

THE USE OF INTELLECTUAL PROPERTY IN THE PROTECTION OF ARTS AND  
CRAFTS IN ZIMBABWE

BY

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## ABSTRACT

*This research sought to establish the extent to which the current intellectual property protection regime is effectively used in the protection of Arts and Crafts, as cultural products, in Zimbabwe. Such products resulting from the creations by craftsman and artists deserve protection and the creators of works indeed must benefit economically from their works. This study therefore sought to try and bring the issue of protection to both the artists and the relevant stakeholders and to come up with a properly crafted system of ensuring that the works are protected in a manner that will benefit both the artists in particular and the country in general. Interviews, focused group discussions and document analysis were the data gathering methods that were used to collect data. In this study, 72 artist and 71 craftsmen, 12 government officials and 7 administrators of advocacy groups participated during the interviews. Interview guides and questaviews, were used as research instruments. The documentary review method was also used to establish the extent to which the laws and statutes provide protection to cultural products. The study revealed that the majority of artists and craftsmen are not fully aware of their rights, and furthermore, are not aware of the existence of the provisions of the statutes that provide them with intellectual property rights. On the other hand, the study also revealed that some of the government officials were naturally reluctant to provide a platform for intellectual property rights awareness, but instead focused more on promotion than protection of cultural products. This study recommends the current protection regime is not adequate for the protection of cultural products. Therefore, there is need for a comprehensive national strategy within the framework of cultural and economic development, and this can be fully achieved through the adoption of a special kind of protection for these products, a sui generis system of protection that takes into account cultural products' economic importance, against the background of concerns raised by the majority of the participants in this study. Finally, it is also recommended that a model called COINDTRAM Model be used and further research be undertaken in order to establish how best this model can be tailor-made to offer a more comprehensive and all encompassing kind of protection for cultural products in Zimbabwe.*

## 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.

STUDENT ..... DATE .....

Signature

SUPERVISOR ..... DATE.....

Signature

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## **DEDICATION**

This research is dedicated to my wife, Dudu, and the entire MIP 6<sup>th</sup> Cohort.

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## **CHAPTER 1**

### **1.1 Introduction**

A great deal of skill, creativity and ingenuity is involved in the production of arts and crafts. Crafts are goods or products made of diverse materials. In visual arts, the artist uses various elements, form or material to express ones' feelings and emotions as well as own perception of the environment around him or her. Such products resulting from the creations by craftsman and artists deserve protection. These creators of works indeed must benefit economically from their works. It is the focus of this study to try and bring the issue of protection to both the artists and the relevant stakeholders. In other words, to come up with a properly crafted system of ensuring that the works are protected in a manner that will benefit both the artists in particular and the country in general.

Chapter one focuses on the background of the study, statement of the problem, objectives of study, research questions, importance, /significance of study, theoretical framework, limitation of the study, delimitation, definition of key terms and finally the summary to sum up the chapter.

### **1.2 Background to the study**

Zimbabwe has a very rich cultural heritage as evidence by the vast presence of Arts and Crafts all over the country. It can be observed that Arts and Crafts have contributed

significantly in building Zimbabwe's image. It also emerged that Arts and Crafts have over the years proved to be a viable and vibrant industry which is also considered as one of the country's top foreign earners.

Zimbabwe is generally known for its indigenous Art and Craft, particularly the renowned Tonga/Binga basketry and Shona stone sculpture. The arts and craft as an industry on its own have allowed rural and urban people to express themselves creatively, and as a means to earn a living. (Musundire, 2011)

In order to promote and develop the Arts and culture industry, the government came up with a cultural policy. The policy intends to harmonize both the government and the private sector towards the promotion of a vibrant cultural industry. In other words, the major thrust of the policy is to give direction to development efforts being undertaken by all stakeholders in the promotion of the arts and cultural sector in the country.

The researcher realized that in Zimbabwe, there are quite a number of artists and crafts persons who are being prejudiced because they do not know their intellectual property rights. The major issue is that people who buy the products and then display them or make copies of such without even acknowledging the creators of the original work is worrisome. Furthermore, the originators have no economic benefits from their skill and judgment. It is against this background that most works are not protected and in the majority of cases, the artist and craftsmen do not have a full knowledge of their intellectual property rights, (IPRs)

This research shall focus on copyright protection of the arts and crafts works. As postulated by Kroeck (2012), a work is automatically protected by copyright when it is created, that is, “fixed” in a copy or phonorecord for the first time, nor publication is required for copyright protection. There are, however, certain advantages to registration, including establishment of a public record of the copyright claim.

Chron (2011) asserts that Copyright law protects any work of original expression as soon as that work is fixed in a physical medium. This means that as soon as you create a craft it is technically protected by copyright law. The protection, promotion and development of the Arts and Cultural Industries can only enhance the capacity to create new jobs, generate income and increased inflows of foreign currency if it is based on a clear policy.

### **1.3 Statement of the problem**

Arts and Crafts industry is one of the top earners of foreign currency in Zimbabwe. Across the country, the artists managed to form some cooperatives in order to produce and market their works. The problem is now on how best can their works be protected?

### **1.4 Objectives of the study**

The study seeks to:-

1. Identify challenges encountered by artists and craftsmen in seeking protection of their works.
2. Establish the importance of arts and craft as an industry capable of contributing significantly to the gross domestic product (GDP) of the country.
3. Establish attitudes of the government and other relevant stakeholders in the promotion of intellectual property protection of the artists and craftsmen's works.
4. Promote the socio-economic and moral values of the artists and craftsman.
5. Identify the best kind of protection for the artists and craftsman.

### **1.5 Research questions**

1. What are the factors militating against IP protection in the creative industry (Arts and Crafts) in Zimbabwe?
2. How can the country establish the importance of Arts and Crafts industry and make it a viable foreign income earner?
3. How best can the government and relevant stakeholders promote the cultural industry in the country?
4. What can be done to promote socio-economic and moral values of the artists and craftsman?



5. What kind of protection best suit the artist and craftsman's works?

## **1.6 Significance of the study**

The study would help the researcher to come up with the appropriate and suitable intellectual property protection for the artists and craftsman's works that would benefit the country in general and the artists in particular. Through this study, artists would also be in a position to engage all the relevant stakeholders towards the promotion and development of their protected artworks.

The government on the other hand, should enact regulations whose aim is to prevent the sale, importation, exportation, reproduction, adaptation, and other such forms of exploitation of, distortion, mutilation or other modification of, or other derogatory action in relation to, and the acquisition by third parties of IP rights over such works created by the artists.

## **1.7 Assumption of the study**

The study is based on the following assumptions:

1. There are some enacted regulations that were put in place to protect artists' works within the national legal system of Zimbabwe.

2. Artists are not aware of the rights conferred by the statutes towards protection of their works.

### **1.8 Scope of the study**

There is real need for the protection of intellectual property in promoting arts and crafts in Zimbabwe rather than to draw much attention towards promoting of such works. Zimbabwe is able to produce and market handmade crafts, traditional textile designs, traditional music, and other forms of traditional representations and entertainment across the globe. The fear that cripples the industry is centered on IP protection. The Copyright and Neighboring Rights Act Chapter 26:05 and Regulations in Zimbabwe is one instrument that was instituted to protect intellectual property of the artists.

Artistic works are protected irrespective of their artistic quality. It is important to note that the work must be original. However, to qualify for protection.

Therefore what is of critical importance is that there is need to sensitize the artists of the intellectual protection available to their artworks. There is need for them to understand what their rights are as well as the available exceptions and limitations that goes with their works.

There is need to come up with the best possible ways of protecting their works using copyright laws. (Reference to be made to International treaties: WPPC, WCT, TRIPS Agreement and The Berne Convention)

## **1.9 Limitations of the study**

In conducting the study, the researcher might encounter problems like shortage of time and lack of co-operation from fellow staff members at the National Intellectual Property Office and other relevant stakeholders.

## **1.10 Delimitation**

The study is mainly confined to the Zimbabwe situation and within the Cultural industry where Arts and Crafts are found.

## **1.11 Definition of key terms**

Best and Khan (1993) and Leedy (1993) point out that definition of key terms serves to convey the meaning of terms as they are used in the research. Intellectual property,

copyright, arts and crafts and handicrafts are terms to be defined, as they are peculiar to this study.

*a. Intellectual Property*

Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works.

*b. Copyright*

Is a set of exclusive rights regulating the use of a particular expression of an idea or information and these rights are of limited duration. Copyright literally means the right to copy. Copyright is an internationally accepted form of intellectual property law.

*c. Art*

Art is a diverse range of human activities and the products of those activities; this research shall focus primarily on the visual and performing arts

*d. Craft*

A craft is a pastime or a profession that requires some particular kind of skilled work

*e. Handicraft*

Handicraft is the traditional main sector of the crafts; it is a type of work where useful and decorative devices are made completely by hand or by using only simple tools.

*f. Artistic Works*

Artistic works generally include paintings, drawings, sculpture, and works of Artistic craftsmanship, performances, architectural works of art, engravings and photographs.

## **1.12 Summary**

The chapter focused on introduction, background to the study, statement of the problem, objectives of the study, research questions, and the theoretical framework, assumptions of the study, limitations of the study, delimitations of the study and definition of key terms. In the next chapter, literature related to the problem under study is going to be reviewed.

## **CHAPTER 2**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

This chapter seeks to identify knowledge gaps between existing literature and current research topic and to establish a means through which knowledge gaps can be fulfilled. It also explores literature related to the problem under study. A summary of the highlighted points will hem the chapter.

#### **2.2 Related Studies**

Maonera (2007) asserts that Zimbabwean intellectual property-related legislation is also relevant to the protection of cultural products that have value as intellectual property. The Copyright Act provides copyright protection for literary and artistic works that include paintings, sculptures, drawings, engravings and photographs; works of architecture, being either buildings or models of buildings, or works of craftsmanship.

In the same vein, Maonera (2007) further propounds that in spite of the potential economic value attached to these product, are hardly protected, researched and rarely

feature in national economic statistics of the country. Therefore something has to be done since there is usually no inventory, management, conservation and related research as far as protection of these valuables is concerned.

In their study, Mandewo and Khalfan (2010) assert that although it is apparent that Arts and Crafts are protected by laws, the creators of such works are not aware of that legal possibility. They propound that from the lessons learnt in Zimbabwe, Tanzania and Egypt, the prevalence of ignorance among the creators of such works and the protection of Arts and Crafts is simply a matter of blueprint phenomenon which in reality nothing has since materialized.

In relation to this study, Mandewo and Khalfan (2010) were however quick to adopt the dimension of protection from the angle of using Zimbabwe's Industrial Designs Act 26.2 of 1996. This avenue, as can be observed, will actually create a gap for the protection of other such forms of works, like the performing arts, which does not necessarily require protection under the Industrial Design Act. In other words, Industrial Design is not just but enough to offer protection for Arts and Crafts. Therefore this study would like to explore further from this angle in order to offer a more comprehensive kind of protection for the Arts and Crafts.

One of the most significant studies as far as misappropriation and exploitation of indigenous people' is that of the Aborigines' indigenous artistic works. For a long time now, there have been a lot of cases involving third parties exploiting indigenous peoples' designs without authority, acknowledgement or even benefit-sharing. The case

in Australia, *Milpurrurru v Indofurn Pty Ltd* (1995), known as the 'Aboriginal carpets case' can be considered as one of the cases that heralds positive protection from misappropriation. (Wiseman, 2010)

There are several avenues that actually exist for the protection of intellectual property rights of indigenous artists. As learnt and observed, arts and crafts protection are compatible with existing legal frameworks of copyright, trademarks, and industrial designs, but the protection is currently inadequate under these provisions, (Scott , 2006). The fact remains and the question floats; is the protection adequate to fully protect the indigenous people's arts and crafts?

The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous People (1993) noted that existing protection mechanisms are insufficient for the protection of Indigenous Peoples Intellectual and Cultural Property Rights.

Hollowell-ZimmerJulie (2012) heralds concerns raised by Alaska Native artists about intellectual property rights in the protection of their works. Hollowell-ZimmerJulie (2012) also argue that the current copyright law is inadequate in protecting indigenous cultural property of the native people of Alaska

On the same point raised above, Schussel, (2012) postulates that despite the exclusive rights conferred by the Copyright Act, there are several exceptions. One of the exceptions is that of fair use, which allows certain privileged uses in situations where the



public interest in access to a work outweighs the interest in protecting the work under copyright law. Therefore, Alaska Native artists sought to establish protection of their work through self-contained sui generis statutory schemes, deviating from the existing framework.

### **2.3 International Instruments**

Artistic works are protectable subject matter through Intellectual property regimes. The legal framework of intellectual property is covered by various international instruments. The Berne Convention for the Protection of Literary and Artistic Works was formulated in 1886, and has been subject to several revisions. The scope of subject matter under this Convention is literary and artistic works, which is interpreted broadly to embrace any production in the literary, scientific or artistic domain. There is also the Paris Convention (1883) and the TRIPS Agreement (1994) The WIPO Performances and Phonograms Treaty (the WPPT) protects performances of literary and artistic works or expressions of folklore. WIPO Copyright Treaty (the WCT, 1996) This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention. It is interesting to note that Zimbabwe is a signatory to all the above treaties and conventions.

### **2.4 Summary**

To many communities in Zimbabwe, the cultural products actually are reliable sources of income. The apparent convergence of the findings suggests that people make a good living out of arts and crafts. The knowledge of creating such works is handed from generation to generation. Some families will be known for their crafts and have made a name out of it. The economic value of such products has to be tightly secured to curb unfair and inequitable use. The problem of misappropriation and exploitation has to be harnessed so that these people yield something out of their creativity. The next chapter is going to focus on the methodology used in data gathering in this research.

## **CHAPTER 3**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

This chapter discusses the research design and research methodology that were used in the research. The chapter also discusses the research design, population, sample, the sampling procedure, and research instruments that were used in this study. The methods used in data collection are, interviews, focused group discussion and document analysis. A detailed discussion on each technique is given below in relation to its use in providing a comprehensive structure for understanding different kinds of protection regimes available for arts and crafts in Zimbabwe. The researcher referred to both research methods; qualitative and quantitative, but used mainly the qualitative research technique to collect data.

Qualitative design permitted the researcher to seek an explanation and interpret rather than to measure the evidence as revealed by this study. This allowed for a proper investigation into the attitudes of the artist and craftsmen and actions intended. Schon, (1991) accentuates that qualitative researchers are basically concerned with participant perspectives. Qualitative design provides the opportunity for the researcher to actually

observe feelings, attitudes, self- knowledge and even emotions as expressed by the respondents. Pascal, (2006) asserts that a research design develops the procedures and techniques for collecting and analysing data. Thus the focus was on what the participants said about protection of their work and what they also did to ensure that their works are protected.

### **3.2 The Research Design**

Creswell (2009) define a research design as overall plan for obtaining answers to questions being studied. The research design is essentially the architectural backbone of the study.

McNiff and Whitehead (2005) argue that when designing the study, the researcher will specify which specific design will be adopted, and what controls will be used to minimize bias and enhance interpretability of results.

Creswell (2009) postulates that the research design is a blueprint for a research that deals with and answer the four questions of; which questions to study, which data are relevant, what data to collect and how to compile the results.

The study is largely qualitative because of its nature and scope and it follows the practical approach. Kemmis and McTaggart (1990) assert that the practical approach involves the researcher and practitioner coming together in order to identify potential problems, underlying causes and possible solutions or interventions.

For this research study, a descriptive survey was also used. As put forward by Creswell, (2009) a descriptive survey typically seeks to ascertain respondents' perspectives or experiences on a specified subject in a predetermined structured manner.

On the other hand, Kemmis, (1988) argue that descriptive survey is designed to describe the characteristics or behaviors of a particular population in a systematic and accurate phenomenon. Hale, (2011) also says that a descriptive essay focuses on the behavior of the respondents so that the researcher can make an informed decision.

A descriptive research is thus used to get information concerning the current status of the phenomena to describe, "What exists" with respect to variables or conditions in a given situation (Hale, 2011).

The researcher adopted the survey method because of several merits attached to it. Generally, at surveys are relatively inexpensive, especially self-administered surveys. Surveys are very useful in describing the characteristics of a given large population and no other method of observation can provide this general capability. The other merit is that there is flexibility at the creation phase in deciding how the questions will be administered, especially during the face-to-face interviews. This results in the researcher getting highly reliable responses, for example from the attitudes, values, beliefs, and behavior.

### **3.3 A case study**

Case studies focus on some contemporary phenomena by studying a single instance of the phenomena. In other words, case study gives an opportunity for one aspect of a problem to be studied in some depth with a limited scale. Stake, (2010) concurred with the above statement adding that a study is a detailed examination of one setting, or a single subject, a single depository of documents or one particular event. This study basically focused on cultural products protection regime in Zimbabwe.

As explained by Shaughnessy and Zechmeister (1995) a case study method has an advantage that it can be used to study even rare phenomena. It is well known that protection of intellectual property is not a rare phenomenon, the issue of copyright protection of arts and crafts, especially in less developed countries such as Zimbabwe; operationalization of international statutes is seen to be lagging behind. Those artists the researcher interviewed professed ignorance of any existence of intellectual property rights which they rightfully have over their works.

Although there is relevant legislation in Zimbabwe towards the protection of cultural products, and also coupled with the fact that Zimbabwe is also a signatory to some of the said international treaties, the majority of artists are not aware of their rights.

### **3.4 Population**

Creswell, (2009), defines a population as any group of individuals that have one or more characteristics in common and that are of interest to the researcher. In this study, the population of interest comprised artists and craftsmen. As explained by Golafshani, (2003) a population can be any group of individuals that have one or more characteristics in common that are of interest to the researcher. There are many arts and culture organizations and associations working to advance the state of the Zimbabwean creative sector. The researcher selected respondents from members and non members of advocacy groups and associations that advance the interests of the artist. Therefore, in this study, the target population is made up of administrators, artists, craftsman and informed users who are also interested parties throughout seven out of the ten provinces of Zimbabwe.

### **3.5 Sample**

This is a representative of a whole and was selected based on its reflection of the characteristics of the total population that are judged crucial to this study. Lancy, (1992) is of the view that a sample is a set of respondents selected from larger of population. Therefore, a sample is a subset of subjects of a population that is to be studied. In this study, it is a finite part of a statistical population whose properties are studied to gain information about the whole.

### **3.6 Sampling procedure**

In order to understand the theoretical framework, this study largely used the cluster sampling in data gathering. Two types of cluster sampling methods were used. First there was one-stage sampling. All of the elements within selected clusters were included in the sample. Then secondly, the two-stage sampling was also used. This means that subsets of elements within selected clusters were randomly selected for inclusion in the sample.

Pascal and Yves (2006) state that a sample procedure includes the selection of a sample size, which is the number of subjects and the development procedures for recruiting subjects. Lancy, (1992) views sampling procedures as organizing the population into homogeneous subjects and randomly selecting the appropriate number of elements from each set. In this research, probability sampling was used. Pascal and Yves (2006) further explain that the probability sampling approach for research methods gives each element a known chance of being included in the sample. This method is closer to a true representation of the population. Generalizations that come from it are more likely to be closer to a true representation of the population.

### **3.7 Permission**



The researcher sought permission to carry out the research in the province from the Ministry officials. The permission was granted by the Ministry of Higher and Tertiary Education, Science and Technology Development. A supporting letter from the Africa University was also issued to justify and clarify that indeed the research was to be carried out in partial fulfillment of the Masters in Intellectual Property degree programme under studied. The permission was granted without any problems at all. All the responsible authorities consulted were quite helpful and willing to co-operate.

### **3.8 Research Instruments**

Patton, (2002) is of the view that in research, data collecting tools are commonly termed research instruments. Kemmis and Taggart, (1990) regard research instruments as tools or measurements approaches used in collecting information and data needed to find solution to the problems under investigation. In this research, the questionnaire, structured interviews, and focused group discussions were employed as methods of data collection.

### **3.9 The Interview**

The interview method was used because this method can be used on everyone including the blind and the illiterate. It also enhances the quality of data through probing.

Interviews involve the collection of data through verbal interaction. As explained by Stake, (2010) an interview is a way of getting data from the respondents by asking them questions. The researcher was the interviewer and the participants were the interviewees. An interview was basically a suitable instrument for collecting data for this study. Kemmis, (1998) points out that interview enable respondents to express themselves freely and also enable the interviewer to observe non-verbal responses, personal reactions and respondent. In this respect, the interview was a two-person conversation initiated by the interviewer, for the specific purpose of obtaining relevant information.

Unstructured interviews were designed and used. Corbin and Morse, (2012) postulate that unstructured interview is an open situation having greater flexibility and freedom. Kemmis and Taggart, (1990) point out that the interviewer will have that opportunity to observe the participant as well as the total situation in which he or she is responding. As Kemmis, (1988) points out the research purpose governs the question asked, their content, sequence and wording are entirely in the hands of the interviewer. The interview also had open-ended questions.

However, one of the demerits of using unstructured interviews was that it posed some kind of limitations to the study. In other words, the information or data gathered depended on the willingness of the interviewees. Although the interviewer assured confidentiality, some were actually nervous. In some cases respondents gave responses according to how they interpreted the question. In such cases, the researcher used follow

up questions to get relevant data. Corbin and Morse, (2012) also suggest that in some cases the researcher may direct the response. They need considerable planning and this tends to involve a lot of personal time.

Seventy-two (72) artists and Seventy-one (71) craftsmen were also interviewed, including twelve (12) senior administrators; four from Ministry of Justice, Legal and Parliamentary affairs, four from Ministry of Home Affairs and four employed by the Zimbabwe National Arts Council. There are many arts and culture organizations and associations working to advance the state of the Zimbabwean creative sector. The directors from these organizations were also interviewed. For the purpose of this study seven (7) directors were interviewed.

### **3.10 Focused group discussion**

Nielsen (1997) stated that a focused group is a form of qualitative research in which a group people are asked about their perceptions, opinions, beliefs, and attitudes towards a product or service.

In this study, unstructured focused group discussion schedule was designed. Group discussion produces data and insights that would be less accessible without interaction found in a group setting. In this case, questions are asked in an interactive group setting where participants are free to talk with other group members.

In other words, focused group discussions help in listening to other's verbalized ideas and experiences in participants. Lindlof and Taylor (2002) posit that it directly involves the researcher as a result it helps the researcher to better handle the direction of the discussion and thereby improve the quality of the output.

As suggested by Nielsen (1997) when participants are stimulated to discuss, the group dynamics can generate new ideas. This will obviously result in a much more in-depth discussion that will solicit for more information. In a focused group discussion, every participant is under observation, so it is easy to make participants fully engaged in the activities.

On the other hand one of the disadvantages of the focused group discussion is that focused group discussion is not the optimal technique for all research situations. According to Creswel (1998), the researcher plays an essential role in handling the situation, but if the researcher is not experienced enough, it is very easy for the whole discussion to be dominated by a few people. In some cases, it is difficult to have participants share their real feelings towards some sensitive topics publicly, thus will influence the output of data possibly not in the manner desired.

For the purpose of this study, a total of fifty-eight (58) artists and twenty seven (27) craftsmen we involved.

### **3.11 Document analysis**

#### **3.11.1 National statutes**

The researcher also took time to go through all the relevant documents. The purpose was to establish the extent to which arts and crafts are protected in Zimbabwe.

- a. Zimbabwe Copyright and Neighboring Rights Act (2004)
- b. The National Gallery of Zimbabwe Act (Chapter 25:09)
- c. Zimbabwe Industrial Designs Act (Chapter 26:02)
- d. Zimbabwe Trademarks Act (Chapter 26:02)

#### **3.11.2 International treaties**

- a. The Bern Convention for the protection of literary and artistic works
- b. The TRIPS Agreement (1994)
- c. The WIPO Performances and Phonograms Treaty (WPPT) for the protection of performances of literary and artistic works or expressions of folklore.
- d. WIPO Copyright Treaty (WCT, 1996) This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention.

### **3.12 Data collection procedures**

An application letter to carry out a research, together with an introductory letter from Africa University was submitted to the Permanent Secretary in the Ministry of Higher and Tertiary Education, Science and Technology Development and permission to carry out the research was granted. Appointments and dates for the interviews were also set. The researcher was also cautious to keep to the time allocated for the interview. The interviewer did not also hold very long interviews. For recording purpose, the interviewer used both the video and the digital cameras. The researcher actually established a good rapport with his respondents and they give him the permission to do so. This was also accompanied by field notes on gestures and facial expressions.

### **3.13 Data presentation and analysis procedures**

#### **3.13.1 Data validation**

The researcher used two approaches, which is the process of triangulation and re-interviewing. Simply put, Guion, Diehl and McDonald, (2013) define triangulation as the use of more than one method of data collection within a single study. Triangulation encourages flexibility and added some reflective in-depth of interpretation. This study

used the interviews, focused group discussion as well as document analysis. The data that was collected using these instruments was compared.

When representing results for any said research, Stake, (2010) argues that the task is to give simple, clear and complete accounts of the results, without getting into an extended discussion of the meaning of the finding and without rehearsing all the information in the tables.

The researcher broke down the data inductively in a bid to explore the general and particular units of meaning displayed within them. Triangulation of data collected through interviews, focused group discussion and documents as well as field notes was done. The researcher also sort to unravel provisions in the international treaties together with what the national laws say about arts and crafts protection.

Each research question will be dealt with separately as reflected in the next chapter, in which data will be presented in descriptive statistical tables, because it will be comprehensively analyzed and interpreted. Data will be discussed descriptively.

### **3.14 Summary**

This chapter discussed the research methods and the research design. This research used both the qualitative and quantitative approaches in data collection and analysis. Cluster sampling was also used to select respondents. The methods that were used in data

gathering were the interviews, the focused group discussion and document analysis. The next chapter focuses on data presentation, interpretation, and analysis.



## **CHAPTER 4**

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

#### **4.1 Introduction**

This chapter focuses on data presentation, analysis and interpretation. The data was collected using interviews, focused group discussion and document analysis methods. The information received was matched with related literature. It will be discussed descriptively with accompaniment of some tables where appropriate.

Marcus and Meyers, (1995) points out that identifying and defining crafts and visual arts and their makers has long been a matter of debate. In fact, the distinction between crafts and visual arts has always been blurred. For the purpose of this study, arts and crafts have independent standing and market points, although they have a mutually supportive and interdependent relationship. It was also observed and noted that in some instance, other respondents were actually actively engaged in both sectors. Both sectors are culturally rooted, hence in this study the works produced by both craftsmen and artists are also referred to as cultural products. For the purpose of interviews, the two sectors were separated.

## 4.2 Gender of subjects

Table 1: Shows gender of the subjects interviewed under the Artists category, that is those in performance and those who produce visual works such as paintings

<b><i>Gender</i></b>	<b><i>Number</i></b>
Female	23
Male	49
<b>Total</b>	<b>72</b>

**Table 1: Gender of the subjects interviewed**

Table 2: Shows gender of the subjects interviewed under Craftsman category; that is those who produce handicrafts.

<b><i>Gender</i></b>	<b><i>Number</i></b>
Female	14
Male	57
<b>Total</b>	<b>71</b>

**Table 2: Gender of Subjects**

Table 1 and Table 2 above show that there were a group of mixed subjects, both males and females in this research.

#### 4.3 Representation by province

There are ten (10) provinces in Zimbabwe. Table 3 shows the representation by province of artists and craftsman interviewed.

Province	Females	Males	Total
Harare	10	23	33
Mashonaland East	5	14	19
Mashonaland Central	5	12	17
Mashonaland West	-	-	-
Midlands	-	-	-
Manicaland	4	21	25
Masvingo	6	11	17
Matabeleland South	-	-	-
Matabeleland North	4	13	17

Bulawayo	3	12	15
<b>Total</b>	<b>37</b>	<b>106</b>	<b>143</b>

**Table 3: Representation By Provinces**

Table 3 shows representation by provinces. It is noted that seven out of the total of ten provinces were represented in this study for the purposes of interview. A total of thirty-seven (37) females participated and a total of one hundred and six (106) males were represented. This difference in figures is as a result of participation in the cultural industry. There are more male players than females. Harare province has the highest number of both female and male representatives. The reason is that it is where most of the cultural activities are marketed and performed and done as an industry. Basically, the Harare province houses the capital city of Zimbabwe. So there is a hive of activities in the arts industry because of tourists, hence foreign currency.

This is followed by Manicaland province. The researcher realized that quite a number of craftsmen are found in Manicaland. This province is in the eastern side of Zimbabwe. Vast natural forests and woodlots are found there. The craftsmen are mostly into wood curving.

#### 4.4 Representation by Administrators.

Province	Females	Males	Total
Harare	2	2	4
Masvingo	2	2	4
Bulawayo	2	2	4
<b>Total</b>	<b>6</b>	<b>6</b>	<b>12</b>

**Table 4: Representation by Administrators**

Table 4 shows representation by administrators from the three provinces. These are Harare, Masvingo and Bulawayo. These metropolitan provinces, Masvingo and Bulawayo house the provincial headquarters while Harare houses the national headquarters. The researcher interacted and interviewed four officials from the Ministry of Justice, Legal and Parliamentary Affairs in Harare. Four administrators from the Ministry of Home Affairs were also interviewed; of which two were in Masvingo and the other two were in Bulawayo. Four administrators from the National Arts Council were all interviewed in Harare.

#### 4.5 Representation by directors from cultural arts/ cultural associations and civil initiatives.

The researcher also collected data from non-governmental organizations, advocacy groups and cultural associations using the interview method. To preserve the anonymity of people and organizations who have contributed to this study, codes have been used. Access to the names of those who contributed has been restricted to the supervisor and the researcher.

Organization	Province	Females	Males	Total
Advocacy Group A	Mashonaland West	2	-	2
Advocacy Group B	Midlands	1	1	2
Advocacy Group C	Harare	1	1	2
Advocacy Group D	Matabeleland South	-	1	1
<b>Total</b>		<b>4</b>	<b>3</b>	<b>7</b>

**Table 5: Representation by directors from cultural arts/ cultural associations and civil initiatives.**

Table 5 shows a representation by advocacy groups. These advocacy groups' mandate, as enshrined in their various mission statements, is to educate and empower art creators, promoters and consumers to defend the freedom to create; monitor, document and issue alerts on current censorship issues and violations on free creative expression; inform and influence judicial opinions, policy and legislation impacting on freedom of creative expression; and provide educational resources, training and legal aid to individuals and cultural organizations responding to incidences of artistic censorship. The researcher wanted to establish the extent to which these groups understand the terms of protection of arts and crafts under copyright and what their views were in terms of the current copyright protection regime.

The researcher analyzed data gathered from the interviews done with the artists, craftsmen, ministry officials and administrators in government as well as the directors of the advocacy groups. The questions asked were derived from the research questions, hence were almost similar to all the groups. However, responses varied as determined by the interviewee's background.

#### **4.6 What are the challenges faced by the artists as far as IP protection in the creative industry (Arts and Crafts) is concerned?**

From the responses given, it revealed that most artists are not aware of their rights as creators of work. Artistic creations are protectable subject matter through various Intellectual properties regimes currently in existence. However, complaints from some communities were noted when they expressed that their works and expressions and handicrafts are being used without their authority or even deference to them. The respondents said that they see their works displayed in some shops, but with a different label altogether and the buying price will be quite exorbitant. So in actual fact, the shop owners would have bought from the artists at a very low price, and after some minor defacing and inscriptions of a trade name, the articles become very expensive.

**4.7 Is the government able to establish the importance of Arts and Crafts as a viable industry that brings in foreign currency?**

From the responses given, it was noted that some artists perceived themselves not as business people but as highly creative artists. What they were worried about was on how they can improve on their craftsmanship to beat the one next door. The government instituted the Copyright and Neighboring Rights Act (Chapter 26:05) Artists have exclusive rights over their work. However, despite these exclusive rights, the Copyright Act contains several exceptions under permitted acts in relation to copyright. One outstanding exception is that of fair use that allows certain privileged uses in situations where the public interest actually outweighs the interest of the creator in protecting the



works. The understanding is that copyright is a bundle of rights including rights to absolute possession, to exclude others, and to dispose of property freely.

Respondents from the crafts specifically pointed out that the government was reluctant to provide them with decent shelter where they can work in. They expressed bitterness over the government's lack of sincerity and goodwill to promote the industry. So most of the craftsmen work under tree shed or temporary makeshift shelter made of a black plastic sheet supported by not so firm poles from indigenous trees. This was visible in all the provinces visited by the researcher. So it can be concluded that there is less value attached to this industry by the government, especially on shelter and marketing strategies.

#### **4.8 How do you see the government's efforts in promoting and protecting the arts?**

Some subjects explained that the government was doing literally nothing to promote the industry. The other subjects also confirmed that the government was heavily relying on efforts made by the business community and other no-governmental organization or nonprofit making organizations in promoting the industry. It was revealed that it is now the responsibility of these organizations to organize some annual and biennial functions

or shows where artist whose works are nominated as the best work in a respective category will receive some awards. From these responses one would conclude.

The administrators of the advocacy group reiterated that although the government came up with a comprehensive cultural policy, its main objective is that of promoting Zimbabwe culture in multi – cultural society and take into account the different ethnic, linguistic and religious groups. The ministry officials also emphasised that the government was geared at promoting and reflecting Zimbabwean culture internationally with artistic integrity. The focus here was mainly on promoting the arts industry rather than to also focus on protection.

#### **4.9 How is the government or any other organization helping you in promoting socio-economic and moral rights as artist?**

Some subjects responded that they are not aware of their moral rights to be specific. The researcher had at one point took time to first of all explain what socio-economic rights are as well as explain what is meant by moral rights. As explained by Bently and Sherman (2009:241) moral rights protect an author's non pecuniary or non-economic interests. Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works, (September 9, 1886) protects attribution and integrity, stating:

*Independent of the author's economic rights and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and*

*to object to any distortion, modification of, or other derogatory action in relation to the said work, which would be prejudicial to the author's honor or reputation.*

In some circles, moral rights have been criticized as rights which prioritize private interests over the public interests. Explained further, Bently and Sherman (2009:243) say that moral rights may inhibit the creation and dissemination of derivative works, for example parodies. Therefore what it means is that there would be conflict with the right to freedom of expression.

Moral rights are also recognized in Zimbabwe Copyright and Neighboring Rights Act (Chapter 26:05 Sec. 4 (61)) as the right to be identified as the author or director.

The interpretation of the above was not clearly defined by both the ministry officials and administrators. On the other hand, the artists confessed that they have been complaining over the infringement of this right, although they were not sure of it. So at some point it was difficult for them to clearly articulate their issues to the enforcement agencies. Therefore, there is need to sensitize the players in the arts industry about the moral rights. IP has a very important role to play in protecting the dignity of these artists and by recognizing property rights in relation to their skill and judgement will providers a degree of control of use of their works by others.

#### **4.10 Is the current protection regime adequate to protect the artist's works?**

Copyrights in Zimbabwe are regulated by the Copyright and Neighbouring Rights Act Chapter 26:05. Some of the respondents were well aware of this right and other pieces of legislation that regulate intellectual property in Zimbabwe. However, the majority were quick to point out that their cultural works were not adequately protected under this current protection regime. The directors of the advocacy groups were the ones who expressed bitter sentiments over this. They said they tried by all means to influence changes in the Copyright law for a long time, but their cries are simply receiving a cursory attention from the government side.

Other respondents said that the subject matter of protection and the term of protection do not go hand in hand. In support of this, in their study, Mandewo and Khaflan ((2010)) point out that the subject matter of protection may not auger well with short term protection because of both the Communal and sometimes the spiritual aspects connected to traditional crafts.

As was observed, many aspects of indigenous cultural property actually conflict with the theoretical grounding and legal requirements of copyright law in Zimbabwe. For example the famous Binga basketry by the Tonga people, it is communally owned. And

is produced using the indigenous methods of production, that any individual tribal member of the Tonga people may ever claim the role of author. It is also very difficult to protect their works as joint works or joint authorship. Indigenous works might also not qualify as original because almost everyone can do it with similar designs or slightly different patterns of their basketry, for example. Therefore, in theory these materials belong in the public domain, and are accordingly ineligible for copyright protection.

Schussel (2010) in his study of Alaska Native art, points out that Native groups are not only concerned with the outright infringement of their cultural property, but are also concerned with the translation and resulting distortion of their works. His study also revealed that many Native works are not eligible for copyright, the owners of the works or the tribes will be unable to avail themselves of copyright's remedies. Therefore what it means is that if no copyright is recognized in the given work, the creators of the work will have no right to block reproductions or derivative works based on that underlying work.

In this respect, many respondents felt that a special kind of protection be instituted to protect their cultural works.

#### **4.11 Any other information you might want to bring to our attention?**

What caught the researchers' attention was the fact that from all the respondents, the issue of intellectual property awareness was topical. Indeed there is need to promote serious advocacy on IP awareness to all relevant stakeholders about the importance of intellectual property in protecting and promoting the arts and culture industry as a viable tool for economic development.

When all the relevant stakeholders appreciate the importance of IP, then it will be easy to proceed to influence changing of laws to suit the kind of protection sort for. The protection of traditional art and designs also touches directly on other policy areas, such as cultural and artistic policy. Zimbabwe has such a policy, which regrettably does not offer a comprehensive kind of protection that suit cultural products.

#### **4.12 Focused group discussion**

The researcher developed questions for a group discussion for the purpose of finding out what the artists and advocacy groups say about the protection of cultural products. The groups that were involved were from four provinces as shown by Table 6. They were asked the same questions during the discussion. The questions were not very deferent from those in the interview guide. Lindlof and Taylor (2002) posit that it directly involves the researcher as a result it helps the researcher to better handle the direction of the discussion and thereby improve the quality of the output.

Province	Females	Males	Total
Harare	6	12	18
Mashonaland East	5	8	13
Masvingo	6	10	16
Bulawayo	5	12	17
<b>Total</b>	<b>22</b>	<b>42</b>	<b>64</b>

**Table 6: Focused group discussion**

These focused group discussions were held in the respondents' workplaces or areas of operations. This helped them to freely participate in the discussion since the environment was familiar and non- threatening

#### **4.13 What challenges are being faced by artists in the arts and crafts industry?**

The whole group of respondents concurred that they have common challenges affecting them, especially on promoting and fostering their contemporary and traditional crafts they make. Also a serious issue they raised was the lack of goodwill by the government to support them, for example, proving decent shelter for them to operate in or under. The groups agreed that the government was simply worried about the promotion of arts, though to a limited extend, and not ignore the fundamental aspects of protection.

#### **4.13.1 What can be the possible solutions to these challenges?**

One group suggested that government should perhaps increase the budget for the programme on arts promotion festivals. Actually, they suggested that the government should not only focus much on awarding the best artists, for example, the annual National Merits Award (NAMA) event, yet little effort was done to help the artists create and promote their work.

Others also suggested that the government should establish art galleries where artist can show case their work. Currently, the country has only one National Art gallery in Harare and another of its branch in Bulawayo.

Suggestion was also made that festivals and arts events where it may be possible to show jointly with other artists to be fully supported by the government. This will result in the improvement of their work and enhance good networking for business prospects.

#### **4.14 What is the attitude of the government in attaching value to arts industry?**

Participants in all the groups had mixed feelings. The other group members stated that the government was sensitive to their needs; hence the crafting of the Copyright laws in the country. Others strongly disagree with this viewpoint. They cried that the government should have come up with appropriate laws to protect their work. Asked what they really mean by that, they responded that there is no reason whatsoever why



there must be a prescribed term of protection. For example, the life plus fifty as stipulated under copyright law. They expressed that why fifty years on the cultural expressions and traditional crafts they were making. Interestingly, others were not even aware of the term of protection under copyright law. From the responses given, one would conclude that some of the artists are actually aware of the term of protection under copyright which in actual fact is not adequate to protect their work. However, that term of protection is not adequate.

#### **4.15 What kind of protection can you prefer for your work?**

Within the groups, as discussed above, some were not aware of the current protection regime for their work. Others were also switched on to suggest protection under the Industrial Design law. Mandewo and Khalfan (2010) point out that the legal framework of intellectual property comes from the Berne Convention (1886), the Paris Convention (1883) and the TRIPS Agreement (1994)<sup>24</sup>. As for copyright, the basis for the legal regime is the Berne Convention for the protection of literary and artistic work. Their artistic works, therefore, are protected under copyright.

#### **4.16 Document analysis**

##### **4.16.1 National statutes**

The researcher also took time to go through all the relevant documents. The purpose was to establish the extent to which arts and crafts are protected in Zimbabwe.

#### **4.16.2 Zimbabwe Copyright and Neighboring Rights Act (2004)**

Initially, it was Copyright Act (Chapter 26:1) which came into force on January 1, 1981. The law's subject matter was particularly focusing on Copyright and Related Rights (Neighboring Rights), Enforcement of IP and Related Laws, IP Regulatory Body, Traditional Cultural Expressions, Traditional Knowledge (TK). In 2004, the law was amended and was later called Copyright and Neighboring Rights Act (2004). Part II Sec 9 (2) reads;

Copyright subsists in a work if it is eligible for copyright in terms of Sec.

10...Sec. 10 literary works and... (c) artistic works.

#### ***Ownership of copyright***

On ownership of Copyright, Sec 14 (6) states that ownership of any copyright conferred by Sec. 13 shall initially vest in the State or the International organization concerned, *not in the author*.

Then Section 18 (a) states acts restricted by copyright in artistic works. It spells out that subject to the Act, copyright in an artistic work shall vest in the owner the exclusive

right to do or to authorize the doing of reproducing the work, importing the work in Zimbabwe or exporting it from Zimbabwe, other than for the personal and private use of the person importing or exporting it.

In spite of the provisions of the Act, there still exist complaints from some communities that their cultural expressions and representations are being used without their authority. To make matters worse, their works are used in disrespectful and inappropriate ways, causing cultural offence and harm. Other artists complained that third parties exploit their designs without their authority or mutual agreement or even benefit-sharing.

Sec. 15 (f) states that any literary, musical or artistic work, the life of the author and fifty years from the end of the year in which the author dies. Legal rights based on the copyright system empower copyright owners and their heirs in title to benefit financially for a long but fixed period of time. This then poses some challenges when it comes to crafts made communally, for example the Tonga basketry near Victoria Falls in Matabeleland North province of Zimbabwe.

#### **4.16.3 The National Gallery of Zimbabwe Act (Chapter 25:09)**

The Interpretation In this Act of “art gallery” means premises which are used or intended to be used for the collection or exhibition of works of art; and ‘works of art’ includes paintings, literary and artistic works calculated to foster encourage public

interest generally in the fine and applied arts; promote the interests generally of art in Zimbabwe; preserve works of art which are acquired by or lent to it, or otherwise in its custody, and to hold public exhibitions of works of Art.

Therefore public exhibitions that are held at the national art gallery are critical in promoting and marketing the artist's works.

#### **4.16.4 Zimbabwe Industrial Designs Act (Chapter 26:02)**

The aesthetic features of a functional product are protected under industrial design laws in Zimbabwe. A design holder is given exclusive rights to prevent others from using it without his/her permission if the design is registered. Design protection is relatively easily accessible to individual artisans and artists, in most countries worldwide, both industrialized and developing countries.

To protect the cultural works under the Industrial Design Act may pose a lot of challenges. As provided in Part III 6 (2) and (3) these cultural products may not generally pass the aspect of *new or cultural*. Only a sigh of relief can be brought about under section 12 (2) where it says;

Where copyright subsists in an artistic work and an application is made by, or with the consent of, the owner of that copyright for the registration of a corresponding design, that design shall not be treated for the purpose of this Act as being other

than new or original by reason of any use previously made of the artistic work...

Thus, the advantage of an industrial design registration is that it provides stronger protection. This means that infringement of an industrial design registration can occur even when the designer of the infringing product has not copied, and has created his or her own design entirely independently. On the other hand, Copyright protection protects only against actual copying.

What could be wise is for the artists to register their crafts a design at the industrial design office, even if they have copyright protection for the original work

#### **4.16.5 Zimbabwe Trademarks Act (Chapter 26:02)**

In Zimbabwe, Trademark protection can be obtained through its registration at the Trademarks office at Zimbabwe Intellectual Property Office (ZIPO). Proper protection gives the trademark owner the exclusive right to prevent others from marketing the same or similar type of products under the same or a confusingly similar mark. It should be also understood that trademark protection is territorial, meaning that the mark is protected only in the country in which protection has been granted.

What can be a challenge is that Part III Art. 7 (1) states that a trade mark shall be registered in respect of a particular classes of goods or services. Now focusing on the cultural artefacts, these may not qualify to be registered in any class that can be deemed relevant.

#### **4.16.6 International treaties**

Several treaties and conventions administered by the World Intellectual Property Organisation (WIPO) in the field of intellectual property have over the years sought to address several legal, conceptual, operational and administrative needs and issues related to intellectual property protection and cultural goods. (Maonera, 2007).

#### **4.16.7 The Berne Convention for the Protection of Literary and Artistic Works (1888)**

Berne Convention's Article 2.1 provides for the protection of literary and artistic works. These provisions are reinforced by Art. 4(b) and Article 6*bis* (on moral rights), which are more suited to the traditional forms of works because of the moral character of most African designs, especially those found in Zimbabwe. (Mandewo and Khalfhan, 2010).

The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international agreement, which was first accepted in the city of Berne in Switzerland in 1886.

The Berne Convention states that all works except photographic and cinematographic shall be copyrighted for at least 50 years after the author's death, but parties are free to provide longer terms. Therefore the national laws should be put into consideration in this respect.

#### **4.16.8 The TRIPS Agreement (1994)**

The Trade-related Aspects of Intellectual Property Rights (TRIPS) Agreement is Annex 1C of the Marrakesh Agreement, Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994. TRIPS provide copyright protection for literary and artistic works. Artistic works are, irrespective of the artistic work thereof, for as long as it is original.

Mandewo and Khalfhan, (2010) explained that the TRIPS Agreement mainly confers economic rights and the scope of protection for our subject matter is limited by provisions of art. 13. They also observed that one weakness of international conventions and agreements is that they tend to relegate the task of implementation and interpretation of agreements to national legal systems.

#### **4.16.9 The WIPO Performances and Phonograms Treaty (WPPT).**

The WIPO Performances and Phonograms Treaty (the WPPT) protects performances of literary and artistic works or expressions of folklore. Maonera (2009) observed that cultural products such as dances and plays belonging to traditional communities in those countries party to the WPPT can therefore expect to receive protection in the other Contracting States.

#### **4.16.10 WIPO Copyright Treaty (WCT, 1996)**

This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention.

A discussion on the protection regime under Copyright and Neighboring rights Act, Industrial Design Act, Trademarks Act actually proved that, although there is provision for the protection of the artists' work, the protection was not adequate.

#### **4.17 Data discussion**



In the study, both male and female respondents actively participated both in interviews and focused group discussions. From the study, one can conclude that the majority of the subjects are not satisfied wholly by the current intellectual protection regime for their work.

It can be observed that there are some challenges that the artists and craftsmen face towards both promotion and protection of their work, (Longhran, (2014) For example a case in point where the government is reluctant to fully support the arts industry and giving it a cursory attention, yet in some circles is proving to be a viable income earner and job creation opportunities are also realized.

Asein (2009) postulate that the safeguarding, promotion and protection of intellectual property, necessarily involves a close partnership between governments, concerned local communities and relevant individuals within the communities as well as informed civil society groups.

The other challenge is that of working conditions. The majority of those whom the researcher interacted with were actually operating on the open, and a few lucky ones under the tree shades. So there is real need for the government to wake up to the demands of the players in the arts industry in order to capacitate this very important sector of the economy.

#### **4.18 The sui generis protection**

Having realized that the existing protection regimes do not fully embrace and take on board adequate protection of cultural products, the researcher suggested that what appears most appropriate is a *sui generis* system of protection that takes into account cultural products' economic importance, against the background of concerns raised by the majority of the participants in this study.

*Sui generis* is a Latin phrase meaning “of its own kind”. A *sui generis* system, for example, is a system specifically designed to address the needs and concerns of a particular issue. This simply means a system entirely separate from and different from the current IP system can be used to protect the cultural products. Any *sui generis* regime should define the nature of the rights conferred.

Another very important observation by Asein (2009) is that there is need for a comprehensive national strategy within the framework of cultural and economic development. Thus, under this system, Zimbabwe should enact regulations whose aim is to prevent the sale, importation, exportation, reproduction and adaptation of the cultural products. Therefore to come up with a system of its kind, a model can help to institute such a dimension.

#### **4.19 The COINDTRAM Model**

The researcher came up with a kind of a model that can be used to protect cultural products in Zimbabwe. COINDTRAM is actually an acronym which stands for **Copyright- Industrial Design – Trademark** protection model. Mixing and blending relevant provisions under each regime will help to come up with a unique protection model of its kind.

Under Copyright protection, the owner of a copyright in a work enjoys a bundle of certain exclusive rights which include reproduction, adaptation, distribution, performance, display, and the right to transmit digital sound recordings. The term of protection is life plus fifty years after death of the author. Under this model authors are viewed as innovators, who, using the raw materials of culture and prior knowledge, will also add original ideas and expression to create distinct works. Asein (2009) asserts that while thinking globally, States should act with the local interest in mind. Policies and legal frameworks should never be developed without due regard to the local communities and the cultural environment. Asein (2009) in the same vein propounds that any mechanism or legal regime should promote respect for indigenous customary laws and practices and factor in the economic & sustainable development needs of the community. Under the Industrial design, a design holder is given exclusive rights to prevent others from using it without his/her permission if the design is registered. Culture-specific solutions to similar problems, needs and wants are at the core of design

processes. As Pasipanodya (2012) points out, the designs are steeply embedded in the evolutionary trends of any society's cultural, economic, political and legislative beliefs aspirations, values and perceptions. In other words, the designs actually reflect the blending of practices underlying public spirit and utility objectives of any given society. Pasipanodya (2012) further argues that design protection is justifiable in that the exclusive rights of exploitation bestowed upon the owner benefits the owner. It also add to the commercial value of the products produced, guarantee fair returns on capital investment and encourage fair competition and honest trade practices which at the end of the day, stimulates and spurs further creativity, and thus creation of aesthetically attractive and diversified products. Trademark on the other hand, can be used for the purposes of promoting sales and cement customer loyalty. Trademarks also help to facilitate the introduction of new products, or the repositioning of an existing product. The protection of a mark is generally not limited in time, provided its registration is periodically renewed (typically, every 10 years) and its use continues.

#### **4.20 Summary**

This chapter focused on data presentation, interpretation, and analysis using tables. The data was collected, interviews, focused group discussion and document analysis. The data was presented method by method. The data was discussed descriptively. The

information was matched with related literature. The next chapter summarizes the research findings, and will go on to give conclusion and recommendations.

## **CHAPTER 5**

### **SUMMARY OF MAIN FINDINGS, CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Introduction**

Chapter one focused on the problem and its setting. Chapter two reviewed literature related to the problem under study. Chapter three discussed research design and methodology in which the interviews focused group discussion and document analysis were used to collect data. Chapter four presented interpreted, analyzed, and discussed data collected using, interview and focused group discussions and document analysis methods. This chapter is going to summarize the research findings and give a comprehensive summative conclusion. Recommendations will be given.

#### **5.2 Summary of the main findings of the study.**

From the research, it was noted that the majority of artists in Zimbabwe are not aware of the available IPR for them. This clearly shows that there is a yawning gap in terms of awareness campaigns by the relevant stakeholders. While it is so, Zimbabwe laws indeed protect the cultural products. The Copyright and Neighbouring Rights Act has a specific provision for works of folklore. In terms of the above mentioned law,

Mandewo and Khalfan (2010) observed that there is a provision in part (viii) specifically defines the form and content embodied in the traditions peculiar to one or more communities in Zimbabwe to include:

*...production of folk art, in particular drawings, paintings, sculptures,  
pottery, woodwork, metalwork, jewellery, baskets and costumes.*

It also surfaced from the research interviews that the creators of the artworks are not aware of this legal possibility. As observed, the majority of societies in Zimbabwe express creativity through verbal or material forms. Valsala and Kutty (2002) posits that traditional knowledge of creating cultural products is usually handed down orally, in writing, or both orally and in writing, and also through practice, imitation and observation. From this observation, one would conclude that one kind of property regime may not be sufficient to adequately protect cultural products. It was also viewed that many aspects of indigenous cultural property conflict with the theoretical grounding and legal requirements of copyright law.

It emerged from this research that a conglomerate of regimes can be blended to come up with a *sui generis* kind of protection for these cultural products. Intellectual property laws reflect a bias in favour of individuals who are said to own rights in the protected works. Generally, copyright law requires protected works to be original. As provided in the Zimbabwean legislation, the work must be original. Copyright protection subsists for

50 years following the author's death, although some countries like the United States of America have recently extended this term to 70 years.

### **5.3 Conclusion**

The study focused on: The use of Intellectual Property in the protection of Arts and Crafts in Zimbabwe.

The study looked at the problem and its setting. Related literature was reviewed to substantiate the study. The researcher used interviews and focused group discussion as well as document analysis as instruments of data collection from the respondents.

The data gathered collected from the respondents was recorded, interpreted, and analyzed using tables. The research findings were discussed summarized and conclusions were drawn. It can be noted that the stated objectives of this study have been met and achieved as well.

From this study, the researcher benefited a lot on how to carry out the research from planning, carrying out the actual research up to the final production of a document.

### **5.4 Recommendations**

From the research, the following recommendations were made:



No one IP regime is adequate to offer protection of Arts and Crafts for economic benefits.

The government should seriously embark on an intensive awareness campaigns and sensitization workshops on the importance of IPRs on the part of both the creators of the work and the consumers themselves.

**COINDTRAM Model** to be used in order to formulate the relevant laws and policies to set up a sui generis protection of Arts and Crafts.

## **5.5 Further Recommendations**

**COINDTRAM Model** may be appropriate for the protection of Arts and Crafts in Zimbabwe. Therefore, the researcher recommends that this study be replicated on a wider population and that this model be put to test towards the promotion of respect for indigenous customary laws and practices. Further research on this kind of protection is therefore recommended as well.

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## **Appendix I: Interview questions for Artists and Craftsmen and administrators**

1. What are the challenges faced by the artists as far as IP protection in the creative industry (Arts and Crafts) is concerned ?
2. Is the government able to establish the importance of Arts and Crafts as a viable
3. Industry that brings in foreign currency?
4. How do you see the government's efforts in promoting and protecting the arts?
5. How is the government or any other organization helping you in promoting socio-
6. Economic and moral rights as artist?
7. Is the current protection regime adequate to protect the artist's works?
8. Any other information you might want to bring to our attention?

## **Appendix II: Interview questions for Administrator**

1. What are the challenges faced by the artists as far as IP protection in the creative industry (Arts and Crafts) is concerned ?
2. Is the government able to establish the importance of Arts and Crafts as a viable industry that brings in foreign currency?
3. How do you see the government's efforts in promoting and protecting the arts?
4. How is the government or any other organization helping you in promoting socio-economic and moral rights as artist?
5. Is the current protection regime adequate to protect the artist's works?
6. Any other information you might want to bring to our attention?

### **Appendix III: Focused group discussion guide**

1. What challenges are being faced by artists in the arts and crafts industry?
2. What can be the possible solutions to these challenges?
3. What is the attitude of the government in attaching value to arts industry?
4. What kind of protection can you prefer for your work?