources. The IP encompasses the need to grant privileges to nurture ingenuity as

well as meet societal obligations. The intangible character of IP has been conferred a legally enforceable character in the form of a right in the property contained therein (Prager 1944). Some of the IP rights are territorial; therefore Namibia is obliged to abide by the international treaties and protocols which are a signatory member. The Constitution of the Republic of Namibia formerly known as South West Africa was ratified on 9th February 1990 and 12 March 1990 came into force after the country gained independence from South Africa. The Constitution is the supreme law and has legal system of uncodified civil law based on Roman-Dutch and Customary laws. The two legislative houses namely; the National Council and National Assembly are part of bicameral legislature. Article 2 of the constitution protects the national symbols, Article 9 establishes rights to culture and Article 16 consecrates the right to property and contains a provision of IPRs.

The researcher therefore believes that the first Constituent Assembly of Namibia which sat in 1989 shortly before independence had individuals who were wise to include those important provisions of Articles 2, 9 and 16. It was from those three articles that many IP legislations were to be based.

The role of IP in catalysing and encouraging industrial and commercial growth has come into sharp focus in recent years. Namibia is a party to regional bodies such as the African Regional Intellectual Property Organisation (ARIPO), Southern Africa Customs Union (SACU), the Common Market for Eastern and Southern Africa (COMESA) and African Growth and Opportunity Act (AGOA). They apply the rule

of Most Favoured Nations (MFN) treatment. The Ministry of Trade and Industry is a focal point and since Namibia became a contracting party to the General Agreement on Tariffs and Trade (GATT) in September 1992.

Although Namibia normally plays a significant role in the work of the African Group at WIPO, the country currently does not have a national IP policy which can be used to coordinate all IP related matter in the country and be the driving force on the most anticipated goals of *Vision 2030*. It should be vital that an IP policy need to be developed and emphasis should be on intellectual Property. Patents Is an original, new/novel, inventive step/non-obvious invention which must meet statutory law, natural laws and industrial applicable. In relevant IP statutes in Namibia, Copyright refers to literary and artistic work. Trade Marks refer to any invisible sign that distinguish goods or services of an enterprise from its competitors. Trade secrets refer to information which is not disclosed to the public without owners consent. The invention is kept a secret and no registration cost involved. No compliance with formalities and they have immediate effect. Utility Model refers to a petty patent or a short term patent an exclusive right for an invention and has limited rights up to 10 years. Related Rights refers to neighbouring rights. There are three kinds of related rights (performing artists in their performances; producers of phonograms in their phonograms; broadcasting organizations in their radio and television programs). Industrial Designs refers as ornamental or aesthetic aspect of an article. It focuses on appearances.

Geographical Indication refers to a product where it originated from and indicates a given geographical area. It is a broad term known as appellation of origin and indication of source while in strict sense is geographical indication. Indication of sources is any expression or sign used to indicate where a product or services originated from in terms of country, regions, or specific place e.g. made in Namibia. An appellation of origin is geographical name of a country, region, and specific place. Geographical Indication is also protected by registration of collective marks or certification marks.

In Namibia, as it is the same in many Berne Union member states, copyright works are not registerable but the Ministry of Information and Communication Technology (MICT) is the custodian of such works as per the provisions of the Namibian Copyright and Neighbouring Rights Act of 1994. Industrial property works are not as common as copyright works but a few that are there are recorded in the Ministry of Trade and Industry. Mostly the country does not invest into patents which compared to international countries are more focused on that due to its commercial value. And the fact that they don't have expertise apart from technical assistance they receive from WIPO. For instance a patent was registered under the University of Namibia (UNAM) and till to date no commercial value was recovered.

The WIPO-Lex Search database Namibia's main IP laws enacted by the legislature is Trade Marks in South West Africa Act, May 1973; Patents, Designs, Trade Marks

and Copyright Act, 1916 (Act no. 9 of 1916) as amended together with rules, proclamations; Copyright and Neighboring Rights Protection Act 6 of 1994; National Anthem of the Republic of Namibia Act, 1991.

The IP-related laws enacted by the legislature is Tobacco Product Control Act, March 2010; Companies Amendment Act, December 2007; Medicines and Related Substances Control Amendment Act, December 2007; Companies Act, December 2004; Criminal Procedure Act, December 2004; Medicines and Related Substances Control Act, August 2003; Competition Act, April 2003; Second Hand Goods Act, September 1998; Liquor Act, April 1988; National Heritage Act, December 2004), Treaty establishing the Southern African Development Community, September 1993; National Arts Fund of Namibia Act, April 2005; Namibian Broadcasting Act, June 1991, Community Courts Act, July 2003, Traditional Authorities Act, December 2000, Council of Traditional Leaders Act, October 1997. Implementing Rules/Regulations for Rules is the Competition Act, 2003.

The IP-related Multilateral Treaties are Agreement establishing WTO, January 1995; Agreement on TRIPs, 1995; CBD, August 1997; Swakopmund Protocol (ARIPO); Lusaka Agreement (ARIPO); Harare Protocol (ARIPO); International Treaty on Plant Genetic Resources for food and Agriculture, January 2005; Banjul Protocol (ARIPO); Cartagena Protocol on Biosafety, May 2005; Convention on Biological Diversity, August 1997; International Plant Protection Convention, February 2007; International Treaty on Plant Genetic Resources for Food and Agriculture, January

2005; Kyoto Protocol to the UN framework Convention on Climate Change, February 2005; Stockholm Convention on Persistent Organic Pollutants, September 2005; UN framework Convention on Climate Change, August 1995; WHO framework Convention on Tobacco Control, February 2006, Convention on the Protection and Promotions of the diversity of Cultural Expression, March 2007; International Covenant on Economic, Social and Cultural Rights, February 1995. Convention concerning the Protection of the World Cultural and Natural Heritage, 2000; Convention for the Safeguarding of the Intangible Cultural Heritage, 2007; Convention on the Protection and Promotion of the diversity of Cultural Expressions, 2007; Convention on the Rights of Persons with Disabilities, 2008; Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2008, UN Convention on the Law of the Sea, First Protocol of 1949 Geneva Conventions.

The IP-relevant Bilateral Treaties is the Agreement between the government of French Republic and Namibia on encouragement and reciprocal protection of investment; Agreement between Kingdom of Spain and Namibia on the promotion and protection of investments; Agreement on encouragement and reciprocal protection of investments between the Kingdom of Netherlands and Namibia; Treaty between the Federal Republic of Germany and Namibia concerning the encouragement and reciprocal protection of investment.

The Regional Economic Integration Treaties: Abuja Treaty, May 1994; Protocol on Trade in the SADC, January 2000; Southern Africa Customs Union Agreement, July 2004; The Georgetown Agreement, July 2004; Treaty establishing the Common Market for Eastern and Southern Africa, July 2004. WIPO Administer Treaties is Berne Convention, WIPO Convention, WIPO Copyright Treaty, WIPO Performance and Phonograms Treaty, Paris Convention, Hague Agreement, Patent Cooperation Treaty.

Amoo and Haring (2009) state that South African Roman-Dutch law has been recognised as one of the source law in Namibia. There are limited accesses to modern science while vast array of laws developed in Europe and USA to protect that science and IPRs. Namibia has many laws amongst others is Copyright and Neighbouring Rights protection Act of 1994 and custodian ministry is Ministry of Information and Communication Technology while Directorate Audio-Visual Media and Copyright Service deals with day-to-day activities related to copyright issues or matters. The industrial property is under the custodian Ministry of Trade and Industry.

Due to the pre-independence colonial regime, Namibian judges relied heavily on the South African (SA) law which in turn is United Kingdom (UK) Law. For instance, the case of *Mega Power Centre CC t/a Talisman Plant and Tool Hire v Talisman Franchise Operations (Pty) Ltd*. This has evidently shown that in Namibia, IP

expertise is highly needed due to a fact that IP Law decisions in court judgment are few in reference to our Namibian court of law and neither less it is protected under Article 16 of the Namibian Constitution. There are two collection society or management organisations such Namibia Society of Composers and Authors of Music (NASCAM) and Namibia Reproduction Rights Organisation (NAMRRO). NASCAM was established in 1994 and deals with musical work only and got support from WIPO, International Confederation of Societies of Authors and Composers (CISAC) and Southern African Music Rights Organisation (SAMRO) to combat piracy and do it in collaboration with Namibian Police, Customs and Exercise and Immigration. While NAMRRO was established in 2006 with financial and logistic support from United Nations Educational, Scientific and Cultural Organization (UNESCO), International Federation of Reproduction Rights Organisations (IFRRO) and Dramatic, Artistic and Literary Rights Organisation (DALRO). Author works published will be deposited in department of National Library and National Archive under Ministry of Education. There is no development yet on Orphans Works, Mass Digitisation and Levies, Pending Lending Rights, Creative Commons.

As a developing country, new IP-related commitments were taken under various international agreement administered by the World Intellectual Property and World Trade Organisation for e.g. TRIPS, Trips plus, Uruguay Round, Doha Act, etc., and reflected on domestic law and practices to strengthen the IP. The strengthening of IP is compatible with countries national development agenda programmes and

blueprints. The reshaped landscape for IP in 1990s through TRIPs, Uruguay Round of Multilateral trade negotiations and WIPO these treaties. Park and Lipporltd (2008) noted that in developing countries, the IP has been strengthening in respect to patents through innovation, technology transfer via trade and investment.

Namibia is in a process of revising current policy on libraries. An Act of Parliament known as the Namibia Library & Information Service Act of 2000 provides a framework for operation of public libraries. NIDA (2011) Act went under review and consider matters related to copyright and research policy, the provisions for legal deposit and their implementation including their extension to electronic and non-book publications, open access/open data (government and scientific), constitution of Namibian Library and Archives Service in the context of role of decentralized government and independent institution and the prospect of legal obligation local and regional authorities to provide community library service that are financially supported.

Many developing countries have diverted from weak IP system to strong IP system through a reform and harmonisation of international laws and practices. The poorly adapted system is from former colonial system or era Namibia included and joined World Trade Organisation and WIPO that automatically adhere to international treaties such as the Paris Convention for the protection of Industrial Property (173 members); the Berne Convention for the protection of literary and artistic works

(164 members); the Patent Cooperation Treaty (139 members); the Madrid Agreement Concerning the International Registration of Marks (76 members); the Hague Agreement Concerning the International deposit of Industrial Designs (51 members); African States members of the Patent Cooperation Treaty (44 members).

To support and develop IP in fully flagged-flag so that it can make an impact on ordinary citizen, the Namibian government need an IP policy which can guide the entire institutional framework and the government in general. The gap in the Namibia IP system is fragmented legislation, no enthusiasm by lawyers/courtship hence IP is elective course, attitude and value added. No mechanism to protect our IP although we are member of WIPO which administer international treaties and protocols to have an effective IP system and need to facilitate expansion of IP system in Namibia and make IP system expansion user friendly. There is a need to stop copying from our colonial master and be innovative and take into consideration of the remedies. Namibia should be a prosperous and industrialised country through human resources, peace, harmony and political stability. Being a knowledge-based and innovation-based therefore, economy will be competitive.

Hoving (2004) the San community have raised the issue of bioparacy in regard to the theft of biological knowledge material from the san and other people in the developing world by Western Corporations. San community are indigenous inhabitants of Namibia living in northern, central and eastern parts of the country. They use plants for survival in terms of eating and medicines. There is also devils

claw found in Kalahari Desert. They had a plant called Hoodia to quench their thirst and not to be hungry. A South African Scientific Organisation embarked on a research project during apartheid regime in 1963 and without consent of San and recognition of their property rights and san people were deprived of Access to Benefit Sharing from their patented plant, Hoodia. At a later stage, the san community was paid a miniscule royalty. Namibia fails to protect San community IP while IP International Property regime protect patents and copyright (Amoo and Harring 2009).

Conclusion

Chapter II looked at conceptual framework that guided the research. The reviewed literature have discussed in terms of how they related to the research. It managed to answer several question such as what is the current situation of IP system in Namibia; what are the strength and weakness of the IP system; what is current status of the IP system of selected African countries. It also explained in details the concept of policy, policy development, IP at international level compared to regional and national level and in comparison to the selected to African countries selected in the study.

CHAPTER III: RESEARCH METHODOLOGY

Introduction

A research methodology is explained in terms of study design, study population, sample techniques, data collection method, data collection and instruments, data analysis tools and research ethics. The researcher finds responses to research questions. This is to deal with logical problem and qualitative employ questionnaires and interviews. It is a blueprint for research and turn research questions into testing the study.

This chapter discusses the methodology that was used to guide the process of data collection and analysis. The reasons for choice of strategy, design, sampling and data collection tools that were used were explained. This chapter also explained how fieldwork was conducted to collect the desired information as well as data processing, analysis and interpretation.

3.1 Study design

A research design is a tool which prepares the researcher to conduct a successful research. The desk research is review of literature found from authors publications both printed and electronic materials. Collection of primary data was from interview held with IP related offices. The research techniques used for collection of primary data was key informant method.

The key experts and human subjects who are well informed in the area of research and who are involved in developing policies were consulted to provide required information. According to McMillan and Schumacher (2010) the term research design refers to a blueprint for a study or a plan for selecting subjects, research sites, and data collection procedures in order to answer the research questions. With highly focused and smaller simpler was ideal due to time constraints within a short period of time.

The researcher used both qualitative and quantitative research designs to enable the researcher to come up with rich detailed information that were used to examine the problem. It is a systematic, subjective approach used to describe life experience and give meaning. According to Hancock (1998) qualitative research is when developing explanation of social phenomena. A key informant technique is good because researcher can easily collect detailed and rich data while during interview there can be clarification when respondents seek for that and lastly genuine information is given. The justification is that researcher is allowed to gather data about subject matter. It helps producing rich, detailed and valid information to add to the understanding of given concept.

Therefore the study was a descriptive research which combined qualitative and quantitative approaches for the strengths of both approaches and eliminates the weaknesses of each of them. Furthermore, the study adopted a case study research

design in carrying out the investigation; and the study focus was on the target population.

3.2 Target population

A target population is the larger population to whom the study results are to be generalized. A population is any group of individuals that have one or more common features that are of interest to the researcher. On A study population is subset of target population that can be studied. The research was carried out in Windhoek, capital city of Namibia where most policy makers and IP institution are located.

The target population therefore included the key groups of strategic informants and sampled for this study, namely:

- i) Universities
- ii) Research Institutions
- iii) Public Institutions
- iv) General public

A target population is population from which sample will be drawn. Population contain person, objects, site, group and events. The above targeted population were interviewed and selected individually due to their respective IP usage and

knowledge. Responses were used in analysing data and open up any gaps or existing shortcomings. The objective of the study was to do a situation analysis of the IP system in Namibia, identify its strengths and weakness; Review progress in IP system of selected African countries and make possible recommendation to the Namibian policy makers for IP policy development.

3.3 Sample, sample size and sampling procedure

A sample is a subset of population under study. A segment of population selected will be from the targeted population because is it believed that it will provide enough data which will be valuable to the study. The sampling is a vital aspect of life in general and enquiry in particular. The population samples were therefore made up of high ranking officials from the institutions indicated above as target population.

The sample size is the amount of people making up target population who were interviewed while sampling procedures is a method of arriving at sample population taken from the targeted population which were interviewed and given questionnaires.

The strategic and purposive sampling techniques were employed to select the sample for the study. The term ‘strategic’ is used herein to indicate that selected members of the general public were approached and requested to respond to prepared questionnaires. Random sampling was used to select IP beneficiaries from the University of Namibia, NEPRU, MTI, BIPA and OPM since these specific members of the target population deal regularly with the subject matter under investigation. Purposive sampling was used to select employees and staff members of public IP

institutions. As far as purposive sampling technique is concerned, the researcher selected participants on the grounds that they were “data-rich” about the phenomenon under study.

To purposefully analyse and interpret the information provided by the respondents in order to achieve the objectives of the study, a separate tool known as the “*observation form*” was formulated and used only by the researcher. This method goes hand in hand with Patton (1990) who pointed out that the method is usually employed in cases where the researcher intentionally selects individual and site to learn or understand the phenomenon.

Therefore, only key people who had a direct stake in IP activities national offices were selected to participate as respondents because they have a better understanding of the strengths and weaknesses of the IP system for policy development.

3.4 Data collection method and instrumentation

The type of data that was collected included secondary data which is the related literature that were reviewed and primary data such as information gathered by means of questionnaires and interviews. Required data was collected from identified population in the Capital city Windhoek only.

John (2000) state that data collection method are meant to capture social meaning and ordinary activities of information in naturally occurring setting that are

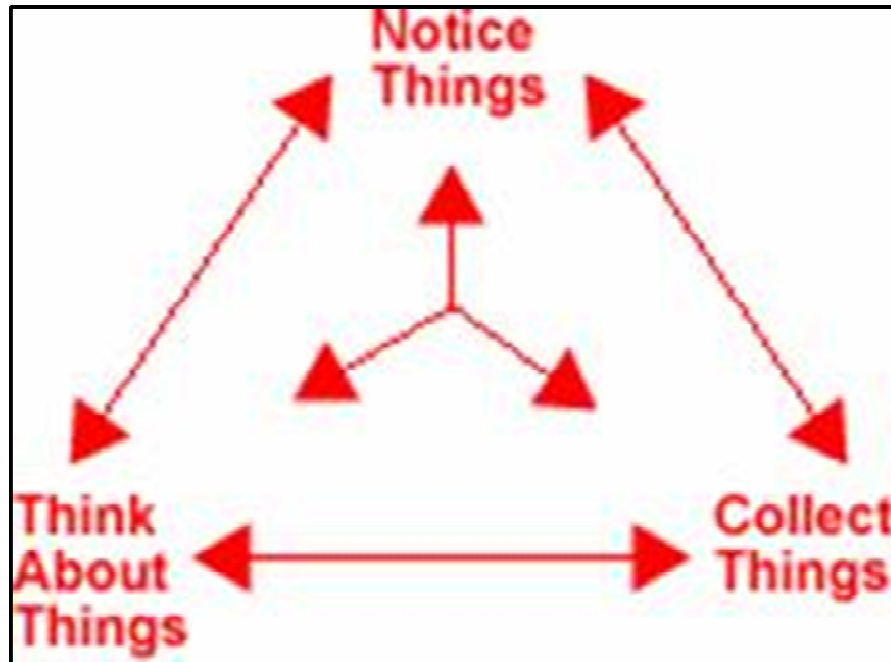
commonly referred to as a field, whose goal is to collect data in such a way research does not impose any of their own bias on the data. John (2000) state further that desk research involves information gathered from both published and unpublished materials such as books, journals, seminar paper, policies, or any other related publication on the subject matter. Interview is a purposeful conversation in which one person ask prepared questions and another answer them. They can either be structured (closed-ended) or unstructured (open-ended). Samples of the questionnaire are attached to the study as appendix I.

3.5 Data analysis tools

A data analysis is a process that usually includes reducing accumulated information to manageable size, developing summaries, looking for patterns. The data analysis was done through qualitative and quantitative method as participants had responded. Some information provided by participants using electronic questionnaires were scanned and forwarded to the researcher by electronic mail.

A process of making meaningful analysis of data collected to get a general sense of data and read data collected, a process of noticing, collecting and thinking about things is employed as explained by Seidel (1998) hereunder.

Figure 1: Systematic definition of data analysis



3.6 Research ethics

The study took into consideration the confidentiality and anonymity of participants. The researcher first introduced herself to the participants and provided them with a letter of introduction from the commissioning institution. Ethics and literature privacy is commonly regarded as akin to the principle of privacy. This principle is integral to our societal beliefs that individuals matter and that individual have the right for their affair to be anonymous. Collaborating with participants and seeking permission for recording and photographing will be sought first from the participants where necessary. Therefore, the researcher has fully to adhere to research ethics as conditionally stipulated by the commissioning institution.

Conclusion

Chapter III discussed the research methodology which was used by the researcher to gather data for the study. It also outlined all the important components of the roadmap of the study. It was in this chapter where the researcher had indicated the methods used to gather and analyse the required data. The chapter was concluded with the researcher making reference to research ethics as one of the obligatory requirements of the commissioning institution.

CHAPTER IV: DATA PRESENTATION AND ANALYSIS

Introduction

In this chapter, the researcher has analysed both primary and secondary data gathered in comparison with the main objectives of the study. The concentration was more on the primary data collected from the questionnaires and face-to-face interviews. Assessment was also done on the secondary data collected from the review of related literature of the study. The participants were tested on the general knowledge of the subject matter with a view to establish their respective level of understanding of the IP system in Namibia *vis-avis* the national IP policy (if any) that is supposed to guide its implementation. Participants were also tested on the role of the Namibian government in respect of the subject matter under review. The purpose was to establish whether the current state of affairs is desirable or any possible change should be in the offing.

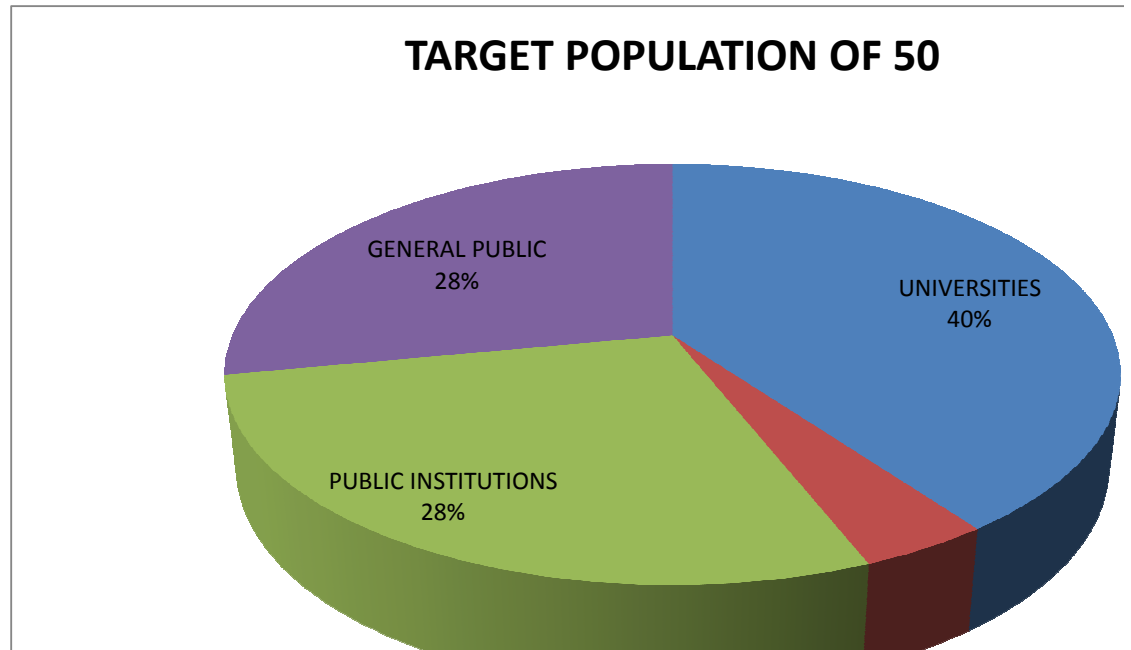
Finally, the researcher requested participants to give their opinions on the way IP assets are coordinated and managed in the public service. They were also requested to provide general comments on the overall subject matter under investigation.

4.1 Participants' general knowledge on IP

The researcher had a total population of fifty (50) derived from the University of Namibia which provided the largest number of participants of eighteen (18) in total.

The Polytechnic of Namibia (PoN), which has also been upgraded to a university level through the amendment of the Polytechnic of Namibia Act 33 of 1994, has provided two (2) participants in total. Twelve (12) participants in total from OPM and MTI respectively were involved in the study. One main research institution, Namibian Economic Policy Research Unit (NEPRU), provided two (2) participants while the newly formed semi-autonomous IP authority, BIPA, also provided two (2) participants. A number of fourteen (14) participants were derived from the general public who were strategically selected.

Figure 2: Percentage of target population participants



About 28% of the participants which represented government institutions have a basic understanding of what IP entails. That is the same level of understanding held by strategically selected members of the public. Regarding participants from research institutions and universities, the level of IP knowledge is the same. While the level of IP knowledge is the same among the participants as indicated above, the researcher still feels that more and more rights holders and prospective creators alike should be encouraged to create, manage and enforce their rights through the available legal framework and institutional support from CMOs.

It could therefore be concluded that the high level of understanding of IP among the target population is an indication of the strength of Namibia's IP system. Its

weaknesses are in that creation, management, protection and enforcement of IPRs is not satisfactory, especially due to the fact that only IP assets that are protected under copyright demonstrate satisfactory progress in terms of creation, management, protection and enforcement through the two available CMOs. The two CMOs are the Namibian Society of Composers and Authors of Music (NASCAM) and the Namibia Reproduction Rights Organisation (NAMRRO) for reprography rights. IP assets protected under industrial property legislations such as trademarks, industrial designs and utility models are secure under the newly enacted Industrial Property Act of 2012. Patents, on the other hand, are almost non-existent.

4.2 Participants' understanding of policy and the current IP system in Namibia

It is clear from the data gathered that policies are known and well understood by most if not all participants under the study. While the current status of the IP system in Namibia is known by most participants, those from government institutions feel that Namibia is doing better in comparison with other developing countries in Africa. However, they are of the view that more investment should be made to automate all IP related offices. This, according to them, would necessitate the effective communication between government and international and regional IP organisations such as ARIPO and WIPO. On the contrary, participants from universities and research institutions have divergent views on the IP system in Namibia. They are of the view that rights holders are not well informed about their rights. They also feel that responsible statutory IP institutions are doing very little in terms of popularising

IP issues among rights holders and stakeholders alike. However, they acknowledged the availability of relevant laws but at the same time, they feel that these laws are somewhat inactive in terms of enforcement of rights. Lastly, they were also of the view that relevant information communication technology (ICT) infrastructure that are required to run those institutions effectively are lacking.

The Office of the Prime Minister (OPM), which is the government focal point in terms of policy formulation and monitoring, is of the same view as that of other government institutions that Namibia is advanced in terms of its IP system. However, the OPM proposes that there should be a coordinated approach to IP assets management among IP related institutions. The OPM also advised that statutory IP institutions should create links with international and regional IP organisations in order to facilitate development assistance from developed to developing and least developed countries.

It is the researcher's viewpoint that most participants that have been interviewed are knowledgeable on IP and understand what the subject matter entails. This could be interpreted as one of the strengths of the Namibian IP system for the purpose of policy development. A policy can only be effective and successful when the target audience comprehends and appreciate the fundamental purpose for its formulation. However, it is one thing to have a policy in place but quite another to have the target audience (the public) who do not have a deeper comprehension of what is entitled to

them in terms of fundamental policy provisions. The first Namibian Constituent which sat in 1989 shortly before independence to draft the country's first Constitution had individuals who were prudent to include those important provisions of Articles 2, 9 and 16. It was from those three articles that many IP legislations that are available today were based. Article 2 protects the national symbols, Article 9 establishes rights to culture and Article 16 consecrates the right to property and contains a provision of IPRs.

Conclusively, the researcher is of the view that the weaknesses in the Namibian IP system surpass its strengths by wider margins. While the strengths include a satisfactory knowledge of policies, the understanding of the IP system and the availability of relevant IP legislations that encompass all IPRs, its notable weaknesses are as follow:

- Not all IP offices are equipped with relevant ICT infrastructure, resulting in the inability for them to maintain regular contacts with relevant regional and international IP bodies such as ARIPO and WIPO;
- Rights holders are not well informed about their rights and obligations under relevant IP legislations, thus resulting in a discouragement to create on the part of the rights holders, and possible increase in infringement cases on the part of the users;

- Available statutory IP institution are doing very little in terms of advocacy on IP-related matters, resulting in IP in general, remaining a mystery to a larger component of the population;
- Lack of coordination in the management, protection and enforcement of IPRs among statutory IP institutions, subsequent to a possible duplication of efforts by the institutions with similar mandates.

4.3 Formulation of national policies in Namibia

There were specific questions aimed at finding out whether participants were aware of the government institution that is responsible for policy formulation and whether government should be involved in the initiation of individual policies from other semi-autonomous bodies of government. The findings from that particular question are indicated in the table below:

Table 3: Participants' understanding of policy formulation in Namibia

	Universities	Public institutions	Research institutions	General public
Who is responsible for policy formulation	OPM	OPM	OPM	OPM, Ministries, institutions
Should GRN be involved in policy formulation by semi-autonomous	Not necessarily, but all policies must be aligned with Gov.	Not necessarily but GRN should provide directives, monitoring	Not necessarily but GRN should provide funding and technical assistance	Yes, so that policies could benefit the electoral masses in all corners of the

bodies	objectives	& provide assessment		country
Are the current national policies realistic and effective	NDPs and Affirmative Action are realistic and effective. Vision 2030 is not.	NDPs and Affirmative Action are realistic and effective. Vision 2030 require more time and better coordination	NDPs and National Reconciliation are realistic and effective. Vision 2030 is not because of lack of commitment.	NDPs, Reconciliation and Affirmative Action are realistic and effective. Vision 2030 is but a dream.

The office responsible for policy formulation is the OPM. Other public offices initiate their own policies but the OPM plays a crucial role of monitoring their implementation strategies to ensure that they tie in well with government objectives. However, the researcher feels that despite other public offices initiating their own respective policies, such policies should all reflect the main components of the national development agenda which in turn should have an element of IP. This is due to the fact that IP has inevitably become part and parcel of any developing country's national development agenda.

It was found that a draft national policy of IP is in place in Ghana and it is also a monist country. The National Intellectual Property Policy and Strategy (NIPPS) have been prepared to strengthen the management of the IP system in Ghana and to encourage innovation and creativity within the system. It aims to bring IP system in line with its international commitment under the WTO on TRIPs and international best practices. It has been informed by existing national development policies

including the Shared Growth Development Agenda, the National Cultural Policy, the National Drug Policy, the Private Sector Development, the Industrial Policy and the Science and Technology and Innovation Policy among others. The situational analysis of IP regime in Ghana in regard to strengths and weaknesses of IP system is current legislation on IPRs whereby existing laws are inadequate and need revision to aim for high standard of IP protection and between 2003 to 2006 some laws were amended and updated.

Kenya is a monist country like Namibia. It is more advanced and better among developing countries in terms of active Science and Technology Institutions (Universities, national and international research centres). IP compared to Sub-Saharan Countries per say is better in Kenya. The policy of Kenya has addressed existing inadequacies in area of public awareness, training capacity, enforcement, preservation, ownership. It will control IPRs in newly created information or knowledge based seeks to provide guidelines for optimum usage of IPRs and contribute to growth of the country. In the 1970s, Kenya lost out on profit accruing from their traditional knowledge of the *Maytenus Buchananii* plant from Shimba Hills of Kenya in the Digo community was collected by US National Cancer Institute (NCI).

In Kenya a draft of IP is also in place and a steering committee was constituted by Ministry of Trade and Industry, Attorney General's Chambers and Ministry of Agriculture on the development of National IP Policy. This committee advised and

assisted the Ministries in development of nation framework for IP policy. Different stakeholders had an opportunity to give their inputs and there was a consensus between all the parties involved in the developing of the IP policy. There was assistance from WIPO, ARIPO and WTO in terms of technical assistance, financial support for the government, judicious urgency, legislation, human institutional and infra-structural capacities, detailed assessment in existing agreements and policies.

It has been noted with considerable satisfaction that one of Namibia's tertiary institution has initiated a process to craft an institutional IP policy that could be used as a yardstick for the same initiatives by other tertiary and research institutions. In spite of the above developments by that particular tertiary institution, the fact still remains that Namibia as a country does not have a national IP policy in place. Nevertheless, the researcher believes that the initiative by the above-mentioned tertiary institution could be a useful starting point that could successfully benefit policy makers when formulating a national IP policy.

The formulation of the national policies in Namibia has its strengths and weaknesses.

The strengths include but not limited to the following:

- Policy formulation is centralised under the Office of the Prime Minister while policy identification and preliminary formulation is decentralised;

- All policies are linked to the country's development agenda which include IP;
- At least one of the tertiary institutions has initiated a process of formulating an institutional IP policy, which could be used as a yardstick for policy makers to formulate a national IP policy in future;
- Namibia is a monist country, same as Ghana and Kenya which have been used as benchmarks for the purpose of the study, denoting the fact that any international conventions, treaties or protocols that the country accede to are automatically adopted at national level.

The weakness in this regard, is that Namibia is yet to formulate a national IP policy that is needed to guide and direct most of the country's national development agenda.

4.4 Management of IP assets in Namibia

Participants were tested on the arrangement of IP assets management in Namibia which are currently placed under different ministries as their core functions. The main purpose of this particular question was to find out whether the current arrangement is suitable for effective IP management. About 98% of the participants disapprove the current arrangement giving the following reasons:

- IP managements works better when handled by experts on the subject matter through one focal point;

- It makes IP management ineffective when functions are scattered all over the place;
- Namibia seems to be doing things in isolation from the rest of the world as IP assets in other industrialisation aspiring nations are coordinated under one roof.

Namibia has adopted the monist through Article 144 of its Constitution. Thus, the implication of ratification by Namibians is that the international and IP law become binding upon Namibia and in effect become part of the laws of the country. The term *monism* is used to describe the approach that a state applies international laws in its domestic or national system whereby such international laws do not need to be translated or converted into national law due to the act of ratifying an international treaties, conventions, protocols immediately incorporate that international law into national law. Article 144 of the Namibian Constitution states: “This denotes that all IP rights instrument ratified by Namibia are directly applicable in Namibian legal system. International law is automatically applicable within Namibia legal system”. Being a monist country, international law is superior compared to national law.

In 2011, Namibia’s upper house of Parliament the National Assembly passed the Industrial Property Act. The Act seeks to repeal the colonial South West African Trade Marks Act. The Patent, Trade Mark, Industrial Designs, are protected under Industrial Property Act. Due to apartheid regime Namibia has been denied of modern

IP law. Most of the laws are out-dated and need to be reviewed and amended due to new advancement technology or current digital era and international law harmonisation. For instance, Namibia has right to protect the devil's claw , marula, ximenia melon, hoodia, commiphora (Namibian myrrh) and get benefit sharing with other African Neighbouring countries such as South Africa and Botswana. The Swakopmund Protocol was passed and to protect Indigenous Knowledge (IK) or Traditional Knowledge (TK). This Protocol applies to all English speaking countries member state to African Regional Intellectual Property Organisation (ARIPO).

Conversely, the researcher feels that the Ministry of Trade and Industry should be commended for good initiative of establishing the Business and IP Authority (BIPA) which would serve as a one-stop-shop for all IP assets management activities in Namibia. However, it is felt that more investments should be committed to ensure that BIPA is at the level where it can communicate and liaise with relevant regional and international IP bodies such as ARIPO and WIPO. That is only possible where the offices are automated and well equipped with the necessary ICT infrastructure, capacity in terms of human capital and resources. The automation of these offices would not only facilitate the communication aspect but also the coordination of the IP offices and assets management approach. Coupled with the automation of relevant IP offices should be the introduction of the IP education, preferably at tertiary institutions which produce graduates that are ready for the job market.

The situation in this regard at the present moment in Namibia is such that only one tertiary institution provides some IP-related subjects as bridge courses. It is therefore the researcher's view that the above-mentioned bridge course should be developed in educational curriculum in such a way that they are suitable for IP interested candidates, professionals and agents in the IP fraternity. It is through the provision of IP training to the IP professionals and agents that the protection and enforcement of IPRs could be effectively implemented. Effective protection and enforcement of IPRs would be expected to run effectively and efficiently when those who are implementing it are in the know. Outreach programmes that are regarded as effective tools for IP awareness could be carried out through focal points that are manned by well-trained IP professionals and agents.

It could therefore be concluded that the establishment of BIPA which is mandated with the management of industrial property assets is a notable strength of the Namibian IP system and in deed, a step in the right direction. On the contrary, the management of all other IP assets such as biodiversity, copyright and genetic resources are placed under different public institutions, which renders the process of creation, management, protection and enforcement of IP assets virtually ineffective.

4.5 Existing national policies in Namibia and their linkage to the subject matter

It was observed that more than 85% of the target population agreed that the existing policies are in line with most of the government objectives. However, the same

population samples felt that IP does not feature prominently in most if not all national policies, except in isolated public institutions that deal directly with the subject matter on a daily basis. The general feeling among the participants was that the popular *Vision 2030* is unrealistic, especially taking into consideration the fact that 24 years have gone by since 1990 when the country attained independence, but little development is noticeable in terms of the country's roadmap and the pace at which it is moving towards industrialisation. However, the researcher is of the opinion that the Namibian development policies such as the *Vision 2030* mentioned above should encompass the relevant regional and international bodies that are viewed as possible catalysts for national development.

About 15% of the population which is most representative of the general public are of the view that while the popular *Vision 2030* was a good initiative from government, it will remain but a dream unless revamped to strengthen its implementation capacity and monitoring strategies.

4.6 Participants' general comments on the subject matter

Participants were requested to provide general comments on the subject matter after having responded to individual questions on the questionnaire. Different findings and observations that came out were analysed as follow:

- Participants felt that IP education should be introduced at tertiary level of education, which would be viewed as a possible strength;

- Capacity building for IP professional should be encouraged and the necessary resources thereof should be sought to strengthen the national IP system;
- Government should formulate a national IP policy as a matter of urgency to direct and guide all IP-related activities;
- Stakeholders must be involved in policy formulation and that all policies should be linked, in one way or the other, to IP creation, management, protection and enforcement;
- Public awareness campaigns should be carried out throughout the country so that many stakeholders and the public at large are aware of the importance of IP;
- Existing collective management organisations (CMOs) should be empowered and supported to effectively implement statutory requirements of relevant legislations in the absence of IP policy framework.

Conclusion

In summing up this chapter, the researcher looked analytically at the data presented and collated various arguments with the current state of affairs in terms of the IP system in Namibia. Various proposals on policy formulation as well as suggestions as to which public institution should lead the way in that regard were received.

While many participants agreed that the Office of the Prime Minister is well suited for policy formulation, many believed that the OPM should still do more in terms of monitoring and assessment of different national policies.

After careful scrutiny of the findings herein, the researcher has formulated relevant recommendations based on the capacity, infrastructure, resources and political willpower of the Namibian nation as a whole to realise its dream of industrialisation. One of such recommendations is the encouragement of further IP research initiatives that could be used to enhance economic development of Namibia as a country. The recommendations mentioned above are outlined in the next chapter.

CHAPTER V: SUMMARY, CONCLUSION AND RECOMMENDATIONS

Introduction

This chapter aimed at summarizing the research findings, the statement of the problem, objectives of the study, the research questions, the related literature review, and the research methodology, findings of the study, conclusions and provision of relevant recommendations.

The study has looked at the situation analysis of the IP system in Namibia, identifying its strengths and weaknesses, review progress in system of selected African countries and made recommendations to the Namibian policy makers for IP policy development. The data was gathered from both primary data and secondary sources.

5.1 Key findings and observations

5.1.1 IP knowledge

The participants are knowledgeable on IP and know what the subject entails.

5.1.2 More investment should be made to automate all IP related offices

It would necessitate the effective communication between government and international and regional IP organisations such as ARIPO and WIPO.

5.1.3 Intellectual property rights

Most of the right holders are not aware of the exclusive and other rights entitled to them through the available IP legislations.

5.1.4 Capacity, infrastructure and resources are lacking

Necessary automation, relevant ICT and infrastructure are needed.

5.1.5 Advance IP system

The IP legislations available in Namibia are adequate and institutional support mechanisms are in place.

5.1.6 Coordinated approach to IP assets management

The IP assets should be managed by experts on the subject matter and ensure effective and efficiency of the IP system.

5.1.7 Create linkage with international and regional level

Through creation of linkage with international and regional bodies it will elevate the country to international required standards and be in a better position to request for technical assistance.

5.1.8 Policy formulation

The office responsible for policy formulation is the OPM. Other public offices initiate their own policies but the OPM plays a crucial role of monitoring their implementation strategies to ensure that they tie in well with government objectives.

5.1.9 IP does not feature prominently in most national policies

IP should be interlinked with national policies to achieve government objectives. In essence, this means that all institutions should align their core activities with those of government objectives.

5.1.10 IP education

Only one tertiary institution provides some IP-related subjects as a bridge course.

5.1.11 Formulation of national IP policy

There is no national IP policy in Namibia and as the country is geared towards industrialisation to achieve the goals of *Vision 2030*, a national IP policy becomes imperative.

5.2 Summary and conclusion

It was observed that most of the literature review has supported the findings of the study. As stated in Article 144 of the Namibian Constitution states, all IP rights instrument ratified by Namibia are directly applicable in Namibian legal system. International IP laws are automatically applicable within the Namibian legal system as a result Namibia's accession to international convention, treaties and their protocols. Therefore, the IP system in Namibia is satisfactorily advanced.

5.3 Recommendations

Recommendations by the researcher after an analysis of the data collected are as follows:

5.3.1 Creation of IP and enhance generation of IP assets through promotion of creativity and innovation

Namibian government shall empower, motivate and reward its nation for creating Intellectual Property capital. National Innovation System should be supported and promoted by the government.

5.3.2 Formulation and implementation of a national IP policy

The IP policy should be develop to guide the nation at large hence moving towards industrialisation country and knowledge based economy. Furthermore, IP policy with in IP related institutions such as Universities, Vocational, Research Institutions, and so forth should be developed. Through the establishment of National IP policy,

a steering committee and consultants are needed from different stakeholders who are experts in the area of IP. The consultants should be facilitated by the steering committee appointed. Monitoring and Evaluation of the IP policy should be encouraged and done by independent institutions that are experts in the field of IP. Promote linkages and integration of IP policy development to overcome shortcomings. The formulation should integrated development objectives and not only be defensive by minimizing cost of introducing IP protection in different area. New modalities should be explored and established to respond to development needs. Lastly commitment to formulate a national IP policy by government can use Ghana and Kenya as benchmark for development of Namibia's IP system.

5.3.3 IP offices should be coordinated and encourage advocacy

Currently industrial property is under Ministry of Trade and Industry and copyrights is under the Ministry of Information, Communications and Technology. While biodiversity, genetic resources are also placed under different public institutions. The statutory IP institutions should be more pro-active in advocating IP-related matters to all corners of the country.

5.3.4 Effective protection of Intellectual property rights

IPRs should be protected through adequate legal, administrative and institution framework to achieve efficiency and high standard. There's need for a detailed review of the law and for gaps in harmonisation with regional and international

level. Align our law with emerging market and remedy the provision of the laws that have over time become obsolete. Benchmark and suggest possible amendments into the legislation.

5.3.5 Effective enforcement of IP legislations

Enforcement shall be enacted and reviewed according to emerging issues at national, regional and international level. Acceding to international treaties, protocols, conventions, and agreement should be at Namibia's best interest at heart. Adequate strong cross-border measure should be encouraged to reduce IP crimes and remedy the situation.

5.3.6. Adequate resources (funding, human, and infrastructure) and technical assistance

Support from the government to enhance capacity building of all national IP offices and any other related IP institutions. Need adequate administrative to promote IP and support commercialisation of IP assets through economic development. Establishment of infrastructure such as business incubation, industrial parks, and so forth. Introduce issues of IP in public procurement. Technical assistance can be requested from WIPO and ARIPO. Collaboration and strong linkage needed between the Universities, vocational, industries, and research institutions should be encouraged so that research product can be used by the public. IP Services Industry should be developed and facilitated through the establishment of IP business service to offer an array of services.

5.3.7. Operation of CMOs

The operations of the two CMOs in Namibia, NASCAM and NAMRRO should be reviewed regularly to provide clear guidelines to the rights holders and the end users to ensure that they are key catalysts for promoting and rewarding creativity of the inventors. The general public should also be educated on IP issues so as to start recognising and appreciating national creativity in all fields of IP.

5.3.8 IP education, awareness and focal points

IP education should be developed in educational curriculum to be suitable for IP interested candidates, professionals and agents. Sustain the standard use of IP system through increased outreach programs/plans and awareness campaigns. While focal IP points are needed at Universities and IP related institutions, and in the government offices.

5.3.9 Human resources capacity, practices of IP professionals and agents

Development of human resources capacity in IP by introducing IP courses at tertiary level, not only for law students but for any other student specifically in faculties of humanities, business and science and technology fields. Capacity building through offering of more IP trainings to enhance IP knowledge and expertise. Practices of IP professionals and agents should be formalised. The government should regulate the certification and practise of them. Finally training should not be limited only to lawyers.

5.4 Recommendations for further IP research initiatives

IP studies can be used for the enhancement of economic development in many developing countries including Namibia. The researcher therefore recommends that further studies be encouraged in the field of IP so as to continue where this specific study has ended and subject becomes as popular and respected as other subjects used in the process of economic development.

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APPENDIX 1

QUESTIONNAIRE

Selma Alfeus

Student Number: 130092

Africa University, Mutare, Zimbabwe

Dear Prospective Participant,

You are kindly and humbly requested to participate in my study by completing this questionnaire from your own perspective. Kindly answer all the questions. You are ensured that all the answers you will provide will be treated highly confidential and used solely for academic purposes. It is not compulsory to provide your real name but kindly give information regarding your institution.

THE RESEARCH TOPIC FOR THE STUDY IS:

***“AN ANALYSIS OF NAMIBIA’S INTELLECTUAL PROPERTY SYSTEM FOR
POLICY DEVELOPMENT”***

SECTION I

PARTICULARS OF THE RESPONDENTS

Full name and gender:

.....M:.....F.....

Company/Institution:.....

Age group: 25 – 35..... 35 – 45..... 45 –
55.....55 Up.....

Education Level:

Grade 12:..... Diploma:..... BA-Degree:..... Masters
Degree:.....PhD:.....

SECTION II

KNOWLEDGE OF THE SUBJECT MATTER

1.1 In your view, what does intellectual property (IP) entail?

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1.2 How do you understand the term “Policy”?

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1.3 What, in your view, is the level of Namibia’s IP system at the present moment?

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1.4 Which Government institution is responsible for policy formulation in Namibia?

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1.5 Government Ministries/Universities/Research institutions should initiate and formulate their own policies as per individual institutional needs without any involvement from central government. Do you agree or disagree with the above statement? Motivate your answer.

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1.6 Which, in your view, could be the alternative Government institution to be responsible for policy formulation and why?

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1.7 In Namibia, Copyright (literary, artistic, dramatic works & traditional knowledge) is under MICT. Industrial property (patents, trademarks, industrial designs) fall under MTI. Biodiversity and genetic resources (plant and animal variety) fall under MET. Is this, in your view, the perfect arrangement in terms of systematic approach to intellectual property (IP) management?

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1.8 Mention any two national policies in place in Namibia that are linked closely to economic development.

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SECTION III

GENERAL COMMENTS

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THANK YOU VERY MUCH FOR YOUR COOPERATION AND SUPPORT!!