Innovation & Intellectual Property
Collaborative Dynamics in Africa

EDITORS:
JEREMY DE BEER, CHRIS ARMSTRONG,
CHIDI OGUAMANAM AND TOBIAS SCHONWETTER

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Preface

This book is among the key outputs of the Open African Innovation Research and Training (Open A.I.R.) Project. Based on case study research in nine African countries, the book examines the recent history and current on-the-ground realities of innovation and intellectual property (IP) in African settings. In doing so, the book reveals complex collaborative dynamics across a range of different countries, sectors and socio-economic contexts, and generates recommendations for how innovation and IP can be married with social and economic development objectives in African settings. This book’s sister report, Knowledge and Innovation in Africa: Scenarios for the Future, situates the current realities covered in this book within a much longer historical trajectory and multiple potential futures.

Conceived in 2009, established in 2010 and launched in 2011, Open A.I.R. is a pan-African and globally interconnected research and training network, which was established to:

- raise IP awareness in African settings and facilitate critical policy engagement;
- empower a networked, epistemic IP community in Africa;
- identify IP-related innovation bottlenecks and modes of open collaboration; and
- interrogate IP-related innovation metrics, capital and power structures.

Open A.I.R. is financially supported by Canada’s International Development Research Centre (IDRC) and Germany’s Federal Ministry for Economic Cooperation and Development (BMZ), and collaborates with numerous other organisations and individuals – all of whom are recognised in the Acknowledgements’ pages of this book. In addition to the aforementioned case study and foresight research, the Open A.I.R. network engages in a wide range of training, capacity building, outreach and policy engagement activities – both on the African continent and in settings outside the continent where matters of African innovation and IP are engaged. These engagements target external stakeholders capable of changing policies and practices, including:

- innovators, creators and entrepreneurs – individuals and companies;
- business groups such as chambers of commerce and industry associations;
- national, regional and international law-makers and policy-makers;
- issue leaders, such as politicians, judges, professors and practitioners;
- scientific and cultural research and development funding bodies;
university researchers, administrators and technology transfer officials; 
rights-holders and collective rights management organisations; and 
representatives of indigenous and local communities.

Open A.I.R. is motivated by a vision in which innovation and creativity in Africa are sustainable, properly valued, collaborative, widely accessible and result in benefits that are distributed throughout society. Based on this vision, the network's mission is to better understand how innovation and IP processes work in African settings, how knowledge and technology currently protected by IP can be mobilised, and how IP systems can be harnessed or adapted in a manner that fosters openness-oriented collaborative innovation resulting in just distribution of new knowledge and technology.

This book and the **Scenarios** volume are two parts of a much broader attempt, by Open A.I.R. and other initiatives, to facilitate, in the medium to long term, the emergence of new, pragmatic means of valuing and facilitating innovation and creativity in Africa. Contextually appropriate metrics sensitive to the monitoring of meaningful changes in behaviour around innovation and creativity could be instrumental for promoting African grassroots entrepreneurship, broadband business development, and a vibrant private sector built on small and medium-sized enterprises (SMEs) with a sustained ability to innovate. And the opportunities for innovation-driven SMEs could also benefit from policy-maker adoption of appropriate metrics when designing the policy and regulatory frameworks necessary to ensure predictable innovation environments for stakeholders.

Open A.I.R.’s core funders, IDRC and BMZ, have provided a framework for Open A.I.R.’s objectives. Open A.I.R. fits within the IDRC’s Science and Innovation programme, which supports research and policy engagement in relation to how science, technology and innovation (STI) can be engines of socio-economic development. Within this programme, the Information and Networks (I&N) initiative, which funds the Open A.I.R. Project, aims to better understand the linkages among innovation, creativity, networked collaborations (often enabled via information and communication technologies [ICTs]), and determinants of openness – including IP rights. The IDRC also supported the precursor network to Open A.I.R., the African Copyright and Access to Knowledge (ACA2K) Project, which ran from 2007 to 2011 and generated the nucleus of the expert network now driving Open A.I.R.

BMZ supports Open A.I.R. via Germany’s Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), under the GIZ commons@ip – Harnessing the Knowledge Commons for Open Innovation initiative. The commons@ip initiative focuses on how IP rights interact with open innovation, the knowledge commons, open licences and collaborative innovation. It is part of the BMZ-
mandated Train for Trade programme, which aims at strengthening the private sector and its constituent bodies in the Southern African Development Community (SADC) region through training and capacity building in export promotion, quality control and promotion of open innovation – as well as through promotion of local and regional economic development and trade.

Open A.I.R.’s training and capacity building components include:

- building the network’s capacity – through online platforms, network-wide workshops, research methodology support, scenario-building meetings and thematic seminars;
- awarding Open A.I.R. Fellowships to emerging IP scholars and potential leaders – from Tanzania, Kenya, Uganda, Ethiopia, Cameroon, Nigeria and Egypt;
- exchanging knowledge through Africa-wide and South–South knowledge networking at seminars, workshops and conferences;
- growing awareness among African creators, innovators, entrepreneurs and policy-makers of openness-oriented approaches to innovation and IP matters in Africa; and
- teaching at African tertiary educational institutions, including development of a replicable, open course curriculum on IP law and development.

Because of the immense geographic size of the African continent, and unique logistical challenges of African intra-continental travel, ICTs have been instrumental in empowering the research network’s “community of practice”. Open A.I.R. has an offline presence in 14 African countries and in multiple countries outside the continent. Online, the network includes hundreds of individuals and institutions throughout Africa and from all corners of the globe, linked via a suite of online networking and social-media tools. The Open A.I.R. community of practice advances a culture of multidirectional exchange among African innovative and creative communities and external actors – with a view to sustainably empowering local communities and SMEs. Network members promote cross-fertilisation of ideas via original thinking and partnerships with national and international institutions, scholars, funding agencies, civil society organisations and other willing partners. Those wishing to join the community can visit http://www.openair.org.za/join.
Acknowledgements

True to its emphasis on “collaborative dynamics”, this book is the product of the collective energy of dozens of people and institutions in many countries, all of whom work within the Open African Innovation Research and Training (Open A.I.R.) network. Open A.I.R. currently has core network members and institutions in 14 African countries, spanning North Africa (Egypt, Tunisia), West Africa (Senegal, Ghana, Nigeria, Cameroon), East Africa (Ethiopia, Uganda, Kenya, Tanzania) and southern Africa (Malawi, Mozambique, Botswana and South Africa). Other network members and institutions are in Canada, the United States, the United Kingdom, Germany and France. These members are, in turn, linked – via online and offline interactions – to a broader Open A.I.R. network of hundreds of individuals and institutions, including people and entities in Brazil, India, Malaysia, Australia, Switzerland and the Netherlands. The network receives generous financial support from Canada’s International Development Research Centre (IDRC) and Germany’s Federal Ministry for Economic Cooperation and Development (BMZ).

Each of the editors and authors of this volume is part of, and collaboratively exchanges knowledge and expertise with, this large network, and we the editors, and each of the contributors, are profiled in “About the Editors” and “About the Contributors” sections of this book and on the Open A.I.R. website’s Team page, http://www.openair.org.za/content/open-air-team. On this Team page, one can also find the names and contact details of Open A.I.R. Fellows and other network members and institutions. The network is also accessible via its social media platforms, featured at http://www.openair.org.za/join

Open A.I.R.’s administrative hub is the IP Unit in the University of Cape Town Faculty of Law, where Project Manager Nan Warner and Administrator Phyllis Webb are the key operational drivers. Warner and Webb receive management support from two of the editors of this book (and the co-Principal Investigators of the Open A.I.R. Project), UCT IP Unit Director Tobias Schonwetter and Jeremy de Beer of the University of Ottawa Faculty of Law. Also supporting project management are Julie Nadler-Visser of UCT’s Research Contracts and IP Services (RCIPS) unit, members of the UCT Finance Department and Faculty of Law Finance Department, and another editor of this book: Chris Armstrong of the LINK Centre at the University of the Witwatersrand (Wits) in Johannesburg.

Network strategic guidance is provided by a Steering Committee composed of De Beer, Schonwetter, Warner, Chidi Oguamanam (another of this book’s
editors) of the University of Ottawa Faculty of Law, Nagla Rizk of The American University in Cairo (AUC), Sisule Musungu of IQsensato in Nairobi, Khaled Fourati of the IDRC office in Cairo, and Balthas Seibold of Germany’s Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) in Bonn. Further strategic support from the IDRC is, or has been, provided by Naser Faruqui, Simon Carter, Laurent Elder, Fernando Perini, Matthew Smith, Heloise Emdon and Phet Sayo; Karim Badran and Rose-Marie Ndiaye Pereira on financial matters; and Michelle Hibler and Nola Haddadian on publications. GIZ’s involvement is focused on the capacity-building components of the network, which are carried out in collaboration with the GIZ’s commons@ip – Harnessing the Knowledge Commons for Open Innovation initiative. At GIZ, in addition to support from the aforementioned Steering Committee member Balthas Seibold, who advises on matters of international knowledge cooperation and networking, support has also come from Petra Hagemann, Christine de Barros Said, Ursula van Look, Marina Neuendorff, Margrit Brockhaus and the Working Group of German Development Organisations on Promoting Innovation Systems. At UCT, as well as those already mentioned, key supporters and collaborators have been the Dean of Law, PJ Schwikkard, Lee-Ann Tong in the Faculty of Law, and, in the IP Unit, the Unit’s founder Julian Kinderlerer, its Deputy Director Caroline Ncube and its Senior Research Fellow Bernard Maister. At the University of Ottawa, in addition to those already mentioned, support has been provided by the Dean of the Faculty of Law, Common Law Section, Nathalie Des Rosiers, and Former Dean Bruce Feldthusen.

For this book, key network participants were the team of JD candidates in the University of Ottawa Faculty of Law – Lukas Frey, Will Sapp, Phil Holdsworth, Maya Boorah, Kristen Holman and Saara Punjani – who provided long hours of diligent editorial assistance. In addition, because the research case studies presented in this book all required collection of data from human subjects – via interviews and/or focus group discussions and/or written surveys – this book would not have been possible without the cooperation of dozens of respondents across the countries of study. For reasons of confidentiality, most survey and interview respondents are not named in this book, but we are sincerely grateful for their contributions. Also contributing to the research outlined in this book was Donna Podems of OtherWISE in Cape Town, who advised on research methodologies and supported a methodology workshop for several of the authors featured in this volume, in addition to her support of Open A.I.R.’s monitoring and evaluation (M&E) framework. At this book’s publisher, UCT Press, the key drivers have been Publisher Sandy Shepherd and Project Manager Glenda Younge. The cover design for this volume is by Elsabe Gelderblom of Farm Design in Cape Town, who does all of Open A.I.R.’s design work for its website, social media tools, PR materials,
Acknowledgements

Briefing Notes and the network’s other substantial publication output, the Open A.I.R. Scenarios compendium – which is available in hard-copy, and on the Open A.I.R. website, as a separate published output and companion to this book.

Network headquarters at the UCT IP Unit serves as Open A.I.R.’s Southern Africa Hub, coordinated by Project Manager Warner. There are also four other Hubs: the North Africa Hub at the Access to Knowledge for Development Center (A2K4D) of the School of Business at The American University in Cairo (AUC), coordinated by Nagham El Houssamy under the direction of Nagla Rizk; the West Africa Hub at the Nigerian Institute of Advanced Legal Studies (NIALS) in Lagos, coordinated by Helen Chuma-Okoro under the direction of Adebambo Adewop; the East Africa Hub at the Centre for IP and IT Law (CIPIT) of Strathmore University, Nairobi, coordinated by CIPIT Director Isaac Rutenberg; and the Canada Hub at the University of Ottawa Faculty of Law, coordinated by De Beer and Oguamanam. Contact can be made with these Hubs and Hub Coordinators via the aforementioned Open A.I.R. website Team page.

Also integral to the success of the network are its nine Fellows, each of whom has spent time at the UCT IP Unit in Cape Town. The Fellows have contributed to Open A.I.R.’s case study and foresight research, to outreach and training work, and to building the network. The nine Fellows are: Esther Ngom of the Ngo Nyemeck law firm in Yaoundé; Seble Baraki of the Justice and Legal System Research Institute (JLSRI) in Addis Ababa; Moses Mulumba of the Centre for Health, Human Rights and Development (CEHURD) in Kampala; Douglas Gichuki of CIPIT in Nairobi; Milton Lore of Bridgeworks Africa in Nairobi; Eliamani Laltaika of the Tanzania Intellectual Property Rights Network (TIP-Net) in Dar es Salaam; Alexandra Mogyoros, a student in the Faculty of Law at the University of Ottawa; West Africa Hub Coordinator Helen Chuma-Okoro of NIALS in Lagos; and North Africa Hub Coordinator Nagham El Houssamy of A2K4D in Cairo.

Other collaborating institutions are the Program on Information Justice and Intellectual Property (PIJIP) at the Washington College of Law at American University in Washington, DC; the Centre for Technology and Society (CTS) in Brazil; the Centre for Internet and Society (CIS) in India; and the Open Society Foundations, where Open A.I.R.’s key partner is Vera Franz. The Open A.I.R. network has also benefited from interaction with staff at the World Intellectual Property Organisation (WIPO) headquarters in Geneva. In London, Shirin Elahi of Scenarios Architecture is the driver of Open A.I.R. foresight research work, as featured in the aforementioned Scenarios compendium that provides an important forward-looking complement to the current picture offered by this volume. Jo Higgs of Go Trolley Films in Cape Town did post-production on the videos available on the Open A.I.R. YouTube channel – videos which show how the network came into being and how the research was conceptualised.
All the people and institutions mentioned here have in one way or another played a role, by collaborating within the Open A.I.R. network, in the conceptualisation, planning, data collection, data analysis, writing, editing, design and production processes that resulted in successful research and the completion of this book. It is hoped that this volume’s free availability online, under a Creative Commons (CC) licence, will ensure that the book’s collaborative dynamics do not end here at the moment of publication, and continue long into the future in the work of the still-growing Open A.I.R. community.

Jeremy de Beer, Chris Armstrong, Chidi Oguamanam, Tobias Schonwetter
September 2013
About the Editors

Prof. Jeremy de Beer is an Associate Professor in the Faculty of Law, University of Ottawa, and co-Principal Investigator of the Open African Innovation Research and Training (Open A.I.R.) Project. His edited books include Access to Knowledge in Africa: The Role of Copyright (UCT Press, 2010), and Implementing the World Intellectual Property Organization’s Development Agenda (Wilfred Laurier University Press, 2009). jeremy.debeer@uottawa.ca

Dr Chris Armstrong is a Visiting Researcher at the LINK Centre, University of the Witwatersrand (Wits), Johannesburg, publishing and communications consultant for the Open African Innovation Research and Training (Open A.I.R.) Project, and former Research Manager of the African Copyright and Access to Knowledge (ACA2K) Project. He is an editor of Access to Knowledge in Africa: The Role of Copyright (UCT Press, 2010). c.g.armstrong@gmail.com

Dr Chidi Oguamanam is an Associate Professor in the Faculty of Law, University of Ottawa, a lawyer with Blackfriars LLP in Lagos, a co-investigator for the Open African Innovation Research and Training (Open A.I.R.) Project, and former Director of the Law and Technology Institute at Dalhousie University, Halifax, N.S., Canada. He is author of the books Intellectual Property in Global Governance (Routledge, 2012) and International Law and Indigenous Knowledge (University of Toronto Press, 2010). coguaman@uottawa.ca

Dr Tobias Schonwetter is Director of the IP Unit in the Faculty of Law, University of Cape Town (UCT), African Regional Coordinator for Creative Commons (CC), co-Principal Investigator for the Open African Innovation Research and Training (Open A.I.R.) Project, and former co-Principal Investigator for the African Copyright and Access to Knowledge (ACA2K) Project. He is an editor of Access to Knowledge in Africa: The Role of Copyright (UCT Press, 2010). tobiasschonwetter@gmail.com
About the Contributors

Dr Perihan Abou Zeid is a Senior Lecturer in the Faculty of Legal Studies and International Relations, Pharos University in Alexandria (PUA), a Post-doctoral Fellow in the Centre of Economic Law and Governance at Vrije University, Brussels, and a volunteer attorney for Public Interest Intellectual Property Advisors (PIIPA). perihan.abouzeid@pua.edu.eg

Lucienne Abrahams is Director of the LINK Centre, University of the Witwatersrand (Wits), Johannesburg, and a former board member of South Africa’s National Advisory Council on Innovation (NACI) and National Research Foundation (NRF). luciennesa@gmail.com

Prof. Adebambo Adewopo is a Professor of Law at the Nigerian Institute of Advanced Legal Studies (NIALS), Abuja, a Principal Partner at L&A Legal Consultants, Lagos, and former Director-General of the Nigerian Copyright Commission (NCC). tonade@yahoo.com

Titi Akinsanmi is Policy and Government Relations Manager at Google, Johannesburg, an African Regional Representative on the At-Large Advisory Committee of the Internet Corporation for Assigned Names and Numbers (ICANN), and a former Research Associate at the LINK Centre, University of the Witwatersrand (Wits), Johannesburg. titi.akinsanmi@gmail.com

Prof. Njoku Ola Ama is an Associate Professor in the Department of Statistics, University of Botswana, Gaborone. amano@mopipi.ub.bw

Dr Bassem Awad is a Judge at the Appeal Court of Egypt, an Adjunct Professor in the Faculty of Law at the University of Western Ontario, London, Ont., Canada, and a Tutor at the Academy of the World Intellectual Property Organisation (WIPO). awad_bassem@hotmail.com

Wondwossen Belete is President of the Society for Technology Studies (STS), Addis Ababa, former Manager of International Creativity and Innovation Development Support Services (ICIDSS), and former Director of IP Protection and Technology Transfer at the Ethiopian Intellectual Property Office (EIPO). wondwossenbel@yahoo.com

Helen Chuma-Okoro is a Research Fellow at the Nigerian Institute of Advanced Legal Studies (NIALS), Lagos, a Research Fellow of the Open African Innovation Research and Training (Open A.I.R.) Project, and Coordinator of Open A.I.R.’s West Africa hub in Lagos. helenchuma@gmail.com
Gino Cocchiaro is a lawyer with Natural Justice: Lawyers for Communities and the Environment, Cape Town, and a former Legal Researcher at the International Development Law Organisation (IDLO), Rome. gino@naturaljustice.org

Dr Tesh Dagne is an Assistant Professor in the Faculty of Law, Thompson Rivers University, Kamloops, B.C., Canada. tdagne@tru.ca

Fernando dos Santos is Director-General of the African Regional Intellectual Property Organisation (ARIPO), Harare, a Tutor at the World Intellectual Property Organisation (WIPO) Worldwide Academy, Geneva, a former Lecturer in Law at Eduardo Mondlane University (UEM) and the Technical University of Mozambique, Maputo, and former Director-General of the Mozambican Industrial Property Institute (IPI). fsantos@aripo.org

Kristen Holman is a JD candidate in the Faculty of Law, University of Ottawa. kristen.holman@gmail.com

Dr Dick Kawooya is an Assistant Professor in the School of Library and Information Science, University of South Carolina, Columbia, SC, and former Lead Researcher of the African Copyright and Access to Knowledge (ACA2K) Project. He is an editor of Access to Knowledge in Africa: The Role of Copyright, (UCT Press, 2010). kawooya@sc.edu

Johan Lorenzen is an LLB candidate at the University of Cape Town (UCT) and a former consultant with Natural Justice: Lawyers for Communities and the Environment. yolorenz@gmail.com

Dr Bernard Maister is a Senior Research Fellow in the IP Unit, Faculty of Law, University of Cape Town (UCT), practised as an IP (patent) lawyer in the US, and is one of the authors of Harnessing Intellectual Property Rights for Development Objectives (Wolf Legal, 2011). maisterb@gmail.com

Dr Ikechi Mgbeoji is an Associate Professor at Osgoode Hall Law School, York University, Toronto, and a lawyer with Blackfriars LLP, Lagos. His authored books include Global Biopiracy (UBC Press, 2006). ikechimgbeoji@osgoode.yorku.ca

Dr Caroline Ncube is an Associate Professor, and Deputy Director of the IP Unit, in the Faculty of Law, University of Cape Town (UCT), and lectures in the Master of IP programme of the World Intellectual Property Organisation (WIPO) and African Regional Intellectual Property Organisation (ARIPO) at Africa University, Mutare, Zimbabwe. caroline.ncube@uct.ac.za

Dr Marisella Ouma is Executive Director of the Kenya Copyright Board (KECOBO), Nairobi, an Advocate of the High Court of Kenya, has taught IP Law at the University of Nairobi, and lectures in the Master of IP programme of the World Intellectual Property Organisation (WIPO) and African Regional
Intellectual Property Organisation (ARIPO) at Africa University, Mutare, Zimbabwe. mwarsie@justice.com

**Dr Adejoke Oyewunmi** is a Senior Lecturer in the Faculty of Law, University of Lagos (Unilag), Akoka, and a former Adjunct Lecturer in the Master of IP programme of the World Intellectual Property Organisation (WIPO) and African Regional Intellectual Property Organisation (ARIPO) at Africa University, Mutare, Zimbabwe. aoyewunmi@unilag.edu.ng, adejoke21@yahoo.com

**Simão Pelembe** is a legal advisor at Petróleos de Mozambique (Petromoc), Maputo, a Master’s candidate in Business Law at Instituto Superior de Ciências e Tecnologia de Moçambique (ISCTEM), and serves on the boards of Petromoc group companies Petrogás, Somotor, Petroauto, Ecomoz and Somyoung Motors. simao.pelembe@petromoc.co.mz

**Dr Nagla Rizk** is Professor of Economics at the School of Business, The American University in Cairo (AUC), founding Director of the Access to Knowledge for Development Center (A2K4D) at AUC, a Faculty Associate at Harvard University’s Berkman Center for Internet and Society, an affiliated Fellow of Yale University’s Information Society Project (ISP), and a founding member of the Access to Knowledge Global Academy. She is co-editor of, and contributor to, *Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development* (Bloomsbury Academic, 2010), and a co-author of *Arab Knowledge Report 2009*. naglarzk@aucegypt.edu

**Britta Rutert** is a PhD candidate in Anthropology at the Free University of Berlin and a Researcher for Natural Justice: Lawyers for Communities and the Environment in Bushbuckridge, South Africa. britta.rutert@gmail.com

**Prof. Ben Sihanya** teaches at the University of Nairobi Law School, is CEO of Innovative Lawyering and Sihanya Mentoring, Nairobi, and is former Dean of Law and Chair of the Department of Commercial Law at the University of Nairobi. His edited books include *Intellectual Property Rights in Kenya* (Konrad Adenauer Stiftung, 2009), and he is the author of *Intellectual Property and Innovation in Kenya and Africa* (Innovative Lawyering and Sihanya Mentoring, 2013) and *Presidency and Administrative Bureaucracy in Kenya* (forthcoming, 2013). sihanyamentoring@gmail.com, sihanya@innovativelawyering.com

**Izabella Sowa** is a JD candidate in the Faculty of Law, University of Ottawa. sowa.izabella@gmail.com
### Acronyms and Abbreviations

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<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>A2K</td>
<td>access to knowledge</td>
</tr>
<tr>
<td>A2K4D</td>
<td>Access to Knowledge for Development Center (The American University in Cairo, Egypt)</td>
</tr>
<tr>
<td>AAU</td>
<td>Addis Ababa University</td>
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<tr>
<td>ABS</td>
<td>access and benefit-sharing</td>
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<tr>
<td>ACA2K</td>
<td>African Copyright and Access to Knowledge Project</td>
</tr>
<tr>
<td>ACP</td>
<td>African, Caribbean and Pacific Group of States</td>
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<tr>
<td>ACTS</td>
<td>African Centre for Technology Studies (Kenya)</td>
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<tr>
<td>ADPP</td>
<td>Ajuda de Desenvolvimento de Povo para Povo (Mozambique)</td>
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<tr>
<td>AERC</td>
<td>African Economic Research Consortium</td>
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<td>AFTE</td>
<td>Association for the Freedom of Thought and Expression (Egypt)</td>
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<tr>
<td>AGOA</td>
<td>African Growth and Opportunity Act</td>
</tr>
<tr>
<td>AIM</td>
<td>Agência de Informação de Moçambique</td>
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<tr>
<td>AmCham</td>
<td>American Chamber of Commerce (Egypt)</td>
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<td>ARC</td>
<td>Aquaculture Research Centre (Egypt)</td>
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<td>ARIP</td>
<td>African Regional Intellectual Property Organisation</td>
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<tr>
<td>ASSAf</td>
<td>Academy of Sciences of South Africa</td>
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<td>ASTII</td>
<td>African Science, Technology and Innovation Indicators</td>
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<td>ATO</td>
<td>alternative trading organisation</td>
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<tr>
<td>ATPC</td>
<td>African Trade Policy Centre</td>
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<tr>
<td>ATPS</td>
<td>African Technology Policy Studies Network</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<td>AUC</td>
<td>The American University in Cairo</td>
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<tr>
<td>B-BBEE Act</td>
<td>Broad-Based Black Economic Empowerment Act 53 of 2003 (South Africa)</td>
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<td>BCP</td>
<td>bio-cultural community protocol</td>
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<td>BIH</td>
<td>Botswana Innovation Hub</td>
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<td>BMZ</td>
<td>Federal Ministry for Economic Cooperation and Development (Germany)</td>
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<td>BoI</td>
<td>Bank of Industry (Nigeria)</td>
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<td>BOTEC</td>
<td>Botswana Technology Centre</td>
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<td>BPR</td>
<td>business process re-engineering</td>
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<td>CAA</td>
<td>Cocoa Abrabopa Association (Ghana)</td>
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<tr>
<td>CARICOM</td>
<td>Caribbean Community</td>
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<tr>
<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<tr>
<td>CBN</td>
<td>Central Bank of Nigeria</td>
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<tr>
<td>Acronym</td>
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<td>CC</td>
<td>Creative Commons</td>
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<td>CCIA</td>
<td>Computer and Communications Industry Association</td>
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<td>CEDAT</td>
<td>College of Engineering, Design, Art and Technology (Makerere University, Uganda)</td>
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<td>CEHURD</td>
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<td>CEPIL</td>
<td>Centre for Public Interest Law (Ghana)</td>
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<td>CIGI</td>
<td>Centre for International Governance Innovation</td>
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<td>CIPC</td>
<td>Companies and Intellectual Property Commission (South Africa)</td>
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<td>CIPIIT</td>
<td>Centre for IP and IT Law (Strathmore University, Kenya)</td>
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<td>CIPO</td>
<td>Canadian Intellectual Property Office</td>
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<td>Commission on Intellectual Property Rights (UK)</td>
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<td>CMO</td>
<td>collective management organisation</td>
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<td>COCOBOD</td>
<td>Ghana Cocoa Board</td>
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<td>CPD</td>
<td>Centre for Policy Dialogue (Nigeria)</td>
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<td>CRRTT</td>
<td>Centre for Research in Transportation Technologies (Makerere University, Uganda)</td>
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<td>CSIR</td>
<td>Council of Scientific and Industrial Research (India)</td>
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<td>CTEA</td>
<td>Copyright Term Extension Act (US)</td>
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<td>CVCP</td>
<td>Committee of Vice-Chancellors and Principals (UK)</td>
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<tr>
<td>DACST</td>
<td>Department of Arts, Culture, Science and Technology (South Africa)</td>
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<td>DEST</td>
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<td>DFID</td>
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<td>DHET</td>
<td>Department of Higher Education and Training (South Africa)</td>
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<tr>
<td>DNS</td>
<td>domain name system</td>
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<tr>
<td>DRC</td>
<td>Democratic Republic of Congo</td>
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<td>DRM</td>
<td>digital rights management</td>
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<td>EAEP</td>
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<td>EC</td>
<td>European Commission</td>
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<td>ECBP</td>
<td>Engineering Capacity Building Program (Ethiopia)</td>
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<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>ECX</td>
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<td>EEAA</td>
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<td>EIPRL</td>
<td>Egyptian Intellectual Property Rights Law</td>
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<td>EPA</td>
<td>Environmental Protection Authority (Ethiopia)</td>
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<td>EPO</td>
<td>European Patent Office</td>
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<tr>
<td>EST</td>
<td>environmentally sound technology</td>
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<td>Acronyms and Abbreviations</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUEI</td>
<td>EU Energy Initiative</td>
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<td>Eurostat</td>
<td>Statistical Office of the European Communities</td>
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<td>FAO</td>
<td>UN Food and Agriculture Organisation</td>
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<tr>
<td>FCN</td>
<td>Friendship, Commerce and Navigation (Kenya)</td>
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<tr>
<td>FDI</td>
<td>foreign direct investment</td>
</tr>
<tr>
<td>FDRE</td>
<td>Federal Democratic Republic of Ethiopia</td>
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<td>FDSE</td>
<td>Free Day Secondary Education (Kenya)</td>
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<td>FES</td>
<td>Friedrich Ebert Stiftung (Germany)</td>
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<td>FLO</td>
<td>Fairtrade Labelling Organisations International</td>
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<tr>
<td>FOSS</td>
<td>free and open source software</td>
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<td>FPE</td>
<td>Free Primary Education (Kenya)</td>
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<td>FTA</td>
<td>free trade agreement</td>
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<td>GDP</td>
<td>gross domestic product</td>
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<tr>
<td>GEM</td>
<td>Global Entrepreneurship Monitor</td>
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<tr>
<td>GERD</td>
<td>gross expenditure on research and development</td>
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<td>GI</td>
<td>geographical indication</td>
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<tr>
<td>GIPC</td>
<td>Global Intellectual Property Center</td>
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<td>GIZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit (Germany)</td>
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<tr>
<td>GM</td>
<td>genetically modified</td>
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<tr>
<td>GOAN</td>
<td>Ghana Organic Agriculture Network</td>
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<td>GOK</td>
<td>Government of Kenya</td>
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<td>GR</td>
<td>genetic resources</td>
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<td>GTZ</td>
<td>German Technical Cooperation</td>
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<td>HSRC</td>
<td>Human Sciences Research Council (South Africa)</td>
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<td>ICANN</td>
<td>Internet Corporation for Assigned Names and Numbers</td>
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<td>ICIDSS</td>
<td>International Creativity and Innovation Development Support Services (Ethiopia)</td>
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<td>ICJ</td>
<td>International Commission of Jurists</td>
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<td>ICLS</td>
<td>International Conference of Labour Statisticians</td>
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<td>ICPSK</td>
<td>Institute of Chartered Public Secretaries of Kenya</td>
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<td>ICT</td>
<td>information and communication technology</td>
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<td>ICT4D</td>
<td>ICT for development</td>
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<td>ICTSD</td>
<td>International Centre for Trade and Sustainable Development</td>
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<td>IDC</td>
<td>Industrial Development Corporation (South Africa)</td>
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<td>IDLO</td>
<td>International Development Law Organisation</td>
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<td>IDRC</td>
<td>International Development Research Centre (Canada)</td>
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<td>IDS</td>
<td>Institute of Development Studies (Kenya)</td>
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<td>IE</td>
<td>informal economy</td>
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</table>
Innovation & Intellectual Property

IFC International Finance Corporation
IICA Inter-American Institute for Cooperation on Agriculture
IIDMM Institute of Infectious Disease and Molecular Medicine (South Africa)
IIED International Institute for Environment and Development
IIPA International Intellectual Property Alliance
IISD International Institute for Sustainable Development
ILC indigenous and local community
ILO International Labour Organisation
INAO Institut national des appellations d’origine (France)
IP intellectual property
IPA Industrial Property Act (Botswana)
IPC International Patent Classification
IPI Industrial Property Institute (Mozambique)
IPR-PFRD Act Intellectual Property Rights from Publicly Financed Research and Development Act (South Africa)
IRB Institutional Review Board (Botswana)
IRENA International Renewable Energy Agency
ISAS integrated seawater agriculture system
ISCTEM Instituto Superior de Ciências e Tecnologia de Moçambique
ISI Institute for Scientific Information
ISO International Organisation for Standardisation
ISP Information Society Project (Yale University, US)
ITC International Trade Centre
JBEDC Japan Bio-Energy Development Corporation
JITAP Joint Integrated Technical Assistance Programme
JLSRI Justice and Legal System Research Institute (Ethiopia)
K2C Biosphere Kruger to Canyons Biosphere (South Africa)
KE knowledge economy
KECOBO Kenya Copyright Board
KENFAA Kenya Nonfiction and Academic Authors’ Association
KES Kenyan Shilling
KHA Kenya Historical Association
KICD Kenya Institute of Curriculum Development
KIPI Kenya Industrial Property Institute
KIPPPRA Kenya Institute for Public Policy Research and Analysis
KNAS Kenya National Academy of Sciences
KOLA Kenya Oral Literature Association
KTO knowledge transfer office
LBC Licensed Buying Company (Ghana)
LDC least developed country
Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>LE</td>
<td>Egyptian Pound</td>
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<td>LINK Centre</td>
<td>Learning Information Networking Knowledge Centre (Wits University, South Africa)</td>
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<td>LSK</td>
<td>Law Society of Kenya</td>
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<td>MAN</td>
<td>Manufacturers Association of Nigeria</td>
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<td>MANCAP</td>
<td>Mandatory Conformity Assessment Programme (Nigeria)</td>
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<td>MCH</td>
<td>Maasai Cultural Heritage Organisation (Kenya)</td>
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<td>MCST</td>
<td>Ministry of Communications, Science and Technology (Botswana)</td>
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<td>MCT</td>
<td>Ministério da Ciência e Tecnologia (Mozambique)</td>
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<td>MDCA</td>
<td>Malindi District Cultural Association (Kenya)</td>
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<td>MDG</td>
<td>Millennium Development Goal</td>
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<td>MEA</td>
<td>Multilateral Environmental Agreement</td>
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<td>MIST</td>
<td>Ministry of Infrastructure, Science and Technology (Botswana)</td>
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<td>MIT</td>
<td>Massachusetts Institute of Technology</td>
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<td>MOA</td>
<td>Ministry of Agriculture (Ethiopia)</td>
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<td>MOE</td>
<td>Ministry of Education (Ethiopia)</td>
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<td>MOFA</td>
<td>Ministry of Food and Agriculture (Ghana)</td>
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<td>Ministry of Finance and Economic Development (Ethiopia)</td>
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<td>Ministry of Science and Technology (Ethiopia)</td>
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<td>MoU</td>
<td>memorandum of understanding</td>
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<td>MRC</td>
<td>Medical Research Council (South Africa)</td>
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<td>Natoil</td>
<td>Natural Oil Company (Egypt)</td>
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<td>NACI</td>
<td>National Advisory Council on Innovation (South Africa)</td>
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<td>NCC</td>
<td>Nigerian Copyright Commission</td>
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<td>NDA</td>
<td>non-disclosure agreement</td>
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<td>NEP</td>
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<td>NEPAD</td>
<td>New Partnership for Africa’s Development</td>
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<td>NESC</td>
<td>National Economic and Social Council (Kenya)</td>
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<td>NESTI</td>
<td>National Experts on Science and Technology Indicators</td>
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<td>NIALS</td>
<td>Nigerian Institute of Advanced Legal Studies</td>
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<td>NRF</td>
<td>National Research Foundation (South Africa)</td>
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<td>NGO</td>
<td>non-governmental organisation</td>
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<td>NIALS</td>
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<td>NIPMO</td>
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<td>NIS</td>
<td>national innovation system</td>
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<td>NMIMS</td>
<td>Narsee Monjee Institute of Management Studies (India)</td>
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<td>NPR</td>
<td>National Public Radio (US)</td>
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<td>NRC</td>
<td>National Research Centre (Egypt)</td>
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<td>Acronym</td>
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<tr>
<td>NREA</td>
<td>New and Renewable Energy Authority (Egypt)</td>
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<td>NWLR</td>
<td>Nigerian Weekly Law Report</td>
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<td>OA</td>
<td>open access</td>
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<td>OAPI</td>
<td>Organisation africaine de la propriété intellectuelle</td>
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<tr>
<td>OCEES</td>
<td>Oxford Centre for the Environment, Ethics and Society</td>
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<td>OCFCU</td>
<td>Oromia Coffee Farmers Cooperative Union (Ethiopia)</td>
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<td>ODEL</td>
<td>open, distance and electronic learning</td>
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<td>ODI</td>
<td>Overseas Development Institute (UK)</td>
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<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>OER</td>
<td>open educational resource</td>
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<td>Open A.I.R.</td>
<td>Open African Innovation Research and Training Project</td>
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<td>ORD</td>
<td>Office of Research and Development (Botswana)</td>
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<td>PBIP</td>
<td>place-based intellectual property</td>
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<td>PCT</td>
<td>Patent Cooperation Treaty</td>
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<td>Petromoc</td>
<td>Petróleos de Mozambique</td>
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<td>PIIPA</td>
<td>Public Interest Intellectual Property Advisors (US)</td>
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<td>PIJIP</td>
<td>Program on Information Justice and Intellectual Property (American University, US)</td>
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<td>PPS</td>
<td>probability proportional to size</td>
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<td>PRO</td>
<td>public research organisation</td>
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<td>ProBEC</td>
<td>Programme for Basic Energy and Conservation in Southern Africa</td>
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<td>R&amp;D</td>
<td>research and development</td>
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<td>RCIPS</td>
<td>Research Contracts and IP Services unit (UCT, South Africa)</td>
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<td>RIPCO (B)</td>
<td>Rural Industrial Promotion Company (Botswana)</td>
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<td>RMI</td>
<td>rights management information</td>
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<td>SADC</td>
<td>Southern African Development Community</td>
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<td>SARUA</td>
<td>Southern African Regional Universities Association</td>
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<td>SCE</td>
<td>Society for Critical Exchange (Kenya)</td>
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<td>SID</td>
<td>Society for International Development (Kenya)</td>
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<td>SINER-GI</td>
<td>Strengthening International Research on Geographical Indications</td>
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<td>SME</td>
<td>small and medium enterprise</td>
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<td>SMIEIS</td>
<td>Small and Medium Industries Equity Investments Scheme (Nigeria)</td>
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<td>SMME</td>
<td>small, micro and medium enterprise</td>
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<td>SNA</td>
<td>social network analysis</td>
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<td>SON</td>
<td>Standards Organisation of Nigeria</td>
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<td>SPS</td>
<td>sanitary and phytosanitary measures</td>
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<td>STCI</td>
<td>Science and Technology Capacity Index</td>
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<td>STEP</td>
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<td>science, technology and innovation</td>
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<td>STS</td>
<td>Society for Technology Studies (Ethiopia)</td>
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</tbody>
</table>
SVKM  Shri Vile Parle Kalamani Mandal (India)
TBT  technical barriers to trade
TCE  traditional cultural expression
TGE  Transitional Government of Ethiopia
THE  Times Higher Education (UK)
THRIP  Technology and Human Resources Programme (South Africa)
TIA  Technology Innovation Agency (South Africa)
TIP-Net  Tanzania Intellectual Property Rights Network
TISC  Technology and Innovation Support Center
TK  traditional knowledge
TKDL  Traditional Knowledge Digital Library (India)
TPMs  technological protection measures
TRIPS  Agreement on Trade-Related Aspects of Intellectual Property Rights
TTO  technology transfer office
TVET  Technical and Vocational Education and Training (Ethiopia)
UB  University of Botswana
UCC  Universal Copyright Convention
UCITA  Uniform Computer Information Transactions Act (US)
UCT  University of Cape Town (South Africa)
UEM  Eduardo Mondlane University (Mozambique)
UGT  Uganda Gatsby Trust
UK  United Kingdom
UM  utility model
UNCST  Uganda National Council for Science and Technology
UNCTAD  UN Commission on Trade and Development
UNDESA  UN Department of Economic and Social Affairs
UNDP  UN Development Programme
UNECA  UN Economic Commission for Africa
UNEP  UN Environment Programme
UNESCAP  UN Economic and Social Commission for Asia and the Pacific
UNESCO  UN Educational, Scientific and Cultural Organisation
UNFCCC  UN Framework Convention on Climate Change
UNICAMP  University of Campinas (Brazil)
UNIDO  UN Industrial Development Organisation
Unilag  University of Lagos
US  United States
USAID  US Agency for International Development
USPTO  US Patent and Trademark Office
WAK  Writers Association of Kenya
WATH  West Africa Trade Hub
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<tr>
<th>Acronym</th>
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<td>WBCSD</td>
<td>World Business Council for Sustainable Development</td>
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<td>WCT</td>
<td>WIPO Copyright Treaty</td>
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<td>WEF</td>
<td>World Economic Forum</td>
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<td>WEP</td>
<td>World Employment Programme</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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<td>WIPO</td>
<td>World Intellectual Property Organisation</td>
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<td>Wits</td>
<td>University of the Witwatersrand (South Africa)</td>
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<td>WPIS</td>
<td>WIPO Patent Information Service</td>
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<td>WPPT</td>
<td>WIPO Performances and Phonograms Treaty</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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<td>ZAR</td>
<td>South African Rand</td>
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Chapter 5

A Consideration of Communal Trademarks for Nigerian Leather and Textile Products

Adebambo Adewopo, Helen Chuma-Okoro and Adejoke Oyewunmi

Abstract

This chapter describes and interprets the findings of a case study into the possible applicability of communal trademark systems for certain Nigerian leather and textile products. Consideration is given to the national legal and regulatory environment, to the level of standardisation currently practised by small-scale leather and textile producers, and to the views of producers regarding the viability of communal trademarking. The study found producer interest in communal trademarking, but also several potential undermining factors of a legal and practical nature.

1. Introduction

Small-scale enterprises constitute an integral part of the formal and informal sectors of the Nigerian economy (Osotimehin et al., 2012). Such enterprises are also increasingly vulnerable to the adverse impacts of globalisation and trade liberalisation. They appear ill-equipped to compete favourably with other manufacturers in terms of the standards, quality and marketing strategies necessary to comply with regulatory policies and consumer demand on the local and global stage (UNESCAP, 2009, p. 34). The key challenges that have been identified for these small-scale enterprises are: meeting standards and quality requirements; marketing their products and building brands; identifying and exploiting the unique characteristics of their products; and protecting their brands in the global environment (UNIDO, 2010).

The status of Nigeria’s textile and leather manufacturing sectors is strongly impacted by the general character of the Nigerian economy, which has been dominated by the oil sector since the late 1970s. A significant proportion of current exports is constituted by crude oil and associated products (CBN, 2012, p. 179;
Innovation & Intellectual Property

ECOWAS, 2008; UNCTAD, 2008, p. 167). The supremacy of the oil sector has led to the neglect of other sectors, generating negative consequences for employment generation, self-reliance and sustainability (Azinge, 2011). The Nigerian government has recently recognised the need to diversify the economy by promoting growth in other sectors, including textiles and leather (Azinge, 2011; Briggs, 2007; Obasanjo, 2000).

There is evidence to suggest that Nigeria's textile and leather industries have strong existing and potential markets at both the local and international levels (see Mark, 2012). Indeed, the textile industry once ranked high as a major contributor to Nigeria's revenue generation and gross domestic product (GDP) (Njoku, 2004). It is widely held that agro-based products and textiles offer strong export potential if these sectors are given an enabling environment (ECOWAS, 2008; Quartey, 2006). Beyond the economic context, textiles hold special social and cultural value for West African countries. The art of handmade fabrics is part of a cultural endeavour and tradition that cuts across communities in Nigeria. Nigeria's leather sector exports processed hides and skins into a market dominated by Italy and China (Amakon, 2006). Nigeria has been identified as a potential leading contender in the export of leather (UNCTAD, 2009, p. 104), and various studies have indicated a vibrant local market and a market in neighbouring countries for Nigerian leather as a raw material for the manufacture of leather-based products and accessories including shoes, bags and furniture (UNIDO, 2002, 2003).

Nigeria's leather and textile sectors, however, face serious challenges from other players in international markets, from high international standards requirements and from technical barriers. Textiles and leather are products that attract high World Trade Organisation (WTO) and environmental standards requirements and strict technical regulations falling under the discipline of the WTO and Multilateral Environmental Agreements (MEAs) in respect of production processes, labelling, packaging and product standards as prescribed by individual countries (see Cordero et al., 2008; UNCTAD, 2004). Amakon (2006) reports that Nigerian leather is often rejected in developed countries as raw material because of its low quality. These factors have severely constrained the capitalisation of market potential that exists locally and internationally.

One of the factors blamed for low quality is a lack of local grades and standards for branding (USAID, 2002). For small-scale enterprises, the challenges in the international market are even more daunting since these enterprises generally lack the individual wherewithal to meet product requirements (UNIDO, 2010). A recent statement credited to the Director of International Standards and SMEs at the Standards Organisation of Nigeria (SON), Robert Okiyie, noted that in Nigeria only 10 SMEs have the international quality certification mark from the International Organisation for Standardisation (ISO) (Ayankunle, 2011).
The local and regional West African market for textiles is also threatened by the proliferation and influx of cheap, low-quality imitations by foreign manufacturers, chiefly Chinese, of the designs of the local industries (see Abdullah, 2010).

At the same time, there is increasing evidence internationally that entrepreneurs from both developed and developing countries can find ways to overcome limitations of scale and survive the onslaught of globalisation and trade liberalisation. Among the methods being used by small-scale entrepreneurs to secure global market bases for their products is the use of the intellectual property (IP) tool of establishing legally enforceable communal trademarks: certification marks, collective marks and geographical indications (GIs) (UNESCAP, 2009). In India, for example, communal trademarks are instrumental in the branding of products of the small-scale producers of Darjeeling tea made in West Bengal, pashmina textiles made in Kashmir, and leather products, toys and wall decorations made in Andhra Pradesh (see UNIDO, 2010).

An example of communal use of trademarks in Africa is the Ethiopian initiative (see Chapter 4 of this volume) that saw the registration of three brands of Ethiopia’s fine coffee produced by local farmers (Yirgacheffe, Sidama and Harrar). The utility of communal trademarks hinges on the fact that they provide a platform to achieve market growth and competitiveness through “partnership collaboration between the producers concerned, joint standardisation of product quality, monitoring of compliance with agreed production procedures and collective marketing” (UNIDO, 2010, p. 2).

The research study outlined in this chapter investigated the potential feasibility of communal trademark strategies in the leather and textile sectors of Nigeria. The study sought to investigate the potential of communal trademarks as strategic vehicles for branding and market access. The assumption underlying the study was that such collective strategies carry the potential to offer – in ways that might not be feasible through the use of individual trademarks – qualitative and quantitative synergies (based to some extent on collaboration and openness dynamics) that can help small entities distinguish their products and build a positive reputation in competitive environments. Section 2 of this chapter delineates the relevant concepts and the contours of the two sectors studied. Section 3 outlines the research, Section 4 provides the findings and Section 5 offers conclusions.

2. Definition of concepts, profiling of the sectors

Communal trademarks

Communal trademarks differ from the classical trademark paradigm. Classical trademarks conceive of the marks as owned and used by an individual entity to
distinguish its product from others. In its most conventional context, a trademark has been defined as "a badge of origin" indicating the source or the trade origin of the item on which it is used (Kitchin et al., 2005, p. 9). In most jurisdictions, a trademark can apply to goods and services alike. However, in Nigeria the Trade Marks Act does not protect services, though such protection has been imputed through a circuitous registration in class 16 and more recently with the Trade Mark Regulation allowing service mark registration. It thus remains debatable whether this action is valid (Trade Marks Act of 1965 [Cap. T13 LFN 2004]).

It is frequently argued that one of the basic utilities of trademarks is to boost competitiveness (Landes and Posner, 1987, pp. 268–70), i.e. a mark with a positive reputation can enhance the competitiveness in the global economy of the goods on which it is affixed (UNESCAP, 2009; UNIDO, 2010). In the context of modern commerce, trademarks can indeed serve several valuable functions, not only in communicating the origin and quality of goods, but also in providing the incentive and security for investment in quality assurance and marketing (Landes and Posner, 1987; Leaffer, 1998). Communal trademarks potentially offer additional merits over traditional trademarks – additional merits germane to the marketing efforts of small entities. The potential underlying incentives for communalism in this context are the qualitative and quantitative synergies envisaged from collectiveness. Such potential synergies can be generated through the use of certification marks, collective marks or GIs. The World Intellectual Property Organisation (WIPO) defines a “collective mark” as “a sign capable of distinguishing the geographical origin, quality or common characteristics of goods or services of different enterprises that simultaneously use the collective mark under the control of its owner” (WIPO, 2004). As noted by Kitchin et al. (2005, p.120), the major purpose of a collective mark is to distinguish, for promotional purposes, the product produced by members of an associated group.

The first kind of communal trademark, a collective mark, is uniquely defined by its ownership structure. Collective marks are owned by an association (public or private), and intended for use exclusively by the individual members of the association. It is the responsibility of the organisation that registers the mark to ensure standard compliance by its members (Kitchin et al., 2005, p. 69). A well-known example of a collective mark is the “CA” mark used by the Institute of Chartered Accountants.

The second type of communal trademark, the certification mark, is similar to a collective mark because it too is registered by a single entity and used by the collective. However, unlike with collective marks, the owner of a certification

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mark may be a certifying authority rather than the association using the mark. "Woolmark" is an example of a certification mark. Use of the mark is open to anyone who complies with the necessary standards (WIPO, 2004, p. 69). This makes certification marks valuable to small entities that lack the wherewithal to develop their reputation independently. Certification marks are frequently used to guarantee compliance with specific standards. They also provide a platform to regulate standards in a sector where standards are demanded (Belson, 2002).

The third type of communal trademark, a GI, can be protected as either a collective mark or as a stand-alone IP right. A GI signifies a product possessing unique qualities, or reflecting the reputation attributable to its origin. The GI’s value therefore lies in giving the product an association with its place of origin – a place of origin that holds particular qualitative advantages. Such advantages could include traditional skills, methods or modes of manufacturing, or unique elements determined by the particular characteristics of the geographical location (WIPO, 2004, p. 120).

**Nigeria’s leather and textile producing sectors**

The textile sector in Nigeria is marked by a mix of large and small enterprises. The small enterprises primarily produce man-made textiles using traditional methods (Quartey, 2006). The small enterprises in this context could be more narrowly classified as micro or cottage enterprises, which are defined as employing fewer than 10 individuals (Abor and Quartey, 2010; EC, n.d., p. 14; IFC, 2012, p. 1; Kozak, 2007; Udechukwu, 2003). The Nigerian leather industry consists predominantly of small enterprises, with only a handful of large enterprises in this market (UNIDO, 2002). Nigeria’s small-scale leather and textile production locations are generally formed in clusters around the country. While the nature and location of the leather and textile clusters differ, there are some systemic conditions and challenges common to both sectors, regarding mainly the legal and policy environment under which they operate. Beyond these lie distinct circumstances and attributes that may influence the feasibility of communal trademarks differently in the different locations.

Textile production is indigenous to the western part of Nigeria, which hosts the largest cluster of small-scale textile production in the country. This area is home to the Yoruba people, for whom textile production has historical, cultural and economic significance (Akinbogun and Ogunduyile, 2009; Maiwada et al., 2012). The indigenous textile products of Nigeria are exported as raw material or sold and used locally to produce other items such as dresses, handbags and bedspreads for export. The textile industries in Nigeria are facing stiff competition from foreign markets (Ogunnaik, 2010, p. 32), and the survival in the global market of indigenous modes of textile production is under threat.
The Nigerian leather industry has two dimensions: leather tanneries and leather accessories. The tanneries are clustered in the northern regions of Nigeria, where livestock rearing is prevalent. Odularu (2008) notes that “Nigeria is internationally efficient in goat and sheep skin leather exports”, with the red skin goat of unique quality highly coveted by foreign markets (USAID, 2002). Odularu further observed that exports in these products accounted for less than 1% of total exports in 2003. This suggests “that further development of the sector could result in [increased market access] for these products” (Odularu, p. 88). Makers of leather-based accessories and finished products are also located in the Northern region and in the cities of Lagos, Onitsha and Aba.

3. The research

The study aimed to investigate the feasibility of using communal trademarks to promote quality, competitiveness and market access of leather and textile products produced by small entities in Nigeria. The investigation focused on:

- analysis of the framework for the protection of communal trademarks;
- identification of specific challenges faced by the producers that could be addressed through use of communal trademarks; and
- identification of potential challenges to the use of communal trademarks.

The study consisted of desktop research combined with a field work component that used a survey questionnaire and interviews. Leather and textile producers were chosen for study because of the socio-economic relevance of these sectors in relation to employment generation and poverty alleviation. In the case of textiles, their economic importance is inherent in the fact that Nigeria hosts whole sectors devoted to textile production, which are unique to the country. Second, the unique African fabrics and materials have distinctive local and international appeal. Third, the manual, family-based and other operators in the sector who apply traditional knowledge (TK) in the production processes have to contend with stiff competition and strong standards in the international market. This creates barriers to market access that would seem to make intervention necessary. A 2006 technical report on textile certification under the African Growth and Opportunity Act (AGOA) noted that although AGOA’s Category 9 scheme for qualifying folkloric textile products represented an attempt to encourage exports of small-scale, handmade folklore articles and ethnic printed fabrics, it often proved difficult to provide the historical and cultural documentation required to place a garment under Category 9 (WATH, 2006).
Interviews were conducted in person and via telephone. The interviewees were key personnel of stakeholder institutions in government and industry working on matters related to the textile and leather sectors. Questionnaires were then distributed to textile and leather enterprises using cluster sampling of small enterprises – mostly micro and cottage enterprises. The selection of the clusters for the study was narrowed by the existence of previous studies that provided basic background on the two sectors (UNIDO, 2002, 2003; USAID, 2002). Three cluster groups in three localities were surveyed via the questionnaires: leather shoemakers in Aba; local textile producers in Itoku-Abeokuta; and leather tanners in Kano.

In Aba, the shoe manufacturers are located in delineated zones hosting manufacturers specialising in respective leather-based accessories, mainly shoes, bags, boxes and belts. The shoemakers are located in four contiguous zones, and the study focused on three of these zones hosting over 100 shoe lines: Shoe Plaza with 41 lines, Bakassi Zone with 80 lines (with approximately 50% specialising in leather shoes) and Imo Avenue, which also specialises in leather shoes. Figure 5.1 shows the structure of the Aba shoe cluster in relation to two of the three zones studied (Bakassi Zone and Imo Avenue), in which stakeholders include: a national association, a state association (at Abia State level), the two zonal associations, product lines under each zone (coordinated by union structures), and then the individual shops.

![Figure 5.1: Typical structure of organisation in the Aba cluster (Bakassi and Imo Avenue zones)](image-url)

Sources: As described to the authors by the interviewed executives of the zonal associations and unions of the Aba cluster; additional information from UNIDO (2003).
The three Aba zonal associations – Bakassi Zone, Imo Avenue and Shoe Plaza – were selected because they are adjoining groups forming a larger cluster; their leadership was cooperative and receptive to the investigation; and they all specialise in leather shoes.

A total of 170 questionnaires were distributed to individuals selected randomly in the three clusters studied: 60 questionnaires in Aba, 60 in Itoku-Abeokuta and 50 in Kano. The ultimate criterion for selecting the respondents was their position as line leaders and consequently leaders of the respective unions organised horizontally across each cluster at the lowest level (Figure 5.1). Of the 170 questionnaires distributed, 120 were completed and returned. Of the 120 completed questionnaires 36% came from Aba, 37% from Itoku-Abeokuta and 27% from Kano (see Figure 5.2).

The study’s field-work findings were based on data drawn from the 120 questionnaires and from interviews with representatives of key stakeholders, including the Standards Organisation of Nigeria (SON), the Manufacturers Association of Nigeria (MAN), the Bank of Industry (BoI), the Nigerian Export Promotion Council, the Trademarks Registry, the country office of the UN Industrial Development Organisation (UNIDO Nigeria) and the US Agency for International Development (USAID).

4. Findings

Legal and regulatory framework

Trademarks are protected in Nigeria under the Trade Marks Act of 1965 (Cap.T13 LFN 2004). Of the three models of communal trademarks under consideration
in this study, only certification marks are specifically covered in the Act, under Sections 43 and 67. The procedure for the registration of certification marks is contained in the First Schedule to the Act. Collective marks and GIs cannot be registered in Nigeria in terms of the Act. It can be argued, however, that Section 43 of the Act allows the registration of GIs as a kind of certification mark that distinguishes the product by origin. The Act’s Section 43(1) discusses certification marks as follows:

A mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of region, material, method of manufacture, quality, accuracy or other characteristic, from goods not so certified, shall be registrable as a certification trade mark in Part A of the register in respect of those goods in the name, as proprietor thereof, of that person: provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified. (Sect. 43(1))

This issue of GI registration has not been tested in court, and thus the lack of specific provisions for GIs constitutes a present limitation to the options available to producers and businesses contemplating use of communal trademarks in Nigeria.

Regarding international protection, Nigeria is a signatory to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Paris Convention for the Protection of Industrial Property (Paris Convention). Nigeria has not, however, ratified the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. Unlike the TRIPS Agreement, which can potentially be enforced in Nigeria, the Paris Convention remains unenforceable in Nigeria in the absence of domestication by the National Assembly. Nigeria ratified the Paris Convention in 1963 but is yet to domesticate it as required by Section 12 of the 1999 Constitution. Article 2 of TRIPS imposes an obligation on State Parties to apply the standards and obligations of the Paris Convention relating to trademarks. Thus, it can be said that the provisions of the Paris Convention regarding trademarks also apply mutatis mutandis to the TRIPS Agreement and so should be read together. Apart from GIs, no express provision is made for the protection of communal marks as such in TRIPS. However, this can be implied from the tone of Article 2 – which consequentially incorporates Article 7bis of the Paris Convention protecting collective marks – and Article 15(1). Article 15(1) of TRIPS defines the subject matter of protection broadly and accommodates collective marks to the extent that they are “signs or a combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings” (TRIPS, Art. 15(1); Pires de Carvalho, 2011, p. 293). However, with regard to certification marks, neither TRIPS nor the Paris
Convention appears to offer them any protection (Pires de Carvalho, 2011). Both TRIPS (Part II, Sect. 3) and the Paris Convention protect GIs as *sui generis* IP rights and appellations of origin distinct from trademarks. Article 1(2) of the Paris Convention includes “indications of source” and “appellations of origins” as protectable subjects. The treaties define GIs as indications which identify goods as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Indication of source means any expression or sign used to indicate that a product or service originates in a country, a region or a specific place, while an appellation of origin is the geographical name of a country, region or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors. Thus, both geographical indications and appellations of origin require that there must be a link between the product and the place designated. However, while appellations of origin require that such link be attributable to the quality or characteristics derivable from the environment, geographical indications extend the basis for the link to reputation, i.e. public perceptions, impressions and expectations about a good and its geographical origin (Oyewunmi, 2012). (See Chapter 4 in this volume for discussion of GIs in relation to the Ethiopian coffee and Ghanaian cocoa sectors.)

With the exception of certification marks, Nigeria has a substandard national legal framework for the protection of communal trademarks. Failure to ratify the Madrid Protocol also undermines protection of a successful Nigerian trademark against international infringement outside the borders of Nigeria. The Madrid Protocol facilitates multiple registrations of trademarks in different countries by providing an international procedural mechanism whereby a single application filed and registered with a national or regional trademark office has effect in each of the countries designated by the applicant. Non-ratification of the Madrid Protocol therefore deprives Nigerian citizens of the benefits of a system intended to eliminate the inconvenience of having to file trademark applications in other countries where protection is desired. Meanwhile, in other countries, there is evidence of increasing recognition of communal trademarks as instruments for facilitation of trade and economic development from grassroots level upward. Since the 1990s, India, South Africa and the UK have all recognised the benefits of communal trademarks by amending their laws accordingly.

The success of a communal trademark would also depend to a great extent on assurance of quality. The Standards Organisation of Nigeria Act of 1970 regulates standards of locally produced textiles and leather, with the Standards Organisation of Nigeria (SON) administering the Act. SON’s major responsibility is to prepare and enforce standards related to products in the formal and informal sectors, and
its work is mainly targeted at protecting consumers from “locally manufactured sub-standard and/or unsafe products, which do not meet the minimum requirements of the relevant” standards, and by so doing, generating “confidence in Made-in-Nigeria products” (SON, n.d.). SON requirements for textile and leather products are, however, not standardised. On the contrary, standards are fixed on a case-by-case basis. It was also found in the course of the research that SON was not enforcing standards requirements on small-scale manufacturers of leather and textile products – apparently (according to the interviewed SON officials themselves) on the grounds that SON did not want to discourage enterprises that would be unable to satisfy such standards. At the same time, only 7% of the survey respondents were aware of the existence of government regulatory standards.

Existing cluster dynamics

Standard-setting initiatives were found to be lacking at the industry level in all three clusters surveyed. In a few cases, local unions and associations were attempting some measure of self-regulation by requiring the registration of individual products and mandating the use of specified materials in production. However, nearly a third of the respondents stated that they did not work within the specifications of any externally set standard requirement (see Figure 5.3).

Industry operatives at associations and unions did, however, express a willingness to implement standards requirements to enhance the businesses under their associations or any other competent body. In fact, where they exist, standards imposed by unions are strongly adhered to and enforced. This suggests that

![Figure 5.3: Respondent adherence to standards](source: Authors’ data analysis.)
if standards were introduced at a higher level and in an appropriate manner, they would be respected. Without high-level standardisation, the goods in question cannot exhibit an assurance of quality, creating potential challenges to establishing and nurturing a successful certification or collective marks system. However, at the same time, implementation of standardisation could potentially create strong incentives for the use of certification marks by manufacturers, and could trigger government interest and support.

The success of a communal trademark system also requires the existence of an institution embodying ownership of the mark (UNIDO, 2010, p. 2). For the Aba cluster (see Figure 5.1), organisational infrastructure was found to exist, while the Itoku-Abeokuta and Kano clusters were found to have less (but still some) organisational structure. The Itoku-Abeokuta cluster, for instance, had an association of textile producers consisting mainly of the traders in the Itoku-Abeokuta market. The existing organisational bodies in all three clusters were providing administrative support, dispute settlement and disciplinary functions to their members – therefore signifying an existing system and a ready-made platform that could be harnessed to build a communal trademarks system at the market level. The Aba cluster was noteworthy here. It was found that in the Aba cluster, it was standard practice for there to be registration of labels and designs with the Aba unions (as protection from copying by other members of the union). The Aba unions were also providing support services and assistance in the form of finance and logistics to their members. The unions were formulating rules to protect the individual and collective interests of their members and were enforcing these rules.

One of the major potential challenges to adoption of a communal trademark by the Aba cluster was found to be the apparent lack of unity in the management structure. It was found that market leaders were prone to fragmentation and rivalry, due to competing interests. However, in the Itoku-Abeokuta cluster (unlike the Aba cluster), management fragmentation was not apparent. The traders’ association in Itoku-Abeokuta was found to have a well-respected executive, headed by its Iya Oloja (executive head), which met regularly as a team. The Iya Oloja also held periodic meetings with the traders to discuss issues of common interest, to disseminate information, and to try to foster communal wellbeing in the market. The Itoku-Abeokuta cluster was therefore found to present an environment potentially more suited than the Aba cluster to successful implementation of communal trademarks. Unlike among the Aba respondents (where some misgivings were registered), the Itoku-Abeokuta respondents expressed confidence in their executive team to liaise with authorities to explore possible processes for establishing and using communal trademarks.
Existing knowledge of IP

It was clear from the data gathered that knowledge of trademarks was poor at all levels in the three clusters surveyed. But for a few ordinary (non-communal) trademarks officially registered in accordance with the Nigerian Trade Marks Act in the Kano leather tannery sector, and the printing of business names on packaging bags for textiles at Itoku-Abeokuta, there was a total absence of IP protection for the designs of the clusters surveyed. There were no instances found of registration of a communal trademark. Design theft was found to be endemic in the clusters and a cause of concern for many. While entrepreneurs in Aba were seeking to protect their designs or labels by registering them with their local unions, this provided only limited protection – as it only extended to those operating within the jurisdiction of the unions. It was found that non-union members often copied such registered designs without incurring repercussions or liability from the registered owner.

Most of the respondents across the three clusters struggled to conceive of a suitable communal trademark. Meanwhile, only 12.2% had their businesses registered with the relevant government agencies. Despite the lack of existing knowledge of communal trademark modalities, the majority of respondents expressed willingness to participate in any collaborative trademarking strategy targeted towards standardising quality and price and improving market access. Roughly 80% of respondents favoured a model that would permit the use of common marks in addition to their personal packaging designs and labels.

Market challenges

It was found that the Kano leather tanners and Aba shoemakers produced for both local markets and markets in neighbouring countries. The Aba shoemakers sampled claimed to have clients both domestically and in neighbouring countries, with more than half of the leather products from Aba designated for export. But the Kano and Aba products were generally not performing well in these markets, in spite of the distinctiveness of some of the products, e.g. products made from red goat skin. The Itoku-Abeokuta textile enterprises surveyed said they had a diversified clientele, both within and beyond the African continent. Across the three clusters, 95.5% of respondents identified competition from foreign products –

2 At the same time, it must be noted that the study was not sufficiently in-depth as to be able to make a categorical conclusion that there is no single instance of registration of a communal trademark in Nigeria under the Trade Marks Act, with the greatest challenge in confirming this position being the lack of a proper and organised database for registered trademarks in Nigeria. This study was also not able to draw conclusions regarding the volume of use of unregistered trademarks.
particularly those from China – as being harmful to their business. They stated that, while local products were usually of higher quality than Chinese imports in terms of the materials used and the craftsmanship, Chinese-made products were cheaper and more aesthetically appealing in design and finishing, thus making them more attractive to customers. Most respondents felt that to remain competitive in this environment, local products would have to compete more favourably in terms of both price and design.

More than 75% of respondents indicated that they faced challenges in producing their goods to their desired specifications. The challenges identified in the Aba and Kano clusters included the high cost of quality raw materials, lack of expertise and equipment, lack of capital and lack of basic infrastructure. The problem of raw materials was particularly significant to the study. The field results indicated that local producers of leather and textiles used mostly (60%) high-cost international raw materials, and only 40% locally sourced materials. This revealed the potentially strategic position for Aba shoemakers of the leather tanning sector in Nigeria (e.g. in Kano) should it in the future be able to provide higher-quality materials to local manufacturers of leather products.

The research found that there were no dynamic marketing strategies in place in any of the three clusters. Manufacturers relied on marketing strategies with limited impact, such as simple displays of their products and offering customers business cards. The majority of respondents of the Aba cluster argued that one reason they did not want to advertise was because it would encourage further copying of their designs. As outlined above, even in cases where designs were registered with a union, protection was still lacking when an infringer was not a member of the union. It seemed clear that this area – design protection – was one in which the synergies provided by communal trademarks could be potentially useful.

Less than 50% of respondents shared their labels or designs with others. Nevertheless, many respondents expressed a willingness to be more open with their creative works if these were better protected. Respondents feared the absence of an efficacious framework that would protect their uniquely developed designs and labels from unfair competition. There was a strong impression that the absence of protection against infringement discourages serious investment in design and quality improvement. In the Itoku-Abeokuta textile cluster, members expressed strong interest in promoting their communal interests by association with high-quality, unique, handmade tie-and-dye products. They also expressed a willingness to share designs with fellow operators in their cluster – as the copying they opposed was the unacknowledged copying of their designs by clusters in other parts of the country and by international manufacturers.
Leather and shoe manufacturers in Aba reported that they distinguished their products from competitors mainly by using higher-quality materials and implementing unique designs. Unfortunately, the Aba respondents said, their consumers (middlemen traders) generally preferred foreign labels. As a result, the manufacturers said they often marked their products with false foreign labels, thus compounding the existing problem – because consumers then attributed whatever satisfaction they derived from the use of the product to a misleading origin.

5. Conclusions

Small-scale operators engaged in the production and manufacture of leather and textile goods in Nigeria hold great potential for improved economic performance, but they face myriad challenges. Key among these challenges is market access, both locally and internationally. Based on the findings of this research study, we are of the view that one of the tools with potential to ameliorate the market position of the three producer clusters studied is the use of communal trademarks (i.e. certification marks, collective marks and/or GIs).

The findings indicate that the use of communal trademarks could be feasible in the clusters investigated. One respondent aptly described the potential direct benefits of group identification as follows: “We will look out for each other’s interests, and [at the same time] the competition will lead to high quality standards even within the group” (interviewee, 2012). With a communal trademark arrangement in place, areas of collaboration could include marketing and branding, enforcement of rights, and accessing credit facilities. For example, a properly conceptualised communal trademark with positive, far-reaching reputation could gain acceptance as security for loans to its adherents, thus opening up a new vista in Nigeria in the area of securitisation of intangibles. More generally, the successful implementation of a communal trademark could have many economic and social benefits, including increased income levels and livelihood opportunities for the large and growing percentage of the population made up of young Nigerians.

Of particular potential for implementation of a communal trademark among the three clusters studied was, in our view, the Itoku-Abeokuta textiles cluster. We saw above that this cluster had an orderly and respected management structure, and in this cluster there appeared to be clear incentives towards adoption of a communal trademark in order to, inter alia, distinguish the handmade original tie-and-dye brands from the imitation machine-made brands; to safeguard the indigenous art and TK of local people; to protect consumers from confusion and
deception; and to ensure that the industry is protected against unfair competition. The Itoku-Abeokuta cluster could deploy a GI or other kind of communal trademark to foster a collective identity and image and to promote Itoku-Abeokuta as the home of genuine handmade tie-and-dye. A communal trademark would also safeguard the integrity of their products – against counterfeiters who sell cheap, non-durable products – as original Itoku-Abeokuta tie-and-dye.

If a communal trademark model is pursued, it must be appropriate to the particular producer or manufacturer group. For the Itoku-Abeokuta textile cluster, a GI would seem to be the most appropriate kind of communal trademark, because of the cluster’s deployment of traditional methods of production handed down through (mostly maternal) lineage specific to the locality. This strong localised TK element gives the Itoku-Abeokuta products a unique quality that distinguishes them from textile products of different origins or produced by different methods. For this cluster, a GI could solidify the pedigree generated by the longstanding production in this locality – production which has led to positive reputation in both local and foreign markets. In contrast to the Itoku-Abeokuta cluster, the Aba cluster would seem well-suited to the existing legal framework of certification marks in Nigeria (the framework which does not at present appear to protect GI-based communal trademarks). Aba-made shoes lack a common geographical quality, but manufacturers possess individual quality standards and creativity that distinguish their designs – thus potentially making a non-GI certification mark more suitable to these manufacturers (i.e. based on a strong desire to standardise quality and distinguish their products via quality standards).

Crucially, there is a clear need for law reform in Nigeria to expand protection to all three main communal trademark models – certification marks, collective marks, and GIs – and to this end it is in Nigeria’s interest to ratify the Madrid Treaty (so as to protect any Nigerian mark in regional and international markets). As one respondent stated,

[...] when it comes to protection, we really do not have any body or institution looking out for our interests in those foreign lands and as such, anything can happen. The solution will be to register the products in the various international markets for easy identification and protection. (Interviewee, 2012)

This underscores the need for Nigeria to ratify the Madrid Treaty and amend its laws accordingly. As far as the law is concerned, the process of effecting the necessary amendments to the Nigerian Trade Marks Act to bolster protection of

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3 These incentives suggest a public interest rationale for a communal trademark, thus satisfying the “public interest” condition specified as required for the registration of a certification mark under the Nigerian Trade Marks Act (First Schedule, Para. 5).
A Consideration of Communal Trademarks

Communal trademarks does not appear to raise extra costs or externalities. The law will likely be amended regardless of whether communal trademarks are contemplated. Short-term cost issues have the potential to present a challenge to producers, in the form of fees for registration procedures and professional services. However, there is reason to believe that these costs could be offset by long-term growth and development of the affected sectors. The introduction of a common trademarks system within the existing Economic Community of West African States (ECOWAS) trading bloc (of which Nigeria is a member) would also be helpful, by establishing a common West African system for IP protection of textile and leather products. Such an initiative, as seen in other regions, could offer valuable legal and institutional platforms for the establishment and West African enforcement of communal trademark models.

In addition, a detailed cost-benefit analysis (which was beyond the scope of this exploratory study) is required before any producer group embarks on the process of establishing a communal trademark.

A successful mark depends on public confidence and a positive reputation. SON is not at present enforcing standards in the market, and while this may in the short term seem to benefit the producers, in the long term it will be detrimental to the growth and development of the sectors. Collaborative efforts are needed between SON and cluster leaders to determine the best approach to establish and implement standards. If standards enforcement is implemented in a uniform, fair and transparent manner, cluster operators can be expected to bear the initial financial strain based on the promise of quality standardisation and market growth.

Beyond IP and standardisation matters, there is a need to address factors leading to the high cost of production. Policies are needed to minimise the manufacturing costs of local manufacturers, so that they can compete with imported products in terms of quality and price. For example, the leather tanneries in Kano need to be positioned for greater competitiveness, and promoting local production of cotton would help to lower textile input costs and generate additional employment.

In addition, the product producers and manufacturers need to become better informed, e.g. about existing financial support facilities and schemes, such as those provided by the Bank of Industry (BoI) and SON. SON provides Duty Drawback Schemes in collaboration with other government agencies (namely, the Nigerian Export Promotion Council, the Nigerian Customs Service and the Central Bank) through which importers may claim repayment of import duty paid for material used in the production of local goods that are exported. The scheme is established to provide relief for producers of various export goods (including leather and textile goods). There is a need for the relevant bodies to assist the manufacturers in benefiting from such schemes.
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