



Briefing note

Intellectual property and women's economic empowerment in Africa

What to know in the context of the AfCFTA

Laetitia Pettinotti, Nadia Hasham, Laura Naliaka
March 2023

Key messages

State parties to the African Continental Free Trade Area (AfCFTA) are working to adopt its Intellectual Property Rights (IPR) Protocol in 2023. Traded goods and services can embody technologies and works protected under intellectual property (IP) regimes.

There exists a gender gap in IP, with women underrepresented in IP filings in Africa. Women's ability to have their artistic and scientific creativity protected depends on their having the economic resources and legal capacity to exercise their rights to IP protection.

Access to IP protection for women is constrained by a number of factors, including the characteristics of women-owned enterprises, systemic bottlenecks, limiting gender norms, and capacity-building issues.

Women's economic empowerment could be embedded as an objective in countries' national AfCFTA implementation strategies, which raises questions around capacity-building, gender budgeting and coordinated governance for IP rights.





Readers are encouraged to reproduce material for their own publications, as long as they are not being sold commercially. ODI requests due acknowledgement and a copy of the publication. For online use, we ask readers to link to the original resource on the ODI website. The views presented in this paper are those of the author(s) and do not necessarily represent the views of ODI or our partners.

This work is licensed under CC BY-NC-ND 4.0.

How to cite: Pettinotti, L. Hasham, N. Naliaka, L. (2023) *Intellectual property and women's economic empowerment in Africa. What to know in the context of the AfCFTA*. ODI Brief. London: ODI (<https://odi.org/en/publications/intellectual-property-and-womens-economic-empowerment-in-africa>)

Acknowledgements

About this publication

This publication is a brief under the Supporting Trade and Investment in Africa programme generously funded by UK Aid. Global Affairs Canada also contributed to funding the brief.

The authors would like to thank Professor Caroline Ncube from the University of Cape Town for her review, which greatly improved the brief.

About the authors

Dr Laetitia Pettinotti [ORCID: 0000-0001-5099-7417] is a Senior Research Officer in ODI's International Economic Development Group. She is a development economist working at the intersection of economic transformation, climate change and gender.

Nadia Hasham is a Trade Policy Expert at the African Trade Policy Centre of the United Nations Economic Commission for Africa.

Laura Naliaka is a Trade Policy Expert at the African Trade Policy Centre of the United Nations Economic Commission for Africa.

Contents

Acknowledgements / i

Display items / iii

Acronyms/Glossary / iv

Executive summary / 1

1 Introduction / 2

1.1 Context / 2

1.2 Why does it matter? / 3

2 Intellectual property as a rights-based issue for improved trade / 5

2.1 Current intellectual protection regime implemented and women's economic empowerment / 5

2.2 Challenges for women entrepreneurs in relation to IP protection / 8

2.3 AfCFTA's IPR Protocol / 11

3 Recommendations for implementation strategies / 13

4 Conclusion / 15

References / 16

Display items

Boxes

Box 1 Terminology / 4

Box 2 Institutional set-up at continental level / 7

Tables

Table 1 The different types of intellectual property / 5

Figures

Figure 1 Proportion of patent applications filed by at least one woman (2015–2022) / 6

Acronyms/Glossary

| | |
|---------------|--|
| AfCFTA | African Continental Free Trade Area |
| ARIPO | African Regional Intellectual Property Organization |
| IP | intellectual property |
| IPR | intellectual property rights |
| MSMEs | micro, small and medium-sized enterprises |
| OAPI | Organisation africaine de la propriété intellectuelle |
| TRIPS | Trade-Related Aspects of Intellectual Property |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| WTO | World Trade Organization |

Executive summary

The success of the African Continental Free Trade Area (AfCFTA) depends on women's full participation in trade. Intellectual property (IP) can act both as an enabler of trade and as a barrier.

Women trade in sectors and undertake economic activities that fall under IP protection, such as the agriculture and small agro-food processing, often informed by traditional knowledge. They also work in creative industries like textiles and fashion and innovate in all economic sectors. Women's trade could be boosted by the marketable advantage afforded by the recognition of their creativity.

If IP can be a tool to boost trade, with many women standing to benefit if they can access IP protection, it can also hinder progress on women's participation in trade. Constraints to women entrepreneurs leveraging IP include administrative complexity, high registration costs and weak enforcement that disincentivise from registering IP.

An implementation strategy to the IPR protocol that would make women's economic empowerment a goal would require the promotion of geographical indications as a key IP promotion element to support the agriculture and food processing sectors in which women predominantly trade. This must be coupled with gender budgeting, capacity building and monitoring to ensure objectives are attained over time and across sectors.

1 Introduction

1.1 Context

Attention to African regional trade has gathered pace with the entry into force of the agreement establishing African Continental Free Trade Area (AfCFTA) and the start of trading on 1 January 2021. One of the AfCFTA protocols to be adopted in 2023 by state parties to the agreement is on intellectual property rights (IPR). Protocols already adopted (phase 1) include those on trade in goods, trade in services while the other ones still under negotiation (phase 2) are those on competition, investment, digital trade, and women and youth in trade. AfCFTA's goals of boosting trade and supporting market expansion entail a key role for IPR protection.

At the time of writing, a screening of free trade agreements since 1990 as listed in the DESTA database repository¹ shows that no intellectual property chapter or protocol to a free trade agreement has included women's economic empowerment as an objective or a best endeavour principle in its provisions or preamble. Mention of gender equality or women on low incomes in relation to IP can be found three agreements² in provisions outside of IP chapters and define scopes for cooperation (WTO, 2023).

Gender-related objectives encompassing empowerment have been included in trade agreements as best endeavour principles, social issues, representation goals, and in some instances as legally binding commitments. Specifically in Africa, trade agreements have so far included a mix of binding and non-binding commitments related to women's economic empowerment covering access to resources, entrepreneurship and representation in decision-making (Bahri, 2021). But they have not been found in IP chapters, where the specificity of IP to women's economic empowerment could avoid the kind of dilution that may be a risk if women's economic empowerment is included only in the preamble or main text of trade agreements.

There is a distinct gender gap in IP protection globally and on the African continent: fewer women than men use the IP system. IP regimes and their implementations hold the potential to entrench inequalities between women and men in innovation and creativity.

1 DESTA is the Design of Trade Agreements Database that maps international trade agreements and explores cause and effects (see www.designoftradeagreements.org).

2 The Agreement establishing an Economic Partnership Agreement between the Eastern and Southern Africa States and the United Kingdom of Great Britain and Northern Ireland (signed 2019); the Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part (signed 2009); the Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part (signed 2000).

Many women in Africa work in sectors that could be covered by IP protection. Women entrepreneurs, for example, form a large share of formal and informal micro, small and medium-sized enterprises (MSMEs) and do business in sectors that often rely on traditional knowledge such as agriculture and food processing or in creative industries and produce innovations that could be protected (Oriakhogba, 2020). IP protection can lead to greater sales (e.g. through a trademark or a geographic indication) and receipt of fees from letting others use their innovation and creation (e.g. through patents and copyrights).

Greater IP protection on its own does not lead to greater women's economic empowerment but is part of an 'ecosystem' of access rights that, together with public policy in the fields of education and training, healthcare, social protection, financial inclusion and care work can improve women's economic empowerment.

1.2 Why does it matter?

IP relates to trade as traded goods and services may embody soft (e.g. software) and hard (e.g. mechanical invention) technologies and works protected under IP regimes. The multilateral agreement on Trade Related Aspects of Intellectual Property (TRIPS) of the World Trade Organization (WTO), for example, constitutes one global legal recognition of the relationship between IP and trade.

The impact on trade of gender gap in IP, where women get less IP protection than men, is reduced economic activity and related lower socio-economic outcomes for women on the African continent as well as for national economies that 'lose out when a substantial part of the population cannot compete equitably or realize its full potential' (Golla et al., 2011).

IP rights not only protect innovation but can help women-led businesses to position themselves competitively in national, regional and global markets, to gain access to greater and new revenue by signalling value to investors, competitors and partners, and to access knowledge markets and networks and opening up new commercial pathways or segment existing markets (Ncube et al., 2019).

But if IP is a tool to boost trade and economic growth, it is conditioned by women being able to access and get enforcement of such protection. What is key is for both women and men to have equal opportunity in taking up IP protection supported by an enabling environment that protects innovation and creation. It is important to recognise that there can be access issues to IP protection that are specific to women due to gender norms and economic empowerment issues; failure to do so could undermine the realisation of the full economic potential of the implementation of the AfCFTA IPR Protocol.

Box 1 Terminology

Gender is a performative social construct that mediates identities and social interactions. This means it is an iterative enactment of behaviours and language that functions as an action (i.e. performativity is what sustains gender identity, see Butler, 1990). Note that this brief uses the term ‘gender’ to cover only cisgender identities, meaning persons whose gender identity corresponds to their sex assigned at birth.

Gender equality is a state where access to rights and opportunities are not affected by gender. Discriminatory social and gender norms (including around masculinity), violence against women and girls, and social exclusion all undermine gender equality.

Technology relates to soft (e.g. software) or hard (e.g. a mechanised invention) embodied in goods or services.

Women’s economic empowerment has no single definition but it is one aspect of gender equality that shapes and is shaped by gender-based violence and social norms (Harper et al., 2020). Central to the concept is the idea of a process of achieving women’s equal access to and control over economic resources, and ensuring they can use them to exert increased control over other areas of their lives (Taylor and Perezniето, 2014).

2 Intellectual property as a rights-based issue for improved trade

2.1 Current intellectual protection regime implemented and women's economic empowerment

IP covers industrial property, which includes patents for inventions, industrial designs, trademarks and geographical indications, as well as copyright, which covers literary, artistic and scientific works (WIPO, 2020). The holder of IP has the right to stop others from making and distributing the protected products. As such, IP laws are tools to reward creation and incentivise innovation. Such framing is rooted in utilitarian western discourse (Roy, 2008).

Table 1 The different types of intellectual property

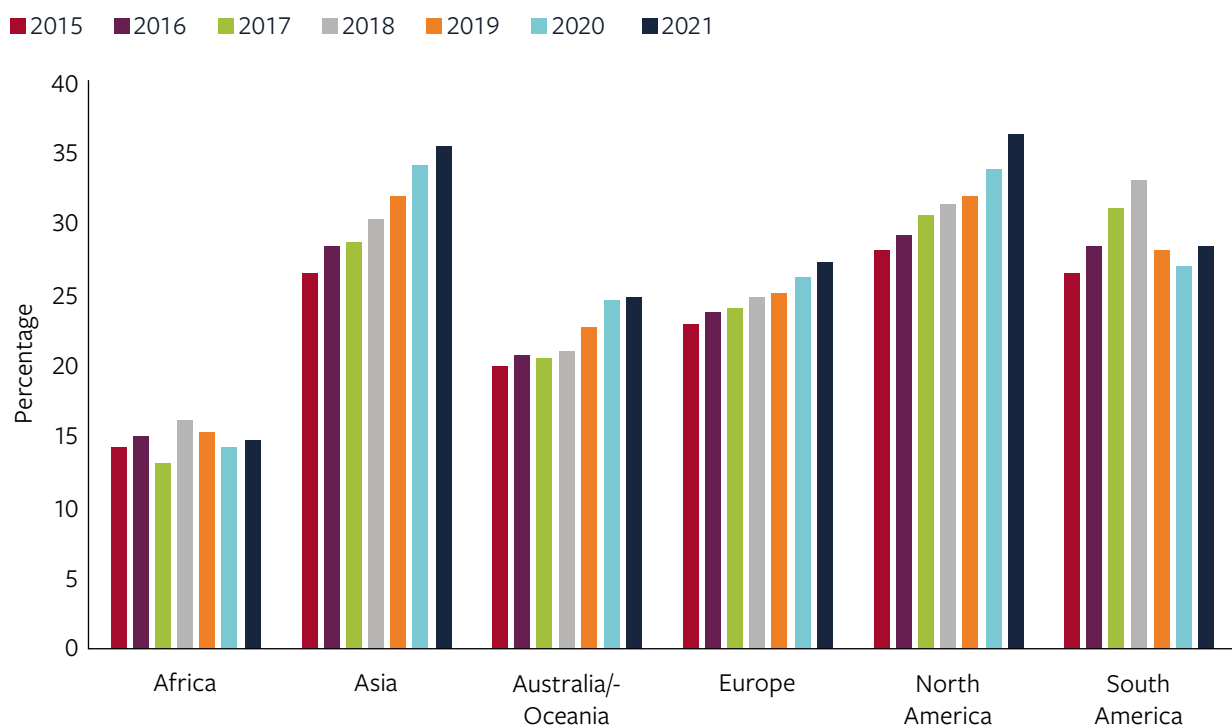
| Type | What it is |
|--------------------------|---|
| Patent | Covers an invention as a product or process that offers a new way of doing something. It defines the inventor right as the ownership to the mental conception, without needing for the invention to actually work. |
| Industrial design | Covers elements of a product that are aesthetic or ornamental. |
| Trademark | Is a sign or a mark identifying the good or service as exclusive to a given enterprise. |
| Geographical indications | Is a sign used on products that have a specific geographical origin. The qualities, characteristics or reputation of the product are essentially due to this place of origin. |
| Copyright | Covers literary, artistic and scientific production. It defines authors' right as the ownership of the intangible work, rather than its physical embodiment. As a result, the right of embodiment (e.g. reproduction) is reserved for the author. |
| Plant variety protection | Grants right to the breeder of a new plant variety: some acts related to the plant require prior authorisation of the right holder. |
| Utility models | An exclusive right granted for an invention; similar to a patent. |

Source: (Burk, 2006; WIPO, 2020; Ncube, 2021)

Globally, women are estimated to be disproportionately underrepresented in IP filings. Data is difficult to obtain: gender-disaggregated data is not a standard requirement for application and filing at regional IP offices; moreover, only patents are held in a centralised registry – copyrights and trademarks are not, rendering a complete picture more difficult to obtain.

Figure 1 shows that the situation is similar across all continents: women apply for patents less than men. On the African continent, the gender gap is even more marked than on other continents, with about 15% of patent applications filed by women. This speaks to untapped or underachieved potential for women's socio-economic well-being (Osei-Tutu, 2017). It also speaks to the persistent prevalence of gender norms around educational attainment and around sectoral choices of career, with lower enrolment of women in science, technology, engineering and mathematics courses, a field prominent in registered patents (Roy, 2008; Marcus, 2018; Oriakhogba, 2020).

Figure 1 Proportion of patent applications filed by at least one woman (2015–2022)



Source: calculations based on WIPO statistics (www.wipo.int/ipstats/en)

While, the IP gap is important in Africa – and as stated previously, there are no provisions specific to women's economic empowerment and IP to be found in any trade agreements – a number of legal instruments have been adopted globally and at continental level that can support women's businesses.

The WTO TRIPS agreement achieves a certain level of harmonisation through its binding minimum standards, but IP legislation remains national, so that to trade across borders, IP rights have to be registered in all territories where the product is traded. As a result, efforts have been made towards convergence, including through the African Regional Intellectual Property Organization (ARIPO) and the Organisation Africaine de la Propriété Intellectuelle (OAPI). Some level of harmonisation has been achieved through these organisations, but regulations differ, which can impact the ease of doing business and trading.

Box 2 Institutional set-up at continental level

IP governance on the continent is currently split between two regional organisations: ARIPO and OAPI. OAPI is unified: it is a regional filing system that covers all countries that are members of the organisation. ARIPO has some harmonisation – for example, trademark filing is unified for countries party to the Banjul Protocol. In practice, this means there are coordination and harmonisation challenges between the two organisations as well as between member states.

These institutions can help address the resource constraints of smaller countries in relation to promoting, registering and enforcing IP through increased regional cooperation. ARIPO and OAPI have signed cooperation agreements over the years, that can provide a basis for this (ARIPO, 2023).

The IP system on the continent is fragmented as African states have different developmental contexts and legal systems. **However**, the goal of coherence or alignment should not be to create uniformity but rather to secure agreement on a basic policy direction that can be used to craft national laws that are appropriate for local contexts (Ncube, 2019). In this sense, the potential creation of an AfCFTA Intellectual Property Office could be an opportunity for progress on this goal.

Some legal instruments on IPR have been adopted at the continental level; these include the Continental Strategy on Geographical Indications (2017) and the African Model Legislation for the Protection of the Rights of Local Communities and Breeders and for Regulations of Access to Biological Resources (2000).

Geographical Indications (GI) are well suited to the African context – particularly in rural agriculture, where women are overrepresented – as they protect products with a specific geographical origin, are defined in terms of communal and collective identity, and are influenced by local factors including traditional methods. GI offers a way to capitalise on place-based positive imagery (Oguamanam and Dagne, 2014). The Continental Strategy on Geographical Indications provides a roadmap to facilitate the development, promotion and protection of GI in Africa. One of its core values is to support the empowerment of vulnerable groups, particularly smallholders, women and youth. Despite the GI strategy not providing details on how such empowerment will be achieved, it remains an important tool given that the GI strategy covers sectors that tend to be dominated by women, such as agriculture, arts and crafts, medicinal plants, cuisine and textiles.

The African Model Legislation for the Protection of the Rights of Local Communities and Breeders and for Regulations of Access to Biological Resources aims to ensure the conservation, evaluation and sustainable use of biological resources, including agricultural genetic resources, knowledge

and technologies. Concern for women's economic empowerment runs through the document. For instance, among its objectives are: (1) to ensure the effective participation of concerned communities, with a particular focus on women, in making decisions as regards the distribution of benefits which may derive from the use of their biological resources, knowledge and technologies; (2) promote the conservation, evaluation and sustainable utilisation of biological resources with a particular focus on the major role women play. AU member states operationalise the model in different ways given that it is a framework mechanisms rather than a prescriptive one-size-fits-all regime (Adebola, 2019).

The above instruments relate to issues that affect factors of production which contribute to or affect women's economic empowerment and their meaningful participation in trade. The acknowledgement and the protection of these rights across borders is critical for enabling trade in goods often traded by women, reinforcing the importance of addressing IPR in the context of the AfCFTA. Specifically, GI protections across borders can also incentivise the formalisation of businesses currently trading informally. They can support the participation of women in agricultural value chains, promote traditional products, and support sustainable rural development.

The IPR frameworks and instruments that exist at the regional economic community level include: the Common Market for Eastern and Southern Africa's 2011 policy on IPRs and cultural industries, which provides for a common set of definitions and principles to address the relationship between IPRs and trade and development; the East African Community's 2018 regional policy on the utilisation of public health-related TRIPS flexibilities; the Economic Community of West African States' 2012 TRIPS policy and guidelines; and the Southern African Development Community's 2017 Protocol for the Protection of New Varieties of Plants (Plant Breeders' Rights). There is, however, no explicit mention of women's economic empowerment in any of these legally binding instruments; doing so would send a strong signal. As stated in the previous section, development and implementation of IPR is not gender neutral. This underscores the imperative for ensuring that the national implementation strategies to the AfCFTA IPR Protocol consider women's economic empowerment.

2.2 Challenges for women entrepreneurs in relation to IP protection

1.1.1 Women-owned businesses face high transaction costs

Most MSMEs on the continent are led by women entrepreneurs (Campos and Gassier, 2017). Many enterprises are informal and engage in informal cross-border trade (APRM, 2022). Across the continent, a large share of women entrepreneurs trade in agricultural raw or minimally processed goods as well as art and craft creations that often rely on traditional local knowledge (Ojong et al., 2021). These are all sectors with limited IP protection coverage, and in general there is limited awareness of IP rights and the protection it can afford businesses. The size of women-

owned businesses (typically micro or small), their type (predominantly informal) and the sectors in which they operate (agriculture, arts and crafts) are parameters that constraint their uptake of IP protection.

The typically small size of women-owned enterprises entails limited funds, either due to limited turnover or to limited access to financial loans for investing in IP protection. On this last point, banks' demand for collateral can be an issue due to restrictive legal systems when it comes to women's ownership. Joint legal ownership and administrative rights over properties is not granted in nine African countries, resulting in differentiated use and control over assets. In this case, women's entrepreneurship is constrained as they cannot use property as a collateral for accessing greater finance for their businesses. Where women have those legal rights, norms and intra-household dynamics related to asset ownership can still constrain their ability to use collaterals to obtain credit (Gaddis et al., 2020).

Furthermore, getting IP protection has a cost: it has legal fees, registration costs, and the cost of travelling to the IP office to submit applications. IP offices are often located in large urban centres, if not only in the capital city that may be far from where the entrepreneur is located. This implies a degree of mobility that may not always be available to women. Women travelling alone may contravene gender norms, which may have implications for their safety (Marcus, 2018). In addition, women are often time-poor as they potentially carry out most of the unpaid care and domestic work in the household (Marcus, 2018). Hence, the burden of researching IP protection and submitting an application can put an added strain on their time.

Such high transaction cost in preparing and registering for IP protection is difficult to handle for small structures, especially given that for cross-border trade, entrepreneurs need to register in multiple jurisdictions if applying for a patent, copyright or a trademark.

Indeed, while the WTO TRIPS agreement sets some minimum standards, IP regulation is a national matter, implying divergence across different jurisdictions, impacting ability to trade. A women-led business trading across borders must navigate different countries' IP laws and institutions, making the barriers even more acute for MSMEs (Ncube, 2019). Thus, divergence increases transaction costs, which are relatively large for MSMEs.

Compounding the transaction cost issue is the limited enforcement of IP rights, which can severely limit the potential returns of investing time and money in registering IP. Limited enforcement on the continent is due to lack of capacity and funding, limited knowledge at border posts about IP rights in different markets, and administrative complexity (Schneider and Ferguson, 2020).

Regarding transaction costs, GI could be a useful IP tool for women's economic empowerment. Not only does such place-of-origin protection apply for sectors where women are predominant, but the GI registration application transaction costs can be lower since the application is not

individual but regional, costs can be pooled, and some countries have a unified filing system where only one application is necessary to be considered by a group of countries (40 worldwide of which nine are in Africa) (WIPO, 2022). Indeed, under the Lisbon system for the international registration of Appellations of Origins, only one unique application to WIPO is necessary, after which parties to WIPO have one year to decide whether to grant protection in their jurisdiction. Similarly, if the protection is registered by OAPI, it becomes valid across its 17 state parties. As a result, one application could potentially result in protection across multiple countries, reducing the transaction cost.

Furthermore, GI protection requires that producers comply with product specification such as relevant geographical area, production method and good's characteristics and hence the appellation is not an individual right but can be used by all producers who abide by the product specifications (AfrIPI, 2022). However, the successful implementation of GI entails the structuration of producers in collectives with collaborative participation (Oguamanam and Dagne, 2014). Nonetheless, GI has the potential to cover many producers at once and protect their trade over several countries, lowering the transaction costs associated with IP. This could matter especially to informal traders lacking the capacity to formally register their IP rights due to the informality of their businesses but who could potentially get GI recognition provided they comply with the appellation's product specifications (UNESCO and Africa Women's Forum, 2021).

2.2.2 Limited recognition of some creative processes can exclude women

Like any system, the IP system is not gender neutral (Swanson, 2016). Economies and societies are not gender neutral but reflect at any given time the power imbalances within them. As such, a system can benefit different groups of women in a differentiated way based on their socioeconomic status, assets, ethnicity, age, bodily ability, etc.

For example, the concept of IP shapes and influences the development and design of creation and the idea of who is a creator and innovator as well as what can be considered an innovation. The IP system implicitly defines which individuals will benefit from this incentive system: for copyright, it is the authors of original work which is not copied from somewhere else; for patents, who can be granted a patent (i.e. the inventor) is the person who conceives an idea in final form but with no requirement for it to be executed in practice. Put differently, what counts towards the act of invention is its mental conception rather than its actual building (Burk, 2006). Regarding what is held as a creation or an innovation, notably, culinary arts and most apparel (because clothes, shoes, bags are deemed functional) are not covered by patents (Bartow, 2006).

As critical feminist theory points out, these definitions matter as they emphasise conceptual work over material production, implicitly not valuing and making invisible the material execution of the

creative process.³ The contribution of individuals or collectives to material production (whether soft or hard technology) are not recognised. Creative contribution in the current system excludes particular classes of contributors, notably those who participate in the material production of the works. In many cases, those are people in positions of lower status (Burk, 2006; Boateng, 2011).

Similarly, on the question of who is deemed an inventor and what is deemed an innovation, traditional knowledge does not fit western rooted IP regimes (Oguamanam, 2023). Traditional knowledge is particularly associated with biodiversity and genetic resources and as such has been recognised as an important driver for natural resource management. Women often play a custodian role in resource management and this to contribute to their household income, food security and health care. This knowledge, however, is rarely patented or protected by IPR (Williams, 2003).

Indeed, many goods relying on traditional knowledge, such as basket-weaving, bead-making, quilting and knitting, receive limited to no IP protection as they are not deemed sufficiently 'new' or 'original' to be protected by patents or copyright⁴ and no 'sole inventor' can be identified for traditional community knowledge (Musiza and Oriakhogba, 2018). Committee discussions have been ongoing at the World Intellectual Property Organization as to whether existing IP tools can be applied to traditional knowledge or whether sui generis protection should replace or complement IP protection for traditional knowledge (WIPO, 2002). Key questions revolve around who would hold such right, how the income would be shared, especially in the case of communities spanning different countries (Oguamanam, 2023). While protection of traditional knowledge may not translate into automatic greater economic empowerment for women, women hold a wealth of traditional knowledge that if protected may support greater economic autonomy.

2.3 AfCFTA's IPR Protocol

The AfCFTA IPR Protocol's preamble is likely to recognise a commitment to introduce an inclusive, balanced, and development-oriented Protocol on IPR that centres African interests and prioritises African-driven innovation and creativity. It is expected to have standard clauses on plant variety, marks, copyright, patents, emerging technologies, and importantly, geographical indications, traditional knowledge, and traditional cultural expressions and folklore. Potentially, the Protocol may cover a number of cooperation provisions on the protection of IPR, including information sharing, steps toward harmonisation, enhancement of use of geographical indications to protect traditional knowledge and cultural expressions, collaboration for enforcement and technical assistance, research, awareness, registration, administration and enforcement. Talks are ongoing

3 In much the same way recognition of what constitutes labour has been circumscribed to the public sphere, to the exclusion of domestic, private labour.

4 There are also views supporting there is no basis in IP law that supports protection of traditional knowledge given that such knowledge predates IP protection creation and hence IP protection has not proven to be an essential tool in incentivising innovation and trade (Phillips, 2016).

over whether to establish an AfCFTA Intellectual Property Office and to work with partners on technical assistance and capacity building to implement the Protocol. Women's businesses may be mentioned alongside youth as a specific category of MSMEs that would need technical support.

The AfCFTA IPR Protocol could address many of the economic segments where women are overrepresented. Consultations with women entrepreneurs highlighted fears that e-commerce may expose smaller businesses to risks of IP infringement, and unfair competition practices may prevent them from being able to enforce IP protection owing to its cost. There may also be an opportunity to refer to these gaps in the ongoing negotiations of the AfCFTA Women and Youth in Trade Protocol. This could include cooperation-based provisions that specifically aim to increase women's participation in the IP system. Implementation measures could create procedural filing or fee waivers for women-owned businesses or MSMEs, simplifying their access to IPR protection.

The ability of the protocol to both protect the IP rights of women as well as encourage women's increased participation in the AfCFTA will depend on the implementation mechanisms at regional and national levels. While the IPR Protocol could be gender-blind, IP laws and policies are designed and implemented in environments with structural gender inequalities in women's access to and control over resources, opportunities, capabilities and security. Thus, the protocol's implementation should recognise the specific challenges of women's participation in IP-related trade.

3 Recommendations for implementation strategies

The gender gap in IP and its impact on trade implies reduced economic activity and, relatedly, lower socioeconomic outcomes for women in Africa. This potentially limits the effectiveness of the AfCFTA as a whole and of the IPR Protocol specifically. The IPR Protocol may be gender-blind but its implementation could recognise the specificities of women's participation in IP-related trade (Ncube, 2022). The Women and Youth in Trade Protocol currently being negotiated also presents an opportunity to improve the gender-responsiveness of the IPR Protocol, recognising the specificities of the challenges women face in trade.

Processes of empowerment call for complex, multi-layered solutions. Women's economic empowerment as an objective could be mainstreamed in countries' national AfCFTA implementation strategies, including in the actions they plan to take to implement their obligations under the IPR Protocol. An implementation in support of women's economic empowerment would include:

- a policy strategy for the implementation of the IPR Protocol that has women's economic empowerment as a goal and articulates its links to other AfCFTA protocols
- capacity-building on women's economic empowerment for agencies coordinating the Protocol's implementation, and practical solutions such as information points and capacity-building on IPR targeted at women
- making finance (national budget, bilateral and multilateral aid) available over time (predictable and additional) to implement a gender-sensitive policy vehicle and its related capacity-building, including gender-disaggregated data collection for reporting and evaluation
- support for increased registration and use of geographical indications given their potential for food, light manufacturing and potentially traditional knowledge and cultural expression, a sector in which women are predominant
- addressing the systemic barriers women entrepreneurs face in accessing their rights to IP protection, including reflecting on potential provisions for the AfCFTA Women and Youth in Trade Protocol regarding IP, such as a cultural exceptions creating fee waivers for women-owned businesses or MSMEs
- improved IP governance: building on and improving coordination and cooperation between existing regional IP regimes (including ARIPO and OAPI) to streamline IP policies, exchange information and coordinate mechanisms of capacity-building, technical support and enforcement from continent-wide institutions to trade border posts
- gender-sensitive implementation monitoring: gender disaggregated measures of implementation progress to ensure effective process.

National or regional implementation strategies will differ by country and by sub-region. Currently, they are unlikely to include women's economic empowerment considerations in relation to IP given that the protocol is to be adopted in 2023. But strategies are revised every five years. Furthermore, implementation mechanisms and arrangements for the IPR Protocol are not necessarily all situated under trade policy, and could be a transverse goal in other sectoral strategies (agricultural, digital, creative sectors).

While most AfCFTA state parties and some regional economic communities have developed or are in the process of developing national and regional AfCFTA implementation strategies, many of these were designed before the IPR Protocol was drafted. Still, opportunities exist to identify gender-responsive priority actions when the strategies are reviewed or in other related strategies and policies. These may include the establishment of information centres and support desks at border posts for women to obtain advice on IPR at the point of entry into national markets, or a fund to provide financial support for businesses trading across borders and sharing methods and procedures for the collection of sex-disaggregated data on the challenges confronting women in accessing IPR.

4 Conclusion

Women's economic empowerment is a process. An implementation of the IP protocol that would be addressing women's specific challenges would be one piece of the puzzle in supporting social changes where women gain greater agency over economic resources and decisions.

No single intervention can address all aspects at once or be effective for all women in all their circumstances. Nonetheless, the brief has identified key entry points, given the main main challenges to women's IPR, and given current IP regimes.

The implementation of the IPR Protocol could be an opportunity to progress women's economic empowerment via trade. Coupled with gender-sensitive implementation of the other protocols to the AfCFTA, and in particular with the adoption of the Women and Youth in Trade Protocol, growing trade in Africa has the potential to further women's economic agency and support a more empowering environment.

References

- Adebola, T.** (2019) 'Access and benefit sharing, farmers' rights and plant breeders' rights: reflections on the African Model Law', *Queen Mary Journal of Intellectual Property*, 9(1), pp. 105–121. Available at: <https://doi.org/10.4337/qmjip.2019.01.06>.
- AfriPI** (2022) *Manual for Geographical Indications in Africa*. Intellectual Property Rights and Innovation in Africa, p. 109. Available at: https://africa-gi.com/sites/default/files/ipkey-docs/2022/AfriPI_GI-Manual_EN.pdf (Accessed: 1 March 2023).
- APRM** (2022) *A study on the opportunities in the AfCFTA for women in the Informal Cross-Border Trade*. Accra, Ghana: African Peer Review Mechanism, p. 20. Available at: https://au.int/sites/default/files/documents/41579-doc-STUDY_ON_OPPORTUNITIES_IN_THE_AFCFTA_FOR_WOMEN_IN_INFORMAL_AND_CROSS-BORDER_TRADE.pdf (Accessed: 1 March 2023).
- ARIPO** (2023) *Cooperation Agreements, The African Regional Intellectual Property Organization (ARIPO)*. Available at: <https://www.aripo.org/cooperation-agreements/> (Accessed: 29 March 2023).
- Bahri, A.** (2021) 'Gender mainstreaming in free trade agreements: a regional analysis and good practice examples', *Gender, Social Inclusion and Trade Knowledge Product Series*, p. 49.
- Bartow, A.** (2006) 'Fair Use and the Fairer Sex: Gender, Feminism, and Copyright Law'. Rochester, NY. Available at: <https://papers.ssrn.com/abstract=902632> (Accessed: 1 March 2023).
- Boateng, B.** (2011) *The Copyright Thing Doesn't Work Here*. Minnesota, US: University of Minnesota Press. Available at: <https://www.upress.umn.edu/book-division/books/the-copyright-thing-doesnat-work-here> (Accessed: 1 July 2022).
- Burk, D.L.** (2006) 'Feminism and Dualism in Intellectual Property'. Rochester, NY. Available at: <https://doi.org/10.2139/ssrn.928421>.
- Butler, J.** (1990) *Gender Trouble: Feminism and the Subversion of Identity*. Routledge.
- Campos, F. and Gassier, M.** (2017) *Gender and Enterprise Development in Sub-Saharan Africa: A Review of Constraints and Effective Interventions*. World Bank, Washington, DC. Available at: <https://doi.org/10.1596/1813-9450-8239>.
- Gaddis, I., Lahoti, R. and Swaminathan, H.** (2020) *Women's Legal Rights and Gender Gaps in Property Ownership in Developing Countries*. Washington, DC: World Bank, p. 40. Available at: <https://openknowledge.worldbank.org/server/api/core/bitstreams/a7487402-9d25-588e-9018-44686af15266/content>.
- Harper, C. et al.** (2020) *Gender, power and progress: How norms change*. Advancing Learning and Innovation in Gender Norms. London: ODI, p. 168. Available at: <https://www.alignplatform.org/gender-power-progress>.
- Marcus, R.** (2018) *The norms factor : recent research on gender, social norms, and women's economic empowerment*. London: ODI, p. 50. Available at: <https://idl-bnc-idrc.dspacedirect.org/handle/10625/57285> (Accessed: 7 March 2023).
- Musiza, C. and Oriakhogba, D.** (2018) *Emphasising the IP gender gap, University of Cape Town*. Available at: <http://www.news.uct.ac.za/article/-2018-04-26-emphasising-the-ip-gender-gap> (Accessed: 20 February 2022).

- Ncube, C.B. et al.** (2019) *A Principled Approach to Intellectual Property Rights and Innovation in the African Continental Free Trade Agreement*. SSRN Scholarly Paper ID 3678276. Rochester, NY: Social Science Research Network. Available at: <https://papers.ssrn.com/abstract=3678276> (Accessed: 20 February 2022).
- Ncube, C.B.** (2021) *Intellectual Property (IP) and Trade in the African Continental Free Trade Area (AFCFTA)*. Policy brief. Geneva, Switzerland: International Trade Center, p. 11.
- Ncube, C.B.** (2022) 'Intellectual property and the African continental free trade area: lessons and recommendations for the IP protocol', *Journal of International Trade Law and Policy*, 21(2), pp. 105–121. Available at: <https://doi.org/10.1108/JITLP-09-2021-0051>.
- Ogumanam, C.** (2023) 'A Critical Examination of the African Legal Framework for Indigenous Knowledge', *Journal of African Law*, 67(1), pp. 1–21. Available at: <https://doi.org/10.1017/S0021855323000049>.
- Ogumanam, C. and Dagne, T.** (2014) 'Geographical Indication (GI) Options for Ethiopian Coffee & Ghanaian Cocoa', *Innovation & Intellectual Property*, pp. 78–108.
- Ojong, N., Simba, A. and Dana, L.-P.** (2021) 'Female entrepreneurship in Africa: A review, trends, and future research directions', *Journal of Business Research*, 132, pp. 233–248. Available at: <https://doi.org/10.1016/j.jbusres.2021.04.032>.
- Oriakhogba, D.O.** (2020) 'Working around the Gender Gap in Intellectual Property Regimes: Empowerment of Women Beadworkers through Open, Inclusive Innovation and Social Entrepreneurship in KwaZulu-Natal, South Africa', *WP* 23, p. 36.
- Osei-Tutu, J.J.** (2017) 'Prioritising Human Development in African Intellectual Property Law'. Rochester, NY. Available at: <https://papers.ssrn.com/abstract=2921330> (Accessed: 1 July 2022).
- Roy, A.** (2008) 'Intellectual Property Rights: A Western Tale', *Asia Pacific Law Review*, 16(2), pp. 219–239. Available at: <https://doi.org/10.1080/10192557.2008.11788187>.
- Schneider, M. and Ferguson, V.** (2020) *Enforcement of Intellectual Property Rights in Africa*. Oxford, New York: Oxford University Press.
- Swanson, K.W.** (2016) 'Intellectual Property and Gender: Reflections on Accomplishments and Methodology', *Social Policy*, 24.
- UNESCO and Africa Women's Forum** (2021) *Challenges and opportunities for women entrepreneurs in Africa: a survey of science and technology usage*. UNESCO Science Report Library: Occasional Papers 1. Paris, France: United Nations Educational, Scientific and Cultural Organization, p. 26. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000379399> (Accessed: 1 July 2022).
- WIPO** (2002) *Intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore*. Elements of a sui generis system for the protection of traditional knowledge. Geneva, Switzerland: World Intellectual Property Organisation, p. 24. Available at: https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_3/wipo_grtkf_ic_3_8.pdf (Accessed: 29 March 2023).
- WIPO** (2020) *What is intellectual property?* Geneva, Switzerland: World Intellectual Property Organisation, p. 28. Available at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf.
- WIPO** (2022a) 'Lisbon Agreement for the Protection of Appellations of Origin and their International Registration'.
- WIPO** (2022b) *WIPO statistics database*. Geneva, Switzerland: World Intellectual Property Organisation.
- WTO** (2023) *Database on gender provisions in RTAs*. Available at: https://www.wto.org/english/tratop_e/womenandtrade_e/gender_responsive_trade_agreement_db_e.htm (Accessed: 28 March 2023).