

## **Committee on Development and Intellectual Property (CDIP)**

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### **SUMMARY OF THE STUDY ON THE ROLE OF INTELLECTUAL PROPERTY IN SUSTAINABLE TOURISM DEVELOPMENT IN NAMIBIA**

*prepared by the Secretariat*

1. The Annex to this document contains a Summary of the Study on the Role of Intellectual Property in Sustainable Tourism Development in Namibia undertaken in the context of the project on *Intellectual Property, Tourism and Culture: Supporting Development Objectives and Promoting Cultural Heritage in Egypt and Other Developing Countries* (CDIP/15/7 Rev.). The Study has been prepared by Dr. Malan Lindeque, Consultant, Namibia.

2. *The CDIP is invited to take note of the information contained in the Annex to the present document.*

[Annex follows]

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

This study was commissioned by the World Intellectual Property Organization (WIPO) as part of its Development Agenda project on *Intellectual Property, Tourism and Culture: Supporting Development Objectives and Promoting Cultural Heritage in Egypt and Other Developing Countries*.

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

The first example concerns the Himba community in north-western Namibia, whose traditional use of an indigenous plant species has led to the development of a wide range of high-value perfume and body-care products. In marketing new products derived from cultural practices, great care is taken to ensure that community interests are safeguarded. The Himba women who harvest the wild plant for their own use as a perfume continue to supply the raw material to a communally owned extraction facility. Some of the essential oils produced at the facility are used to manufacture a range of trademarked products for the tourism market and some are exported to the European Union for the international perfume industry.

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

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

To answer the question, the extent to which Namibian society understands the concept of cultural or intellectual property and the measures taken to protect IP must be assessed. Access to IP protection measures is likely to be yet another major issue owing to their

complexity and legal nature, because those who are most in need of such protection, namely the poor and the marginalized, including indigenous people such as the San<sup>1</sup> and the Himba,<sup>2</sup> are unlikely to have any means of access to such tools. This raises the need to assess the importance of inter-stakeholder partnerships, an area in which Namibia is likely to shine, owing to its achievements in community-based natural resource management and tourism, and the strong role played by its international development partners, civil society and Government as facilitators in this regard within the enabling environment of policy and legal frameworks, as noted by the Ministry of Environment and Tourism (MET) (2013; and MET/NACSO 2018).

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

Moreover, as the developmental role or incremental economic value derived from tourism-related IP is not immediately obvious, it is important to reflect on the dynamics of the tourism industry and, indeed, of the tourism economy in Namibia. Tourism is the country's fastest growing economic sector and is the least vulnerable to factors that still constrain growth in the other important economic sectors, such as volatility in international mining commodity prices and the impact of rainfall variability, climatic including oceanic variability and climate change on agriculture and marine fisheries. Tourism is affected by external factors such as the cost of long-haul travel, which is itself determined by international oil prices, and important internal factors such as peace, stability, safety and security; but tourism has been far more resilient than the other sectors and is much more closely linked to Namibia's competitive advantages in the context of sustainable development.

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

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

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

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

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

The tourism industry and its potential socio-economic benefits are therefore accessible to a large proportion of rural communities that participate in, or have been organized to qualify for, the conservancy program. These communities have successfully attracted tourism investment to their land. Nevertheless, many people are not covered by the program because they lack suitable land or wildlife resources or tourism potential or simply do not wish to operate as part of a community organization. Importantly, tourism is yet another means of deriving group or individual benefits through individual entrepreneurship in other sectors that provide services to the tourism sector such as transport and, in the particular context of this study, those that produce goods, including arts and crafts.

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

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

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

Diversity of culture and traditions and diversity of resources have led to a diverse range of craft products and other goods that are attractive to tourists. Some creations are more successful than others and have thus been copied and imitated on a large scale.

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

<sup>4</sup> Namibian GDP per capita is around US \$6,400 (<https://tradingeconomics.com>) or €5,696.

As in other consumer markets, tourist demand for craft items is not static. Crafters must innovate in order to continue to produce interesting and appealing items, and their social and cultural background must be reflected in their *authentic* craft work. Buyers of crafts value authenticity highly, and such authenticity is derived from the artisan's cultural and social background. Under the pressure of mass production of cultural derivatives, devoid of genuine context, the cultural values imbedded in authentic craft works are at risk of being lost, or have actually been lost. This poses important challenges to the protection of cultural identities and traditional knowledge associated with such products, given the market demands of the modern world. The question therefore hinges on what can be done to ensure that craft production for the tourism market does not lead to the loss of cultural heritage.

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