



REPUBLIC OF BOTSWANA

**BOTSWANA
INTELLECTUAL
PROPERTY POLICY
BIPP 2022**

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FOREWORD

Botswana's economy has since independence depended on its natural resources, especially the mining sector. However, the contribution of minerals to the country's revenues has already reached its peak, implying that the fiscal importance of minerals is likely to decline in the future and their economic impact as drivers of economic growth will likely become less important (African Development Bank, 2016). As part of a broader economic diversification plan, Botswana is in a state of transition from being a resource-based economy to a knowledge-based economy.

Botswana's national development Vision 2036 provides an anchor for this by envisioning an economy that is 'efficient, vibrant and knowledge-based, with access to a skilled and internationally competitive workforce, leading-edge technology and infrastructure' (Republic of Botswana, 2016). The Vision recognises the role of science, technology, innovation and creativity in creating a knowledge-based economy, hence necessitating the development of a conducive environment through effective Intellectual Property (IP) policies, institutional and legislative frameworks. The country has outstanding IP potential; however, it has not recognised IP as a driver for economic development. This is evidenced by lack of integration of IP in National Development Plans (NDP) leading to inadequate resources allocated for IP generation and exploitation, thus hindering the country from reaping the economic benefits of IP. This gap informed the need to develop the Intellectual Property Policy for Botswana.

The Botswana Intellectual Property Policy was developed with the assistance of the World Intellectual Property Organization (WIPO). The primary objective of the Policy is to leverage Botswana's IP potential for inclusive and sustainable economic growth and development, which will deliver prosperity for every Botswana. It has six interrelated pillars, i.e., to improve the IP governance framework for promoting the protection of IP rights; to facilitate availability and access to financing for IP generation, acquisition and commercialisation; to promote IP awareness, education and training; to effectively negotiate IP Agreements for the benefit of Botswana; to develop entrepreneurship capacities in selected IP-driven sectors; and to create appropriate institutional structures for IP development. The successful implementation of the Policy will enable Botswana to use its IP potential towards being a Knowledge-Based Economy (KBE) and to diversify Botswana's economy to create prosperity for all.



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ACRONYMS

| | |
|---------|---|
| AG's | Attorney General's Chambers |
| ARIPO | African Regional Intellectual Property Organization |
| AU | African Union |
| BASIPO | Botswana Association of IP Rights Owners (proposed) |
| BB | Business Botswana |
| BIDP | Botswana Intellectual Property Development Plan |
| BDIH | Botswana Digital and Innovation Hub |
| BIPP | Botswana Intellectual Property Policy |
| BITRI | Botswana Institute for Technology Research and Innovation |
| BIUST | Botswana International University of Science and Technology |
| BOPIF | Botswana Open Innovation Forum (proposed) |
| BUAN | Botswana University of Agriculture and Natural Resources |
| BURS | Botswana Unified Revenue Services |
| CEDA | Citizen Entrepreneurial Development Agency |
| CIPA | Companies and Intellectual Property Authority |
| COSBOTS | Copyright Society of Botswana |
| DPP | Directorate of Public Prosecution |
| EoF | Expressions of Folklore |
| FiR | Financial Resources |
| GDP | Gross Domestic Product |
| GI | Geographical Indications |
| GOB | Government of Botswana |
| GRS | Genetic Resources |
| IGC | (WIPO) Intergovernmental Committee |
| IP | Intellectual Property |
| IPA | Intellectual Property Audit |
| IPDP | Intellectual Property Development Plan |
| IPR | Intellectual Property Right |

| | |
|-------|--|
| LEA | Local Enterprise Authority |
| MTI | Ministry of Trade and Industry |
| NARDI | National Agricultural Research and Development Institute |
| NDP | National Development Plan |
| NIPDP | National Intellectual Property Development Plan |
| NIPGF | National Intellectual Property Governance Framework |
| NFiR | Non-Financial Resources |
| R&D | Research and Development |
| RE&T | Research Education and Training |
| SADC | Southern African Development Community |
| SWF | Sovereign Wealth Fund |
| TCE | Traditional Cultural Expressions |
| TK | Traditional Knowledge |
| ToT | Transfer of Technology |
| TRIPS | Trade Related Aspects of Intellectual Property Rights |
| UB | University of Botswana |
| WIPO | World Intellectual Property Organization |
| WPPT | WIPO Performance and Phonograms Treaty |
| WTO | World Trade Organization |

DEFINITION OF TERMS

Unless the context otherwise obliges, the following definitions of key technical terms are adopted in this Botswana Intellectual Property Policy (BIPP 2022).

Copyright

(also referred to as *author's rights in certain languages*) relates to literary and artistic creations. It refers to 'a form of protection provided by the laws to copyright owners for protection of their work for "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations.'

Creative Industries

a range of economic activities that are concerned with the generation and commercialisation of creativity, ideas, knowledge and information. Also understood as practices whose economic value is anchored on aesthetic appeal and historic or heritage elements.

Cultural Industries

industries or businesses that combine the creation, production and commercialisation of contents which are intangible and cultural in nature; these contents are typically protected by copyright, and they can take the form of goods or services.

Expressions of Folklore

(henceforth EoF) refer to: 'any forms, whether tangible or intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise the following forms of expressions or combinations thereof: (i) *verbal expressions*, such as stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols; (ii) *musical expressions*, such as songs and instrumental music; (iii) *expressions by movement*, such as dances, plays, rituals and other performances; whether or not reduced to a material form; and (iv) tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, basketry, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments; and architectural forms'. Moreover, as per section 2, subsection 2.2 of the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, Botswana will determine the specific choice of terms to denote her EOF.'

Financial Resource Capacities

(henceforth FiR Capacities) shall refer to both '(i) country-level capacities such as banks, non-bank financial institutions (e.g. insurance firms, venture capital firms, etc.), financial markets, and the specific financial instruments provided by the various financial institutions, and (ii) ability of the country to attract and/or access diverse financial resources from external sources.'

Geographical Indications

(henceforth: GIs) shall, consistent with the definitions contained in Article 22.1 of the TRIPS Agreement mean 'indications which identify a good as originating in the territory of a Member (of the World Trade Organization), or a region or locality in that territory, where a given quality, reputation, or other characteristics, of the good, is essentially attributable to its geographic origin.'

Genetic Resources

(GRS) refers to 'genetic material (i.e., any material of plant, animal, microbial or other origin containing functional units of heredity) of actual and potential value. Examples include medicinal plants, agricultural crops and animal breeds.'

Industrial Property

is defined in line with Article 1 of the Paris Convention for the Protection of Industrial Property to, '(i) include patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition, and (ii) applies in a broad sense to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.'

Intellectual Property

(henceforth IP) refers to products of human intellect, for which exclusive proprietary legal rights are recognised and conferred to natural or legal person(s) for a certain period. It is a fruit of personal creativity and inventiveness. Since, in contrast to tangible assets, IP refers to a collection of ideas and concepts, in literature; they are optionally referred to as intangible property or immaterial property.'

Intellectual Property Rights (IPR)

refer to 'the legal rights resulting from intangible creativity and inventiveness that are embodied in tangible or intangible objects.'

Mineral beneficiation

is 'the transformation of a primary material (produced by mining and extraction processes) to a more finished product, and in which case each successive level of processing (or value-adding) permits the product to be sold at a higher price than the original raw material or the previous intermediate product.'

Neighbouring rights

(also referred to as related rights) means intellectual property rights provided for the protection of the legal interests of certain persons and legal entities who either contribute to making works available to the public or produce subject matter which will not qualify as works under the general understanding of copyright but who nevertheless express creativity or technical and organisational skill sufficient to justify recognition of their contribution as deserving of protection; and such rights include the rights of performers, producers of sound recordings and broadcasters.

Non-Financial Resource Capacities (NFIR)

refer to 'country-level capacities in the areas of IP entrepreneurship and enterprise development, diverse institutions for supporting the IP economy, IP enabling infrastructure, IP knowledge and skills, and IP enabling technologies and other diverse Key Enabling Technologies (KETS).'

Resource-based economy

shall signify a country whose economic output to a large extent comes from natural resources.

Traditional Knowledge

(henceforth TK, also referred to as Indigenous Knowledge System (IKS) means 'any knowledge originating from a local or traditional community that is the result of intellectual activity and insight in a traditional context, including know-how, skills, innovations, practices and learning, where the knowledge is embodied in the traditional lifestyle of a community, or contained in the codified knowledge systems passed on from one generation to another. The term shall not be limited to a specific technical field, and may include agricultural, environmental or medical knowledge, and knowledge associated with genetic resources.'

Plant Breeders' Rights (PBRs)

also known as Plant Varieties Rights (PVRs), refer to rights granted to the breeder of a new variety of plants that give the breeder exclusive control over the propagating material (including seed, cuttings, divisions, tissue culture) and harvested material (cut flowers, fruit, foliage) of a new plant variety.

CHAPTER I

1.0 INTRODUCTION

Governments all over the world are developing policies and strategies that seek to improve their National economies. These are meant to improve the livelihoods of their citizens and build National capabilities in many different sectors that include technology, information and culture. The policies and strategies create a conducive environment for individuals, the private sector and the public sector as well as the general public from different industries to develop innovations and create competitive products and services for the benefit of societies. Most economies of the world have achieved this through harnessing the Intellectual Property System (IPS) which provides incentives for new creations and inventions. Intellectual Property Rights (IPR) which include copyrights, patents, trademarks and similar rights are tools used to protect and commercialise innovations, creations and inventions. These, in turn, provide solutions for society's challenges and contribute to National development through their commercial exploitation and the concomitant economic development as well as social and cultural progress.

A National Intellectual Property Policy therefore becomes a critical framework to harness the economic and social benefits of a country. The Botswana Intellectual Property Policy (BIPP 2022) provides an IP governance framework for a conducive environment for the creation, protection, commercialisation and enforcement of intellectual property rights for creations and innovations. The Policy further seeks to create ideal conditions for IP entrepreneurship and enterprise development in different economic sectors of Botswana.

The Policy envisions that "Botswana will be an IP driven economy by 2036". When fully implemented Botswana will be "Harnessing IP for economic transformation" as the Policy theme states. BIPP 2022 is divided into three (3) broad chapters. CHAPTER I deals with the context of IP, how it is generated and protected, its role in economic development and the current IP landscape of Botswana. CHAPTER II is the Policy framework setting out the vision, mission, theme and the objectives of the Botswana IP Policy. CHAPTER III focuses on the institutional structures for the implementation of the Policy.

2.0 BACKGROUND

Five key issues describe the context in which the Botswana Intellectual Property Policy (BIPP 2022) has evolved. These are the generation of intellectual property and associated rights; scope of intellectual property from the conventional perspective; evolution of the concept of intellectual property and associated rights; recognition of additional categories; significance of intellectual property and associated rights for economic development; and position of the IP Policy in the intellectual property system.

2.1 Generation of Intellectual Property and Associated Rights

Deriving from their definition, IP, unlike tangible assets, is a collection of ideas and concepts which lead to intellectual creations. Hence, in literature, the properties of this category (i.e. IP) are referred to as intangible property, or knowledge property. Moreover, despite being intangible, IP, like other forms of property, constitute valuable assets, capable of being owned, transferred and modified. Most importantly, they need protection because they embody proprietary interests of their inventors, creators and owners. This protection is provided through IP laws. Both types of IP, and the rights associated with them, are generated in the following diverse ways:

2.1.1 Research and Development (R&D): here IP is expressed in the form of scientific technological inventions and innovations which involves the marketing of goods and services in the form of trademarks, service marks and collective marks.

2.1.2 Routine Work and Experience: IP of this category is attributed to innovations that result from routine work and experience and generally takes the form of industrial property.

2.1.3 Creative Activity: such IP is generally expressed in literary and artistic works, which include performing artists (performances), producers of phonograms (recordings) and broadcasters (radio and television programmes). These are collectively referred to as Copyright and Neighbouring (or related) Rights.

2.2 Scope of Intellectual Property

Traditionally, IP is categorised into two major groups: Industrial Property and Copyright and Neighbouring (related) Rights. The scope of protection for industrial property involves the rights on technology inventions and innovation (Patent and Utility models), ownership of products and services marks identifiers (Trade and Service Marks), ownership value in certain products (Industrial Designs), undisclosed information (Trade Secrets), Layout designs or topography of micro-chips (Integrated Circuits) and rights on place of origin known as Geographical Indication (GI). In the case of the Copyright and Neighbouring Rights, the subject matter of protection is the rights of authorship of literary and artistic works, performances in music, drama, cinematography, protection of databases, architectural drawings, etc. Other emerging categories of IP are as presented in Sub section 2.3.

2.3 Emergence and Recognition of New Categories of IP

There is an increasing realisation that the innovations and creative expressions of indigenous and local communities also constitute categories of IP. In other words, property in knowledge embedded in Traditional Knowledge (TK), and Expressions of Folklore (EoF)/Traditional Cultural Expressions (TCEs), form a third distinctive category of IP after Industrial Property and Copyright. However, these may not enjoy full protection under the existing IP legal protection systems pending international frameworks. Similarly, several critical IP issues arise in connection with Genetic Resources (GR), especially access to GR, equitable sharing of the benefits arising from GR, defensive protection of GR, disclosure requirements in patent applications that relate to GR and associated TK used in registered and granted inventions.

In recognition of the emerging areas, the African Regional Intellectual Property Organization (ARIPO) developed a regional framework that seeks to offer legal protection to TK, and EoF as distinct forms of IP. This framework is referred to as the “Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore” (ARIPO 2010). Prior to this protocol, African countries provided protection through either industrial property laws or stand-alone laws (*sui generis*). For example, in Botswana, TK and EoF are protected through the Industrial Property and Copyright and Neighbouring Rights Acts, respectively.

Further, there are ongoing negotiations by the World Intellectual Property Organization’s (WIPO) Intergovernmental Committee (IGC) on IP and GR, TK and Folklore, to determine whether and to what extent these assets could be accorded IP rights and protection using international frameworks, beyond the provisions that exist in the current IP systems. Some of the provisions in the current international IP frameworks which seek to offer some protection can be found in the 1967 amendment to the Berne Convention for the Protection of Literary and Artistic Works, whose Article 15.4 aims to provide international protection for EoF and the 1996 WIPO Performances and Phonograms Treaty (WPPT) that provides protection for a performer of an Expression of Folklore (see WIPO Publication No. 913(E)).

2.4 Significance of Intellectual Property and Associated Rights for Economic Development

The significance of IP and associated rights is underlined by the economic and development impact of IP assets. Such assets become beneficial when they are protected through the IP regime and provide incentives for creators and innovators to create more new creations and innovations. More importantly, the IP assets would need to be commercialised.

When IP is commercialised, IP assets impact business competitiveness along the entire economic value chain from investments, production and all the way to trade. The benefits of IP commercialisation include, inter alia, promoting both domestic and a foreign investments increasing economic efficiency and productivity of companies; facilitating Transfer of Technology (TT); and improving the availability of products that are vital for human life.

There has not been much baseline research conducted on the impact of IP from an economic/business perspective, more especially in developing economies. However, there has been widespread discussions on the stimulating effects of IP as evidenced by technological innovation, investment competitiveness, production competitiveness and trade competitiveness which are discussed at different forums. Notwithstanding this, the correlation between innovation and the performance of the economy has been systematically gaining strength, and experiences from successful economies show that IP-based commercial activities represent above average potential for growth and job creation. Practical examples that can be drawn from these include the following:

- a) **IP contribution to GDP:** WIPO analysis has shown that, while inter-country performances differ (varying from 1.5 per cent for the Ukraine in 2005, to 5.3 per cent for Kenya in 2008, to 7.3 per cent for Australia in 2007), on average the copyright industry contributes over 7 per cent of Gross World Production (GWP). Anecdotes in a publication by the International Chamber of Commerce (see ICC [2005]) indicate that in 2009, creative industries, which are heavily reliant on copyright - contributed more than €1.2 trillion to the EU economy, produced value added of €450 billion, equaling 5.3 per cent of the EU GDP;
- b) **IP contribution to trade:** the United Nations put the share of creative industries in global trade at 3.4 per cent, with a growth rate of 8.7 per cent;
- c) **IP contribution to employment:** according to the European Competitiveness Report 2010, creative industries accounted for 3 per cent of employment in 2008, and have consistently been among the most dynamic sectors in the European Union (EU), employing 6.7 million people in the EU-27. The International Chamber of Commerce (see ICC [2005]) indicate that creative industries, which are heavily reliant on copyright - employed 5.2 million people in 2000; and
- d) **IP value in business entities:** IP is also clearly economically crucial at corporate level. In 2006, Jaiya noted that: (i) IBM earns over a billion US\$ a year from patent licensing, (ii) over 80 per cent of the market value of Microsoft derives from its intangible assets, especially its IP, (iii) the publication by the International Chamber of Commerce (see ICC [2005]) indicate that in 2000, intangible assets represented 70 per cent of corporate assets in the USA.

2.5 Position of the IP Policy in the Intellectual Property System

Empirical evidence shows that the process of leveraging IP for development has been spearheaded by some form of National Intellectual Property Governance Framework (NIPGF). The role of such a framework has been to delineate how the protection of IP rights could play a developmental role and contribute to sustainable development. One of the essential components of such a framework is the National Intellectual Property Policy (NIPP). The need for a comprehensive NIPP is underlined by the requirement to develop competitive economies which can deliver benefits to all stakeholders like business entities, Government and the society at large. This is in line with global trends of a shift from Resource-Based Economies (RBEs) to Knowledge-Based Economies (KBEs). Hence, countries are obliged to put in place mechanisms for the economic utilisation of diverse IP assets to ascertain and sustain competitiveness.

3.0 Botswana's Intellectual Property Landscape

Botswana has enacted and reviewed its intellectual property laws through the domestication of international conventions, treaties, protocols and agreements. This is because some of the international frameworks provide standards for IP protection and cover emerging areas of IP. Therefore, Botswana national IP laws have been enacted and reviewed to offer full and up to date IP protection to its citizens. The Government initially enacted the Industrial Property Act in 1996 which provided for the protection of patents, trademarks and Industrial Designs. The Act was reviewed in 2010 to ensure compliance with the World Trade Organization's TRIPs Agreement and to incorporate the protection of new areas of IP like Traditional Knowledge (TK), Handicrafts and Geographical Indications. The country also enacted the Copyright and Neighbouring Rights Act in 2000 to protect literary and artistic works which was reviewed in 2006. However, it is important to note that the development of these laws left a gap as they were enacted in the absence of a national IP Policy which is very critical in guiding the use of IP for the economic development of Botswana. Hence this Policy is important in providing such guidance to fill the gap.

3.1 Botswana's IP Potential

The IP Field Study Report (Matambalya, Salamba and Lesolobe 2017), and the 2011/12 IP Mapping Exercise (Matambalya and Mboya 2011a), shows that Botswana has potential IP assets which need to be leveraged for economic development. Most notably there are several actors in the country (e.g. research institutions, universities, artists, entrepreneurs – particularly in the creative industry, etc.) who generate IP that can be integrated into the economy. There are also diverse opportunities and potential for IP entrepreneurship in the Creative Industry and harnessing of Traditional Knowledge and Traditional Cultural Expressions (also: Expressions of Folklore). A study conducted in 2018 provides empirical evidence as to the significant contribution of the creative industry in Botswana. The study assessed the share of the industry to the GDP in Botswana. The results of the study indicated that the copyright industries make a significant contribution to the national economy of Botswana. For example, in 2016, the industry contributed 5.46 per cent to value added and 2.66 per cent to the total labour force, while in foreign trade it contributed 1.28 per cent to exports and 3.47 per cent to imports.

3.2 Challenges in Harnessing Botswana's IP Potential for Development

Several barriers and challenges have been identified which limit Botswana's ability to derive maximum benefit from her IP potential. They have been broadly divided into five categories:

- a) gaps in the (regulatory and political) governance framework that hinders the harnessing of IP for socio-economic development;
- b) limited awareness and understanding of the relevance and importance of IP;
- c) limited Financial Resources (FiR) that can support the harnessing of IP for socio-economic development;
- d) low levels of Non-Financial Resources (NFIR) capacities to support the harnessing of IP for socio-economic development; and
- e) lack of a strategy that establishes Botswana as an international base for IP economic activities by Botswana and foreigners.

These can be strategically summarised as gaps in diverse capacities to support the development of a strong IP economy which incorporates:

- a) financing of IP businesses;
- b) IP entrepreneurship and enterprise development;
- c) IP knowledge and skills;
- d) promotional and support institutions;
- e) physical infrastructure for IP;
- f) IP political leadership agenda;
- g) IP policies;
- h) IP laws and regulations; and
- i) A strategy that establishes Botswana as a base for the IP economy.

The overarching challenge is that, despite some improvements in R&D, there is low commercialisation of the rights of IP generators/owners which are still not fully exploited in economic transactions that involve IP.

3.3 The Interface between the BIPP (2022) and Other Related Policies

a) National Vision 2036 and National Development Plan (NDP 11)

The IP Policy is seen as critical to bring impetus to the country's National Vision 2036 which envisions a Knowledge-Based Economy (KBE). Vision 2036 anticipates that Botswana will have diversified its economy by making use of science, technology and innovation. There is direct relation between Vision 2036 and IP Policy, as they both recognise the necessity for a conducive environment that includes policy, institutional, regulatory, and legal framework that support all facets of a KBE. The importance of a KBE cannot be overemphasised, for instance, the protection of IP rights is a very critical component in the quest to promote Research and Development (R&D) and innovation, as well as its commercialisation. The Policy will therefore promote the use of science, technology and innovation in the social, economic and business spheres in order to enhance the benefits of intellectual property. This will lead to the development of competitive and sustainable knowledge-based industries by 2036. In addition, NDP 11 acknowledges the use of Indigenous Knowledge Systems (IKS) to produce products and services. This will require concerted efforts in research, innovation and development; and protection of the IP rights generated from the IKS.

b) Industrial Development Policy (2014)

This IP Policy will complement the country's Industrial Development Policy (IDP) that promotes enterprise investment in technology and innovation. The IDP recognises the importance of IP rights protection. The Policy emphasizes the significance of IP protection to ensure that the benefits of research in science and technology for industrial development accrue to deserving companies. This will promote investments in technology and innovation by companies. Therefore, through the revised IDP 2014, Government is committed to the protection of IP rights for industrial researchers, inventors, designers and innovators in line with her national and international commitments.

c) Research Science, Technology and Innovation Policy (RSTI 2011)

This Policy is relevant for the IP Policy because it recognises the importance of IP and its related activities. It provides guidance on different aspects of IP to ensure that there is proper management, protection and fair return. The Policy promotes good practice of IP systems through appropriate legislative regulatory frameworks as indicated in the IP Policy which will ensure that the entire IP governance framework contributes to fostering and harnessing the country's IP potential from Research Science, Technology and Innovation (RSTI) for sustainable economic growth and development.

d) Economic Diversification Drive – Medium to Long Term Strategy for 2011 - 2016

The aim of the EDD Strategy is to ensure that there is creation of new industries that would contribute to diversifying the economy through the development of value chains that can service local and international markets. The EDD Strategy is important for the IP Policy as it promotes the use of technology and innovation as core elements that can improve competitiveness. The Strategy also supports SMMEs in ensuring that they promote R&D as the main drivers for developing new products that are highly competitive.

e) National Trade Policy (NTP 2019)

The National Trade Policy is key to the IP Policy as it promotes proper administration and protection of IP rights in line with national and international agreements. The protection of IPRs facilitates equitable share of trade benefits for rights holders as well as promoting foreign investment.

f) Special Economic Zones Policy (SEZP 2010)

The IP Policy is complementary to the SEZP as it provides a conducive environment that facilitates and supports the development of a knowledge economy through the promotion of innovation, entrepreneurship and commercialisation initiatives such as R&D, knowledge intensive businesses and technology advancements. Stimulating innovative activities will contribute to making Botswana an attractive business hub within the African region.

g) National Entrepreneurship Policy (NEP 2019)

The NEP 2019 aims to develop amongst others, globally competitive enterprises that will enable the country to achieve industrial development, economic diversification and job creation. The Policy promotes and facilitates the development of high-tech start-ups that produce goods and services that could be protected through IPR and commercialised for business competitiveness.

4.0 Intellectual Property Policy Framework

4.1 Vision

Botswana will be an IP-driven economy by 2036.

4.2 Mission

To provide a conducive environment for IP generation, protection and commercialisation.

4.3 Theme

Harnessing IP for economic transformation.

4.4 Principles

The guiding principles for the Intellectual Property Policy define the critical success factors of the Policy execution. These include:

i. IP Awareness

creating consciousness amongst all stakeholder groups about the protection and economic benefits of intellectual property rights;

ii. IP Financing

to ensure financing of R&D for IP generation, protection and commercialisation;

iii. IP generation and protection

promotion of a culture of knowledge creation (innovation and creativity) and ensuring protection through appropriate IP policies and legislation;

iv. Commercialisation

ensuring that innovation and creative goods and services are taken to the marketplace for the benefit of IP rights holders and the country;

v. Enforcement

ensuring that there are necessary IP enforcement structures for IP owners to enforce their intellectual property rights in an efficient manner;

vi. Geographic origin

ensuring that all Botswana products are protected as originating from the country; and

vii. Inclusivity

ensuring that IP initiatives take cognisance of the entrepreneurial activities of Youth, Women, Rural Area Dwellers and People with Disabilities.

4.5 Major Objective

The overall objective of the Policy is to ensure that the entire IP governance framework contributes towards the harnessing of the country's IP potential for economic transformation as well as inclusive and sustainable economic growth and development.

4.6 Specific Objectives

The Policy seeks to address the specific objectives which include the following:

- (a) to improve the IP governance framework for promoting the protection of IP rights;
- (b) to facilitate availability and access to financing for IP generation, acquisition and commercialisation;
- (c) to promote IP awareness, education and training;
- (d) to effectively negotiate IP Agreements for the benefit of Botswana;
- (e) to develop entrepreneurship capacities in selected IP-driven sectors; and
- (f) to create appropriate institutional structures for IP development.

5.0 POLICY FOCUS AREAS

The Policy focuses on all areas of IP that cover both copyrights and neighbouring rights, and industrial property. Projects will be developed in each of the specified areas and integrated into the Implementation Plan for the Policy.

5.1 Enabling IP Governance Framework

IP Governance Framework involves the formulation of appropriate policies and strategies, as well as development of appropriate legislation and structures that foster creativity and innovation. These create a conducive environment for the protection, commercialisation and enforcement of IP rights. Government recognises the need to have an overarching integrated national IP Policy Framework that will ensure that IP is integrated into the economic policies of Botswana. Government will ensure that all Government funded research and development institutions and academic institutions develop and implement institutional IP policies aligned to the BIPP (2022). In addition, Government will encourage academic and research institutions in the private sector to develop institutional IP policies.

Furthermore, Government will review the existing IP laws (Industrial Property Act and the Copyright and Neighbouring Rights Act) to harmonise them with the BIPP (2022). New laws such as protection of new varieties of plants will be developed to promote technology innovation and protection of genetic resources to meet the agricultural needs of the country.

Government will ensure that the use of IPRs in the export and importation of goods is applied effectively and in a balanced manner. This will be achieved by ensuring there is a coordinated approach to IP enforcement by the various institutions involved in IP enforcement. Government will provide appropriate awareness, education and training for all agencies and departments involved in IP enforcement. Government will rigorously apply border measures to protect economic entities operating in the domestic market, thereby creating a conducive environment for investment.

Government will establish an IP committee at Ntlo ya Dikgosi as custodians of traditional knowledge and other aspects of IP. Further, Government will ensure that IP is covered in the mandate of the Parliamentary Portfolio Committee on Finance, Trade and Economic Development for political buy-in.

5.2 Financing for IP Generation and Commercialisation

This will entail creating mechanisms and/or strategies that will ensure that financing is available for IP generation and commercialisation. The country will mobilise and deploy critical masses of financial resources to support leveraging IP for development. Government recognises that the available funding mechanisms are limited in financing research and development and technology start-ups.

In order to enhance capacities for financing IP generation and commercialisation, Government will develop a scheme of incentives created for the private sector to fund research and development and its commercialisation. This initiative will be administered through the policy and a strategy developed to promote private sector participation in commercialisation of IP. There will also be incentives that provide for tax concessions (rebates) on industries to encourage investment on research, IP generation and commercialisation.

Government will increase the innovation and research fund on science and technology to include financing research and development.

5.3 Development of IP Awareness, Education and Training Capacities

This will involve the development of strategies to increase awareness of the public on IP and its associated rights, formal education and training programmes to enhance knowledge of individuals and institutions on IP. This will strengthen their research and development capacities and increase their prospects to generate IP.

Government will strengthen IP education and awareness through:

- i. institutionalising tailor-made IP outreach programmes to different groups such as business sectors, schools, media practitioners and the general public etc;
- ii. strengthening the IP education and training at local institutions. In this regard, local education and training institutions will be encouraged and supported to design and integrate IP courses and programmes in their curricula; and
- iii. launch a medium-term project to design and integrate postgraduate IP degrees and other programmes in the curricula of selected tertiary institutions.

To this end, the following IP skills will be developed:

- i. entrepreneurship skills for arts and culture-based economic activities
- ii. technology entrepreneurship skills; and
- iii. industrial entrepreneurship skills.

R&D is a crucial element in the IP ecosystem. Therefore, the application of IP in research activities by students, scholars, researchers and lecturers will be promoted in order to produce competitive goods and services derived from R&D. Such will be in the form of appropriate technologies and innovations which will be accessed in the market for economic transformation. Therefore, Government will promote protection of IP and its commercialisation in the R&D activities of public and private research institutions.

5.4 IP Entrepreneurship and Enterprise Development

Government will ensure that enterprises are empowered to economically leverage IP potential in the areas of industrial property (Collective Marks, IKS or TK, Patents, Utility Models, etc.), and copyrights and neighbouring rights.

Therefore, Government will ensure social inclusivity with emphasis placed on providing for the recognition and enhancement of various entrepreneurial activities that promote the establishment of IP enterprises. This can be categorised as Micro Scale IP Enterprises, Small and Medium Scale IP Enterprises, Rural IP Enterprises, Youth IP Enterprises, People with Disabilities IP Enterprises and Women IP Enterprises. These will utilise IP to enable competitive economic sectors mirrored through their contribution to the economy in various ways such as job creation, economic growth and their share in GDP.

This will be done through the establishment of model IP business clusters for IP business upgrading that promote and facilitate competitive transformation of Botswana IP enterprises. This will showcase how Botswana IP can be commercialised and the country IP economy made internationally competitive by leveraging local success stories and establishing Botswana Business incubators-cum-accelerators for innovative and creative entrepreneurship. The business incubators will target small and medium scale IP entrepreneurs, women, youth, people living with disabilities and rural entrepreneurs.

Government will ensure that appropriate policies and strategies are put in place to allow for the emergence and thriving of local Large-Scale IP Enterprises (LSIPEs) in all sectors of the economy. Further, indigenous LSIPEs will be empowered to economically leverage IP potential in the areas of both industrial property, and copyrights and neighbouring rights.

Further, Government will ensure linkages between research institutions and the industry to promote effective commercialisation of research outputs as goods and services that can easily reach both local and international markets. The linkages will be supported by institutional IP policies and private sector frameworks to address, amongst others, issues of ownership and benefit-sharing which will prevent leakages of research results.

Given the foregoing, priority will be given to the following economic sectors:

5.4.1 IP-driven Agri-business and Agro-industries

Government will leverage the IP system to revitalise the country's agricultural sector. In this regard, the country's agribusiness and agro-industrial development will be stimulated through specific interventions in biodiversity, agriculture related genetic resources (GRs), agriculture-related GIs, and agriculture-related TK.

Special focus on agribusiness and agro-industries development will be dedicated to:

- (a) supporting agribusiness and agro-industry research;
- (b) identifying key IP with a viable potential for agro-industrial upgrading and initiating upgrading projects;
- (c) developing synergy-leveraging agribusiness and agro-industrial (business) clusters; and
- (d) R&D in the use of artificial insemination and impact genetics.

5.4.2 Creative Industries

Government will focus on promoting Botswana's economic empowerment and development by leveraging on the country's cultural heritage and the creative industry including IKS/TK and EoF. This is born out of a realisation that the creative industry sector can play a part in contributing towards diversifying and growing the economy of Botswana. Therefore, Government will design and implement the following supportive measures:

- (a) Promote establishment of inclusive, resourced, competent and a sustainable creative industry sector;
- (b) Promote cultural diversity and unity;
- (c) Provide supportive purpose-built facilities, adequate ICT connectivity and technological advancement;
- (d) Promote creative industry for sustainable job creation;
- (e) Provide resources for research, training and knowledge & technology transfer; and
- (f) Provide Access and Benefit Sharing framework to ensure that holders of the protected traditional knowledge can benefit from the use of such knowledge.

5.4.3 Healthcare Industry

In the case of the healthcare industry, Government will create a conducive environment for an integrated approach towards developing Botswana's health products in the pharmaceutical industry and traditional medicine which will include the following:

- (a) leveraging TK of the people of Botswana, by enhancing the national TK landscape to make it provide real economic opportunities and returns to Botswana;
- (b) promote R&D in TK to facilitate commercialisation in the pharmaceutical industry. This can be achieved through integration of TK into the pharmaceutical industry to produce different medicines;
- (c) leveraging the flexibilities provided by the World Trade Organization (WTO) TRIPS agreement to use foreign and local inventions to produce different medicines; and,
- (d) promoting R&D in TK that leads to the establishment of the pharmaceutical industry in Botswana.

5.4.4 Tourism Sector

Government will ensure that Botswana optimally utilises IP to stimulate growth of the Tourism Sector. This will promote increased tourist activities in the country. To increase value in the tourism sector, Government will promote the use of the following IP rights:

- (a) Certification marks, which can be effectively used by hoteliers, as well as tour operators, Community Based Natural Resources Management (CBNRM) organisations to promote the quality of relevant local tourist industry services;
- (b) GIs, which can be used to facilitate rural focused agro-tourism ventures;
- (c) IKS, which can be used to promote, for instance, the learning of and experience of different cultural practices (e.g. arts and crafts, language, religion, music, traditions, folklore, etc.);
- (d) Service Marks, which can be used by local services providers (including hotels), to distinctively position their market offer linking them to expected quality;
- (e) Trademarks and Collective Marks used for "Destination branding" of various locations.

5.4.5 Information and Communications Technologies (ICT)

Government will ensure that ICT products and services leverage the use of IP to promote growth in the sector. Government will encourage technology entrepreneurs to develop, protect and commercialise software applications that are useful to drive the different economic sectors of Botswana.

5.5 Strengthen IP Negotiation Structures

Botswana is a member of several international bodies such as WIPO, WTO, ARIPO, AU and SADC which deal with trade and intellectual property issues. It is at these forums that IP issues are negotiated. Some of the critical issues which are being discussed at these forums include the WTO TRIPs Agreement on flexibilities dealing with access to medicines, and WIPO IGC on the protection of TK/EoF/GR. Botswana should not agree to the harmonisation of IPR laws in the context of trade agreements that erodes the TRIPs Flexibilities and exploitation of genetic resources and use of TK without protecting the rights of communities to ensure access and benefit sharing.

The country must use these international platforms to negotiate removal of any remaining barriers and facilitate access to foreign markets of products of the Botswana IP industry (e.g. creative industry). Furthermore, the country should leverage the market access opportunities provided by many trade agreements (regional, WTO development provisions, etc.)

To achieve the above, Government will enhance capacity of the trade negotiation structures to incorporate IP in bilateral, regional and multilateral agreements. Government will bridge the gaps in and/or institutionalise economic diplomacy in Botswana (in bilateral, plurilateral and multilateral fora). This will be achieved by strengthening the existing national mechanism for trade negotiations (with a focus on IP), and by professionalising it.

6.0 INTELLECTUAL PROPERTY POLICY INSTITUTIONAL STRUCTURES

The implementation of the IP Policy requires multiple stakeholders to effectively deliver their mandate. CIPA will take the lead in the implementation of the Policy as it is mandated with authority on IP matters in Botswana. Therefore, CIPA as the regulator will act as a link between the Government and Multilateral Partners, IP generators and other IP support institutions as depicted in Figure 1.

To facilitate implementation of the IP Policy, an IPP Coordinating Committee will be created. The Committee will be chaired by the Permanent Secretary (PS) of MTI, with PS of Ministry of Communications, Knowledge and Technology as Deputy Chairman and CIPA as Secretariat. The Membership of the Committee will comprise representatives of the various Institutions with direct and support IP mandate as shown in Figure 1. The role of each of the key Institutions and Stakeholders in the Committee are as outlined below:

6.1 IP Policy Development Institutions

At the top of the IP Policy Institutional structure is the Cabinet which approves and recommends the approval and adoption of the IP Policy by Parliament, in which the latter is the final authority in all matters of Policy development. The Ministry of Trade and Industry is tasked with coordinating the development of the IP Policy in consultation with key stakeholders. To this end, MTI links with critical Government Ministries like MESD, MCKT, MYGSC and other Government Departments as well as Parastatals that deal with different aspects of IP. Further, MTI collaborates closely with Multilateral Partners such as the WTO, WIPO, ARIPO and SADC to ensure that Botswana accesses resources and other critical support to implement the Policy.

6.2 IP Generators

Their main role is to generate, protect and commercialise IP. There is a direct link between CIPA as the Regulator and the IP Generators. The linkage is through registration and granting of IP rights by CIPA to the innovations and creativity developed by these institutions. The IP Generators include private sector covering small, medium and large enterprises which develop products and services. The technology innovators include individuals who create innovations in all fields of technology. The Traditional Knowledge Innovators are individuals who create products and services using indigenous knowledge. The Creative Industries include those who create literary and artistic works. Academic and Research institutions include researchers and innovators who carry out R&D activities within these institutions such as BITRI, BIUST, BOTHO, BUAN, Government technical colleges, Limkokwing University, NARDI, and UB.

6.3 Support Institutions

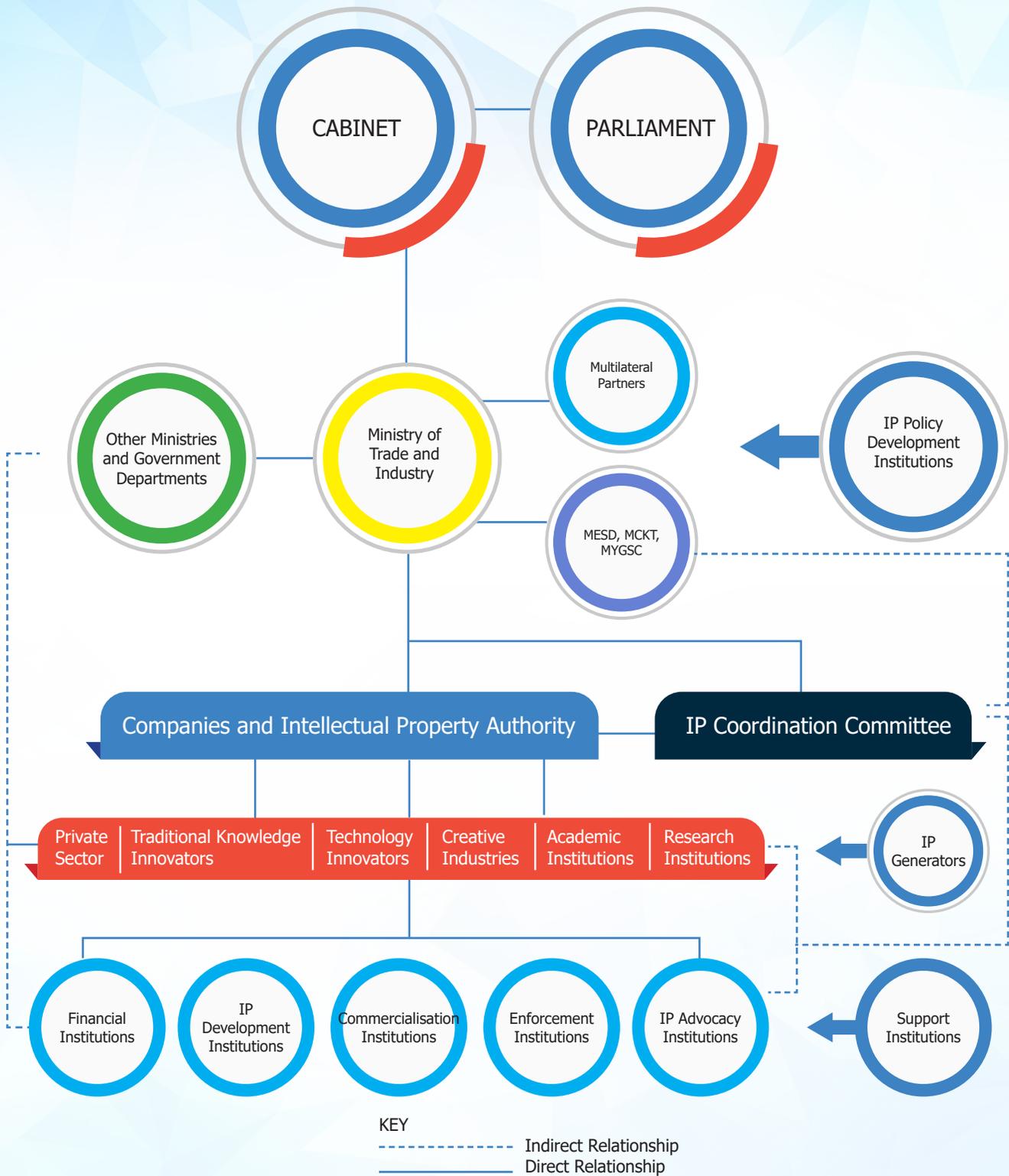
The institutions provide technical and financial assistance to the IP Generators to ensure that there is value in the outcome of their innovative and creative works. The support institutions include Financial, IP Development, Commercialisation, Enforcement and IP Advocacy Institutions. Financial institutions such as CEDA and commercial banks provide funds to support R&D and product development. IP Entrepreneurship Development institutions such as LEA and UB Business School will provide support to IP entrepreneurs in the creative and technology sectors. Commercialisation institutions support incubation and funding of R&D products and services to successfully reach the markets. Such institutions include BDIH and COSBOTS.

Enforcement institutions provide support to IP right-owners to enforce their rights when there is infringement. These institutions include Botswana Police Service, BURS, DPP, and Administration of Justice. IP Advocacy Institutions is about strengthening and establishing institutions representing owners and users of IPRs to create a 'win-win' in the policy space which is critical for technological development and socio-cultural progress. For this balance to be achieved, it is important that the interests of both owners of IPRs and users are protected. Government will support existing associations such as Botswana Music Union, Botswana Publisher's Association, Inventor's Association etc. to ensure growth of different creative and innovation sectors.

Government will establish the following new institutions:

- i. Botswana Association of IP Owners (BASIPO) will serve as a joint advocacy platform of IP owners from all sectors (research, culture arts etc.)
- ii. Botswana Open Innovation Forum (BOPIF) will serve as a platform for sharing experiences and information amongst research institutions to reduce duplication of efforts. Government will ensure institutionalised linkages between Government-funded research institutions.

FIGURE 1: INSTITUTIONAL STRUCTURES



7.0. POLICY REVIEW, MONITORING AND EVALUATION

The Intellectual Property Policy and its Implementation Plan have been developed as dynamic instruments to ensure the continued relevance and effectiveness of the policy measures. The Policy will be reviewed on intervals of five (5) years or as and when the economic environment dictates. Further, the Policy will continuously be monitored through the performance indicators which will be developed as part of the Monitoring and Evaluation Framework.

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