Opportunities and challenges in using intellectual property systems to strengthen regional cooperation through policy harmonization in the Southern African Development Community
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### Acronyms

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<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>ACP</td>
<td>Africa, Caribbean and Pacific</td>
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<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
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<td>ARIPO</td>
<td>African Regional Intellectual Property Organization</td>
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<tr>
<td>AUC</td>
<td>African Union Commission</td>
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<tr>
<td>BRELA</td>
<td>Business Registration Licensing Agency</td>
</tr>
<tr>
<td>CISAC</td>
<td>International Confederation of Authors and Composers</td>
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<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
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<td>EAC</td>
<td>East African Community</td>
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<td>ECA</td>
<td>Economic Commission for Africa</td>
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<td>EEC</td>
<td>European Economic Commission</td>
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<td>EPO</td>
<td>European Patent Office</td>
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<td>EU</td>
<td>European Union</td>
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<td>FDI</td>
<td>foreign direct investment</td>
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<td>FTA</td>
<td>Free Trade Area</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>GDP</td>
<td>gross domestic product</td>
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<td>ICT</td>
<td>information and communications technology</td>
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<td>IFRRO</td>
<td>International Federation of Reproduction Rights Organisations</td>
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<tr>
<td>NGO</td>
<td>non-governmental organization</td>
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<td>OAPI</td>
<td>African Intellectual Property Organization</td>
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<td>OHIM</td>
<td>Office for the Harmonization in the Internal Market</td>
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<td>PAIPO</td>
<td>Pan-African Intellectual Property Organization</td>
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<td>PCT</td>
<td>Patent Cooperation Treaty</td>
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<td>R&amp;D</td>
<td>research and development</td>
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<td>REC</td>
<td>regional economic community</td>
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<td>SADC</td>
<td>Southern African Development Community</td>
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<tr>
<td>SEACONET</td>
<td>Southern and Eastern Africa Copyright Network</td>
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<tr>
<td>SME</td>
<td>small and medium scale enterprise</td>
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<tr>
<td>TRIPS</td>
<td>Trade-Related Aspects of Intellectual Property Rights</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>UPOV</td>
<td>International Union for the Protection of New Varieties of Plants</td>
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<tr>
<td>WCT</td>
<td>WIPO Copyright Treaty</td>
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<td>WHO</td>
<td>World Health Organization</td>
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<td>WIPO</td>
<td>World Intellectual Property Organization</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 Organization</td>
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Executive summary

The report presents the findings of a desk study on the “Opportunities and challenges in using intellectual property systems to strengthen regional cooperation through policy harmonization in the SADC region”. The study assessed the feasibility of harmonizing national intellectual property frameworks in the SADC region and aligning them to subregional mechanisms with the view to strengthen regional integration. It relied primarily on secondary data and reviewed, among others, the following key documents: intellectual property and related legislation from all SADC member States, relevant documents from the African Union Commission (AUC), the African Regional Intellectual Property Organization (ARIPO), the African Intellectual Property Organization (OAPI), the World Intellectual Property Organization (WIPO), protocols of the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) as well as other relevant documentation from European Union (EU) directives on intellectual property for comparison.

This report consists of four chapters. The importance of intellectual property in economic development, trade and regional economic cooperation and integration is outlined in Chapter 1. The chapter also explores the business case for intellectual property protection and describes the scope of the study together with the methodology employed. Further, it discusses the importance of harmonization for trade and economic integration within the SADC region and explores the relationship between intellectual property and business development.

Chapter 2 provides a synopsis of the regional, continental and international intellectual property environment. The discussion on the intellectual property environment captures important and pertinent dimensions for the consideration of member States and the SADC secretariat. The intellectual property frameworks in the EAC, COMESA and SADC are reviewed to identify areas that require alignment for harmonization in line with the vision of the EAC-COMESA-SADC tripartite of creating an aligned intellectual property policy environment. The SADC region needs to develop a regional intellectual property policy framework aligned to the frameworks of COMESA and EAC as a first step towards harmonization. The alignment of national frameworks to the regional intellectual property template would be the next step. The continental framework, through ARIPO and OAPI, provides frameworks for regional cooperation on intellectual property aligned to the international systems under WIPO. The discussion on the international intellectual property frameworks, the World Trade Organization (WTO) and WIPO focuses on how these are mirrored in the continental and regional initiatives. Overall, WIPO provides leadership in the creation and maintenance of a harmonized intellectual property policy environment throughout the world. WTO, as the custodian of the Trade-Related Aspects of Intellectual Property Rights (TRIPS), is a vital institution in the international intellectual property environment.

Chapter 3 outlines the current status of intellectual property rights in SADC member States and specifically reviews national intellectual property policies and legislation, identifying areas for further adjustment for alignment. The chapter also discusses the sector’s existing coordination arrangements in SADC and further elaborates on pertinent intellectual property issues on public health and access to medicines in the region. Overall, the chapter alludes to the different levels of intellectual property awareness and infrastructure, policies, laws and regulations across Southern Africa. A few countries have developed intellectual property environments while many are still creating intellectual property infrastructure. South Africa’s more advanced intellectual property framework provides lessons for adaptation for countries that are still developing policies, legislation and establishing well-resourced intellectual property offices (like Lesotho) and for other countries that have made some progress in the policy environment. The diversity in the levels of development of the intellectual property environment at the national level affects the strategies and pace of regional policy harmonization.
Chapter 4 reviews the interface between intellectual property rights and competition policy and emphasizes the complementarity of the two in their aim to improve consumer welfare. Thus, harmonization and collaboration in enforcing the two is vital in fostering economic development. Both intellectual property rights protection and competition policy encourage firms to compete in the market place by investing in technologies that generate more efficient methods of production and new products and services for consumers. Low levels of awareness, information asymmetry, lack of cooperation between intellectual property rights offices and competition authorities and lack of enforcement are some of the factors limiting the complementarity between intellectual property rights and competition policy. The review in the chapter shows that competition legislation in the SADC region does not interfere with intellectual property rights and that countries in the region are at different stages in the development of competition policies. For harmonization, there is need to strengthen the regional framework that provides the mechanism for cooperation and collaboration among national competition and consumer agencies, the strengthening of information exchange, consultation and joint operation in the enforcement of competitive standards and the thwarting of anti-competitive practices at the bilateral and regional levels. The chapter observes that, ideally, competition and consumer authorities must cooperate in order to successfully identify and prosecute cross-border anti-competitive practices.

Chapter 5 presents the findings, conclusions and recommendations of the study. It identifies the challenges that hinder effective use of intellectual property in SADC member States. These include: the lack of intellectual property policies, poor intellectual property infrastructure, lack of awareness, non-harmonized intellectual property regimes, lack of support for research and development, lack of political will and outdated legislation, poor intellectual property administration and shortage of skilled manpower and limited financial support. The study recommends the development of national intellectual property policies and strategies where they do not exist, the harmonization of intellectual property laws, enforcement and automation, capacity development in intellectual property examination, intellectual property auditing, interface between intellectual property rights and competition laws and development of intellectual property infrastructure. Furthermore, the study recommends region-wide studies on copyright issues to develop strategies to elevate the profile of intellectual property protection and harmonization in Southern Africa. The accession of SADC member States to the Treaties and Conventions administered by WIPO at the international level as well as joining AR IPO at the continent level will help accelerate progress towards creating a harmonized intellectual property environment. The critical role of the SADC secretariat in coordinating policy harmonization in intellectual property is alluded to and a call is made for the efforts of SADC to be aligned to the aspirations of EAC and COMESA.
I. Introduction

A. Overview

Intellectual property is a critical component of commerce and economic growth worldwide as intellectual property rights protection systems affect international trade and support creativity and innovation. The enforcement of intellectual property rights both within the region and externally affects the region’s growth and jobs. When ideas, brands and products are pirated and counterfeited, individuals and economies are adversely affected. In addition, counterfeit products pose a risk to consumer safety and health as they are often produced without adherence to standards. It is, thus, important to develop harmonized and strong intellectual property rights standards to confront infringements in the region. Right-holders need access to effective ways (legal recourse) of protecting their rights domestically, regionally and internationally. Therefore, a predictable intellectual property rights legal and regulatory framework is an absolute necessity. Regardless of the type of product an enterprise produces or provides, it is likely that the enterprise is regularly using and creating intellectual property and that needs to be protected (WIPO, 2011). In today’s globalized world, businesses should be well-versed in protecting, managing and enforcing intellectual property rights, so as to get the best possible commercial results and value from investment in product creation. Almost every business has a trade name or one or more trademarks and should consider protecting them as a matter of principle. Most businesses will have valuable confidential business information, from customers’ lists to sales tactics, that they may wish to protect. Other things to consider in intellectual property protection include creative original designs, publications, and dissemination and invented or improved products or services. Intellectual property can play a role in almost every aspect of business development and competitive strategy: from product development to product design, from service delivery to marketing, and from raising financial resources to exporting or expanding one’s business abroad through licensing or franchising.¹

1. Rationale for protecting intellectual property

From a business perspective, intellectual property can enhance the market value of businesses when it is legally protected. There is demand for intellectual property-protected products and/or services in the marketplace and, thus, intellectual property is a valuable business asset. The strategic utilization of IP assets can enhance competitiveness. In addition, intellectual property can be a company’s most valuable intangible business asset. Intangible business assets include human capital, know-how, ideas, brands, designs and other intangible fruits of a company’s creative and innovative capacity and these should be protected. Progressively and mostly as a result of the information technology revolution and the growth of the service economy, intangible assets are becoming more valuable than physical assets. According to WIPO (2011), in the 1970s, company valuation was dominated by ownership of physical assets (about 80 per cent) but currently, physical assets account for only 20 per cent of company assets with intangibles accounting for the rest. Thus, the protection of intellectual property is an investment and acquiring it is equally important. Markets will value a company on the basis of its assets, its current business operations and expectations of future profits. Expectations for future profits may be considerably affected by the acquisition of key patents. Similarly, a good trademark with a good reputation among consumers may also enhance a company’s current value and may decisively contribute to making a company’s products and services more attractive to consumers. Investment in developing a good intellectual property portfolio is, therefore, much more than a defensive act against potential competitors. It is a way of increasing a company’s

¹ WIPO/ICC - Handbook

Building on their respective work, ICC and WIPO have developed the handbook to help business associations and chambers of commerce establish business support services relating to IP. The handbook is not intended to be a legal guide to explain the nuts and bolts of IPRs, as many excellent legal guides already exist. It endeavours to be a concise and practical guide to help business membership organizations set up their own IP services. It has useful examples and good practices from around the world. It has benefited from the contributions of ICC National Committees, business associations and chambers of commerce worldwide and, therefore, reflects real-life practice and experience.
market value and improving future profitability. Businesses audit their intellectual property assets on an ongoing basis. By establishing a culture of identifying and cultivating intellectual property assets and strategically using them, an enterprise can increase its revenue and have an edge over its competitors and position itself well in the market (WIPO, 2011). These are strategies that may lead to an increase in the market value of a company’s intellectual property.

According to WIPO (2011), the important role of intellectual property in economic development motivates its protection. The protection hinges on two fundamental aspects. Firstly, intellectual property laws provide a statutory expression to the moral and economic rights of creators and their creations, as well as the rights of the public to have access to those creations. Secondly, as a deliberate act by Governments that promote creativity and the dissemination and application of the results of intellectual property, leading to fair trading, which in itself contributes to economic and social development (WIPO, 2011). Intellectual property aims at safeguarding creators and other producers of intellectual goods and services by providing them with monopoly rights for a limited period of time to control the use and making of those products. The creations of intellectual property are usually associated with investments of financial resources and application of skills and this is often time consuming.2

According to analysts, taking this risk requires some encouragement that is provided by intellectual property laws by granting exclusive rights to the creator to use or exploit their invention, innovation and other creations of work for a limited period of time (Kanja, 2006). Secondly, intellectual property protection rewards the authors and inventors of intellectual property products and services for the time, skills and money invested in the production of their intellectual property product or service. Thirdly, since intellectual property is usually given by a government authority, it also serves the purpose of promoting economic development by encouraging publication and dissemination of information. Fourthly, strong protection of intellectual property also encourages and attracts foreign direct investment (FDI) in those countries that have a functional intellectual property system. Furthermore, the protection of intellectual property also prevents piracy and counterfeiting. Some of the pirated products and counterfeited goods are known to be hazardous to health and dangerous to the society (Andersen, 2003). Table 1 illustrates the typology on the rationale for intellectual property rights.

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Table 1: Typology on the rationale for intellectual property rights

<table>
<thead>
<tr>
<th>Social contract theory</th>
<th>Natural rights and moral rationales</th>
<th>Political expediency, as a means to affect economic behaviour, as a mechanism to obtain welfare goals</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>The natural and moral right to claim the intellectual property.</td>
<td>The innovation enhances competition and ‘nature of ideas’ argument.</td>
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<td></td>
<td>The moral right to compensation and reward.</td>
<td>The ‘market protection of entrepreneurial talent’ for industrial development rationale.</td>
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<td>Increased competition and ‘market protection of entrepreneurial talent’ rationales: industrial development from patents</td>
<td>Incentive to invent, be creative and innovative, as well as motivating the direction of such.</td>
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<td>Economic incentive rationales: the social benefits from patents</td>
<td>Incentive to use and allocate resources more efficiently.</td>
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<td>Economic rationale of organizing science, technology and creativity: increased information spillover</td>
<td>Incentive to disclose ideas</td>
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<td>Rationale of uniformity, order, increased information, increased spillover and better advice.</td>
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The Global Patent Cooperation Treaty (PCT) Filing demonstrates the source of technologies as shown by the statistics of applications originating from corporations, universities, government departments and research institutions where intellectual property policies are being vigorously pursued. The data shows trends in PCT filing. It shows that, on the global level, the vast majority of middle-income filings (79.2 per cent) originated in China. At the regional level, the majority of filings also originated in a single middle-income country. As can be seen in Table 2, the PCT filings are dominated by middle-income countries.

Table 2: Regional distribution of international PCT filing (2008-2012)

<table>
<thead>
<tr>
<th>Region</th>
<th>Middle-income origin</th>
<th>International Filing Year</th>
<th>2012 Middle-income Regional Share (%)</th>
<th>Change compared to 2011 (%)</th>
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<tbody>
<tr>
<td>Africa</td>
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While China accounted for 89.8 per cent of middle-income filings from Asia, the Russian Federation was the source of 77.9 per cent of all filings from European middle-income countries, and South Africa constituted 71.1 per cent of all African middle-income filings (only 29.9 per cent of the applications were from the other 53 African countries). Latin America and the Caribbean was the geographical region least dominated by a single country, as only slightly more than half of these filings (53 per cent) were concentrated in Brazil, followed by Mexico and Chile, which accounted for substantial shares of the total Latin America and the Caribbean filings with 17.1 per cent and 10.6 per cent, respectively.

2. Harmonization of intellectual property rights protection

The harmonization of intellectual property policies across national boundaries is critical in an increasingly globalized environment. Harmonization of intellectual property frameworks in SADC member States will rationalize scarce resources, expertise and infrastructure and will bring in concerted efforts in dealing with matters of intellectual property in a unified way. It will also provide a common approach for member States in dealing with provisions for TRIPS flexibilities, working of inventions and the duration of intellectual property rights. As a process of creating common minimum standards, harmonization is a key component of regional integration and levelling the playing field in intellectual property issues. Given that intellectual property is increasingly becoming a valuable asset internationally, harmonization is critical at both international and regional levels for the derivation of optimal economic benefits from new ideas and innovations.

To raise the efficiency of the global economy as a whole, it is imperative that international intellectual property protection rules be established to create a highly transparent, predictable and stable business environment conducive for smooth trade, foreign investment and technology transfer. The globalization of business has also made it necessary to increase the efficiency of rights acquisition in order to support rights acquisition on a global level. WIPO and ARIPO share universal themes especially those of harmonization and development. Intellectual property protection, according to the principle of territoriality, is limited to national jurisdictions. For instance, a patent-owner seeking worldwide protection can only achieve international patent protection through a bundle of individual national patents limited to the States that have granted them. Each patent is governed by the laws of that State and can be enforced only in the territory of that State. This means that the first sale of goods protected as intellectual property can exhaust the intellectual property right only in that territory but not anywhere else. Different intellectual property laws create unequal conditions for the production and distribution of goods and the rendering of services. The tendency towards levelling of legal regimes is becoming more and more commonplace. This not only safeguards rights of locals in each country but also encourages investment and trade from international players.

The principal actors in the international economic and trade order, multinational corporations, not only benefit from the creation of a single legal regime across national or state borders but also work towards extending it and making it permanent. These corporations would neither operate nor prosper without such a vital part of the legal infrastructure in any country being available to them. Inevitably, one of the most critical benchmarks of any country’s attractiveness as a haven for foreign investment and as a trading partner has long become the transparency of its legal system. Transparency has, in turn, been expressed in terms of the legal system’s accessibility to for-
eigners (intent on doing business whether through foreign direct investment or otherwise) and the availability of enforcement mechanisms in case legal rights have to be asserted.\footnote{Id.}

According to the African Union, a single intellectual property system is desirable for the African continent or at least a harmonized landscape is needed.\footnote{African Union Document (Ref No: AU/STRC/522).} This will be in line with the overall integration objectives of the continent and the aims of the SADC, COMESA and EAC tripartite to establish a common market. The African Union mechanism can facilitate the development of a single intellectual property organization on the continent to serve as one-stop access to all African countries.\footnote{See Enyinna Nwauche “An Evaluation of the African Regional Intellectual Property Rights Systems”, \textit{The Journal of Intellectual Property}, Vol. 6, January 2003 at 137-138.} A single organization would enable African countries to benefit from economies of scale through sharing competencies in intellectual property. The current cooperation agreement between ARIPO and OAPI could be the starting point and should integrate the two systems and extend protection accorded to member countries under their respective treaties to each other.\footnote{Adewopo, op. cit at P. 482/483.}

Largely, national intellectual property rights frameworks in the SADC region have several shortcomings, and are in most cases, outdated and do not effectively promote innovation. Consequently, innovation and technology transfer is very low in the region (Kanja, 2006). Furthermore, most of the region’s intellectual property rights systems are not TRIPS compliant as required by the SADC Protocol. The SADC Protocol on Trade identified the TRIPS agreement as the foundation for its intellectual property rights framework. Generally, the level of intellectual property rights awareness in SADC is generally low (Kanja, 2006; Andersen, 2003). In instances where awareness exists, there is lack of confidence in the system because of low enforcement levels. As a result, businesses in the region are not effectively utilizing intellectual property rights systems to enhance their effectiveness and this has had a general negative effect on trade. The international intellectual property rights regimes – the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO) frameworks – are open to cooperation with SADC member States. The aspirations of these organizations as well as regional organizations such as the African Regional Intellectual Property Organization (ARIPO) align with the goals of SADC to harmonize and strengthen intellectual property rights systems in the region. These organizations can provide a blueprint and much-needed experience and resources to develop and entrench intellectual property rights in the region. The SADC region can tap on the technical support from regional and international organizations to develop a regional intellectual property policy framework.

B. Background to the study

The SADC Protocol on Trade endeavours to enhance economic development, diversification, and industrialization of the region and seeks to facilitate the transformation of economies to higher value-added products. Innovation and research and development can accelerate and deepen economic diversification and industrialization. In a global environment characterized by the rise in value of knowledge and information, this can generate a robust demand for intellectual property services in the region. Intellectual property rights regimes influence the diffusion of knowledge, the pace of innovation and, ultimately, economic performance. The increasing importance of intellectual property rights in innovation systems is reflected in the growing number of patents worldwide. Patent regimes have undergone major changes in recent years, most of them strengthening the rights of patent holders and extending the scope of patentable inventions. These patents are increasingly playing an important role in business strategies and in the commercialization and diffusion of technology. The increase in intellectual property-related activities in recent years, including, for example, legislation and regulation, can be attributed to many factors such as: information technology diffusion and faster information dissemination, expansion of technology markets,
reduced market regulation and deliberate government policy to boost innovation and economic growth. Intellectual property is a tool that can power national growth and development and, hence, the imperative for its protection.

The protection of ideas and innovations has become a central priority in the competitive strategies of many economic actors, more so in the globally connected economy with high-speed information flow. The protection of ideas is also an important factor in the set up and survival of knowledge-based industries and, thus, it is not surprising that the ownership and distribution of these assets is now a high-stakes issue in international and regional trade agreements. Worldwide, Governments, individuals and intergovernmental organizations are investing in the protection of intellectual property and the promotion of intellectual property rights.

Despite the challenges of enforcing intellectual property rights at the subregional level, SADC countries realize the importance of keeping pace with advances in science and technology, protecting intellectual property and strengthening regional integration. Yet, concerns about possible abuse by intellectual property rights holders of their exclusive rights can be a disincentive to deeper economic integration and industrialization across SADC. Further, regional cooperation also has potential disadvantages if it lacks the flexibility to allow individual countries to apply intellectual property regimes tailored to their specific needs and circumstances. The need to resist protectionist impulses and take into account pro-consumer interpretations is an important consideration. The heterogeneity of SADC members and the resultant different policy imperatives should sound a warning against an all-embracing intellectual property rights regime at the regional level. Thus, in deciding on a strategy, SADC countries will need to weigh the advantages and disadvantages of regional intellectual property rights cooperation and design a regime best suited to their national circumstances. Stronger cooperation is vital in tackling these issues and organizations such as WIPO and ARIPo were founded to champion a coordinated approach to the promotion of the protection of intellectual property through cooperation among States. The notions of balance, accessibility and reward for innovation and creativity are central to the protection espoused through such cooperation.

SADC member States are increasingly facing pressure from the more developed trading partners to negotiate agreements that encompass intellectual property rights. For example, the current Economic Partnership Agreement (EPA) negotiations with the EU, negotiations with the United States and the WTO all involve fundamental intellectual property rights issues, which require a coordinated approach to resolve. The SADC Protocol on Trade contains intellectual property provisions (Articles 9d and 24) that offer avenues for regional cooperation in intellectual property rights administration that could reduce costs, increase efficiency and reinforce national protection and, thus, overcome national-level constraints. The SADC Protocol on Science, Technology and Innovation (in Article 2m), endeavours to strengthen intellectual property rights in the areas of science, technology and innovation.  

The aspirations of the SADC Protocol on Trade for economic diversification and the promotion of innovation require that ideas generated from the citizenry and industry be nurtured as they enter the market. This can occur in a harmonized policy environment within the region. A common framework for intellectual property protection is thus required.

Thus, in accordance with the ECA mandate to promote intra-regional trade and strengthen regional cooperation and economic integration, and as part of the work programme for 2012-2013, the ECA Subregional Office for Southern Africa commissioned this study to assist the SADC secretariat in its endeavour to operationalize the intellectual property provisions of the SADC Protocol on Trade. The overall goal is to promote intra-regional trade and strengthen regional cooperation and economic integration. In that regard, the study aimed to produce practical and

C. Study objectives and methodology

The objective of this desk study was to enhance knowledge and ability of SADC member States to understand the advantages and disadvantages of regional cooperation on intellectual property rights and, hence, enable them to make the appropriate choices on the harmonization of and cooperation on relevant policies and strategies at the regional level. The study sought to generate critical diagnosis to facilitate policy harmonization and increased cooperation on intellectual property policies. This will ultimately lead to the growth of dynamic industries that will contribute to an increased level of intra-SADC trade, economic cooperation and socio-economic development. Specifically, the study sought to:

- Review the SADC intellectual property landscape and highlight the level of conformity of national policies to regional aspirations and identify constraints and prospects for harmonization.
- Investigate the complementarity of intellectual property rights and competition policy.
- Review the continental and international intellectual property environment and
- Develop an action plan to address the challenges in intellectual property policy and legislative frameworks in the region.

Further, the study aimed to develop a framework to strengthen the capacity of Southern African countries to design appropriate national and regional trade strategies and programmes to optimize the benefits of market integration through the operationalization of the intellectual property provisions of the SADC Protocol on Trade.

The study was primarily based on secondary data and relied on information in the public domain, mostly from internet sources. It assessed the national frameworks for the protection of intellectual property and promotion of innovation and reviewed the adequacy of the international intellectual property rights regimes to boost subregional innovation. The study also assessed the impact of intellectual property protection and policies on innovation and technology transfer in the subregion through a review of relevant regional and international regimes.

D. Scope of the study

The study is regional in nature and provided a comprehensive analysis of the intellectual property rights landscape in the SADC region and considered the benefits and challenges of implementing a regional cooperation framework. The review of national intellectual property policies and legal and regulatory frameworks helped to identify differences and best practices. The findings of the study were used to propose strategies to mitigate the challenges and provide a roadmap towards the development of a common programme for SADC on intellectual property rights. The proposed regional programme will leverage on existing relevant national and Africa-wide policies and programmes to strengthen intellectual property mechanisms. The assessment also reviewed the alignment of national and subregional intellectual property frameworks with continental and international aspirations as promoted through ARIPO and WIPO. The findings of the study emphasized the ratification of protocols, policy harmonization and coordination in intellectual property rights and, in the areas of public health and access to medicine, enforcement includes measures against piracy and counterfeiting of goods. Further, the discussion on the interface between intellectual
property rights and competition policy identified key lessons and international best practices on intellectual property and the need for complementarity.

E. Structure of the report

This report consists of four chapters following this introduction and overview, which deals with the background, scope and methodology of the study. Chapter 2 provides a synopsis of the regional, continental and international intellectual property environment, in each case outlining the key components. The discussion in Chapter 3 outlines the current status of intellectual property rights in SADC member States and specifically reviews national intellectual property policies and laws and identifies the weaknesses and strengths thereof. The chapter also discusses existing coordination arrangements in SADC and further elaborates on public health and access to medicine in the region. Chapter 4 deals with issues around the interface between intellectual property rights and competition policy and provides an overview of competition policy in selected countries in the region. It emphasizes the complementarity between the two strategies. A summary of key findings, conclusions and recommendations from the study is provided in Chapter 5.

F. Study limitations

The study was primarily based on information available in the public domain. There was limited desk to desk verification of certain published information due to poor responses to the questionnaires submitted to national intellectual property institutions for data collection. Furthermore, the fact that not all SADC member States maintain updated information on intellectual property on their websites presented immense challenges in the collection of secondary information. Important national data supposed to be hosted by the TRIPS Council under WTO was incomplete and outdated for some countries and this affected the compilation of the country reports. Although the experts at the Ad Hoc Expert Group Meeting in Gaborone on December 3 and 4 2013 strengthened national-level information on intellectual property, gaps still remained in some cases and this impacted on the overall analysis.
II. Regional, continental and international intellectual property environment

A. Introduction

This chapter is an overview of the regional, continental and international intellectual property and intellectual property-related organizations. The discussion focuses on the key elements that define the work of these institutions and frameworks on intellectual property and identifies parameters that can be adapted for the harmonization of SADC programmes. The chapter emphasizes the need for member States to be cognizant of the continental and international intellectual property environment as they reorient their policies or craft new ones.

B. Regional economic communities: the tripartite environment

The East African Community, COMESA and SADC established a tripartite taskforce in 2005 to harmonize the programmes and the overall regional integration process for the three RECs. The main objective of the tripartite is to strengthen and deepen economic integration of the Southern and Eastern African region through improved coordination and harmonization of the various regional integration programmes of the three RECs. This is being achieved through various initiatives. The programmes of the tripartite are in three pillars: (i) trade (ii) customs and (iii) infrastructure development. These regional integration programmes focus on expanding and integrating trade, and include the establishment of Free Trade Areas (FTAs), custom unions, monetary unions and common markets, as well as collaboration in infrastructural development projects in transport, information and communications technology and energy. The Tripartite Task Force, led by the Trade Sub-Committee, has prepared a Draft FTA Roadmap and a Draft Agreement establishing the Tripartite FTA, including annexes on intellectual property. For example, intellectual property rights as it relates to Trade and Development is in Article 1, Trade Negotiations (Article 2), the Cultural and Creative Industry (Article 3), Traditional Knowledge (Article 4), Information and Communications Technology (Article 5) and Copyrights (Article 6).

It is instructive to review the intellectual property regimes of the three RECs in light of the overall express intentions of strengthening economic integration. The review will help isolate focus areas in policy harmonization and alignment.

1. Southern African Development Community

The Southern African Development Community (SADC) currently consists of 15 member States: Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe. The vision of SADC is for a regional community in which the people of Southern Africa can realize economic well-being, improved living standards and quality of life, freedom and social justice and peace and security. The SADC mission is to “promote sustainable
and equitable economic growth and socio-economic development through efficient productive systems, deeper co-operation and integration, good governance, and durable peace and security, so that the region emerges as a competitive and effective player in international relations and the world economy”.

Outside the SADC Common Agenda, two other key strategic frameworks guide the region’s intentions. While the Regional Indicative Strategic Development Plan provides a governance framework that sets standards for good political, economic and corporate governance, the Strategic Indicative Plan for the Organ focuses on the maintenance of peace and stability in the region. Several SADC Protocols enshrine the aims of the Community by providing codes of procedure and practice on various issues, as agreed by member States. The SADC Protocol on Trade (2005) establishing a Free Trade Area in the SADC region is an example. Its objectives are to further liberalize intra-regional trade in goods and services; ensure efficient production; contribute towards the improvement of the climate for domestic, cross-border and foreign investment and enhance economic development, diversification and industrialization of the region. In relation to intellectual property, the SADC Protocol on Trade requires member States to abide by international rules as provided for under the WTO agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Thus, the TRIPS Agreement is an integral part of all SADC intellectual property endeavours.

The SADC Protocol on Science, Technology and Innovation, signed by SADC Heads of State and Government in August 2008, outlines the framework of cooperation between member States on scientific and technological matters of interest. Since intellectual property is a major component of innovation in science and technology, one of the main aims of the Protocol is to enhance and strengthen the protection of intellectual property rights. The other aims and objectives are to strengthen regional cooperation and coordination; promote the development and harmonization of policies; share experiences and pool resources; promote public understanding, awareness and participation; promote the value of indigenous knowledge systems and technologies; attract, motivate and retain scientists; strengthen institutional capacity and facilitate institutional cooperation and networks; increase access to the teaching and learning of basic science and mathematics; and promote gender equity and equality in the teaching and learning at all levels of education.

The intellectual property provisions in the SADC Protocol on Trade and in the SADC Protocol on Science, Technology and Innovation endeavour to strengthen intellectual property rights within the subregion. Specifically, the SADC Protocol on Trade seeks to create an environment conducive to economic growth and development, strengthen intellectual property mechanisms as well as promote research, development and innovation. The current SADC framework on intellectual property rights emphasizes the link between intellectual property and economic development particularly in relation to promoting innovation in developing countries. It has a broad coverage, which is indicative of the appreciation of the cross-cutting nature of intellectual property and its significance to the development of the region.

The intellectual property enforcement mechanism in SADC is underpinned by increased awareness campaigns and includes the coordination of government agencies for enforcement of intellectual property rights, the establishment of specialized benches with jurisdiction over intellectual property rights, the undertaking of various administrative measures, police raids, and an extensive review and adjustment of policies, laws and regulations. The establishment of a national mechanism for coordination of government agencies for the enforcement of intellectual property rights has been the major trend in most developing countries since 2000. In some countries, divisions in courts of law with jurisdiction exclusively over intellectual property rights have been established. In addition, campaigns, police raids and sudden crackdowns have become the most reported government-led efforts in the enforcement of intellectual property rights. These develop-

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16 See generally, SADC official website, www.sadc.int.
17 “Member States shall adopt policies and implement measures within the Community for the protection of intellectual property rights, in accordance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights”. SADC Protocol on Trade, Art 24.
ments show the major challenges of developing countries in building their intellectual property system and meeting the demands of developed countries. Enforcement of intellectual property rights appears to have been taken mainly as the responsibility of Governments involving the use of law enforcement agencies.

Challenges still remain with respect to the enforcement of intellectual property rights in the SADC region. To improve enforcement, the following should be considered: coordination and dialogue among all stakeholders; enhanced availability of clear and reliable information and objective data; harmonized definitions that would allow proper quantification of the magnitude and impact of international trade in counterfeit and pirated goods; sharing of experiences and practices to tackle counterfeiting and piracy to define the problems therein adequately; and consistency with TRIPS+ enforcement and standards in member States. An example of efforts being made towards development of enforcement measures in SADC countries is shown in Box 1. Another parallel to be drawn is the example of the EAC countries.

### Box 1: Intellectual property enforcement: South African experience

South Africa has the most advanced enforcement regime in the SADC region. Border measures and fighting counterfeiting in South Africa are based on the “Counterfeit Goods Act of 1997”. The Act provides that the Commissioner for Customs and Excise, upon having granted an application to that end by the owner of an intellectual property right, will have the power to seize and detain counterfeit goods or suspected counterfeit goods imported into or through or exported from or through the Republic of South Africa during a particular period and calculated to infringe that intellectual property right. If a right owner has grounds to suspect that counterfeit goods are being imported into or exported from the Republic of South Africa, they may lay a complaint with Customs, accompanied by sufficient information and particulars from which it is possible for Customs to identify the alleged counterfeit goods, a power of attorney (if the complaint is done by a representative) and prima facie evidence the goods are protected (e.g. trademark registration). A customs officer can only act if a warrant has been issued by a judge of the High Court or a magistrate who has jurisdiction in the area were an act of dealing in counterfeit goods (is likely to) is taking place. If during regular inspections a customs officer comes upon counterfeit goods, they have to inform the right owner and furnish an original inventory list of the shipment seized within three days. The right owner must file a criminal complaint within these days or initiate civil proceedings within ten working days after the notification. If no such action is initiated, Customs will have to release the goods.

### 2. Common Market for Eastern and Southern Africa

The Common Market for Eastern and Southern Africa is a Free Trade Area with 19 member States. It was formed in December 1994, replacing a Preferential Trade Area that had existed since 1981. The current members of COMESA are: Uganda, Eritrea, the Democratic Republic of the Congo, Ethiopia, Swaziland, Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, the Sudan, Zambia, Zimbabwe, Rwanda, Burundi, the Comoros, Libya and Seychelles.

The COMESA intellectual property framework is in two parts. Part A, which is entitled ‘COMESA Policy on Intellectual Property Rights’ emphasizes the link between intellectual property and economic development particularly in relation to promoting innovation in developing countries. This part also considers the relationships between intellectual property and trade, the cultural industries, traditional knowledge and expressions of folklore and Information Communications Technologies (ICTs). Part B, which is entitled ‘The COMESA Policy on Copyright and Copyright-related Industries’ focuses on the need to encourage and promote copyright protection for socio-economic development. The objectives of Part B include increasing capacity to commercial-
ize copyright works; creating 'public awareness on the importance of copyright protection' and encouraging research on copyright and socio-economic development. The need to curb piracy and copyright infringement is alluded to in this Part. Part B also mentions the imperative to promote a balanced copyright system that facilitates access to knowledge and learning materials. Therefore, access is essential to the provision of education, which, in turn, contributes significantly to the quality of people's lives. Furthermore, the promotion of research is laudable as the resultant research outputs will provide evidence that can be used in iterative policy and legislative processes. Thus, according to the COMESA Intellectual Property Policy Framework, member States will:

• Promote, encourage and facilitate the generation, innovation, creation, development, use, exploitation, commercialization and licensing of intellectual property rights as well as their effective protection.

• Promote and facilitate the mainstreaming of intellectual property into all COMESA policies, structures, systems, programmes and activities.

• Promote and encourage the mainstreaming of intellectual property into the economic, industrial, technological, social and cultural policies, systems, structures, programmes and activities of the COMESA member States.

• Take urgent measures to transform COMESA member States’ economies from being ‘raw material or resource-based economies’ to ‘knowledge-based and innovation-driven economies’ so as to be competitive in the global economy.

• Encourage the creation of a supportive environment for innovation and creativity including providing incentives and funding of research and development activities, innovation, creativity and intellectual property education as well as the establishment of innovation or technology parks or intellectual property centres of excellence within COMESA member States.

• Increase the awareness and effective use of intellectual property within the region, particularly by the business community in sectors such as trade, industry, science and technology.

• Promote, encourage and facilitate the audit or assessment of the intellectual property rights of COMESA member States and their contribution to the growth and economic development of the member States.

• Encourage innovation and creativity at all levels of economic activities of COMESA member States as a pre-condition for accelerating cultural, social and economic development.

• Build capacity in institutions and human resources required for intellectual property innovation and creativity and

• Enhance the capacity of policy and decision makers to fully appreciate the potential benefits of intellectual property in cultural, social and economic development and play an active role in the unfolding global intellectual property arena.

On intellectual property and trade, the COMESA Policy Framework specifies that member States will:

• Effectively participate in the negotiations where intellectual property issues are considered, whether at the international, regional or other levels in order to ensure pro-development outcomes for the COMESA region.
• Facilitate the increase in regional trade in intellectual property-intensive products and the free flow of intellectual property rights using all the available flexibility in international and regional instruments.

• Develop an effective intellectual property promotion and protection system within COMESA so as to create incentives for innovation and creativity as well as for foreign direct investment.

• Promote and encourage joint ventures, alliances or licensing of technology as a way of facilitating technology transfer to COMESA member States.

• Design programmes to promote creative input or intellectual property value chain in the goods produced within COMESA including branding and marketing using intellectual property.

• Promote the use of intellectual property in business strategies by the firms or businesses within COMESA in order to be competitive globally and boost export income.

• Promote the effective use and exploitation of the opportunities created by information and communications technology such as the Internet and e-commerce in the selling, branding and marketing of goods both within and outside of COMESA and

• Promote collaboration in the fight against production, manufacturing and trade in counterfeit and pirated goods within COMESA.

The COMESA Business Council, a member-based private sector institution of COMESA, is the recognized regional body with the mandate as the “voice of the private sector” within the region. It is part of the architecture of intellectual property promotion within the region. The secretariat of the Business Council has established three pillars with targeted services to its membership. The pillars are: trade policy and business advocacy; business development services and linkages; and membership development services. The activities under the pillars include: business/policy advocacy, business partnerships and linkages, trade capacity development and promotion, business/market information and intelligence, regional public-private dialogues.

3. East African Community

The East African Community (EAC) comprises five countries in the Great Lakes Region: Burundi, Kenya, Rwanda, the United Republic of Tanzania and Uganda. The EAC Common Market Protocol provides for cooperation in areas that are necessary for the effective functioning of the regional Community and maximizing the benefits derived there from. The benefits derived in intellectual property rights are included in this definition. The Treaty for Establishment of the East African Community was signed on 30 November 1999 and entered into force on 7 July 2000 following its ratification by the original three partner States – Kenya, the United Republic of Tanzania and Uganda. Rwanda and Burundi acceded to the EAC Treaty on 18 June 2007 and became full members of the Community with effect from 1 July 2007. The EAC vision is for a prosperous, competitive, secure, stable and politically united East Africa. The mission is to widen and deepen economic, political, social and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value-added production, trade and investments. In addition, the EAC aims at widening and deepening cooperation among member States in, among others, the political, economic and social fields for their mutual benefit. To this extent, the EAC countries established a Customs Union in 2005 and a Common Market in 2010. The next phase of the integration will see the bloc enter into a Monetary Union and ultimately become a Political Federation of the East African States.
The regional integration process in East Africa is progressing reasonably fast and smoothly compared to other regions as shown by the formation of the East African Customs Union and the establishment, in 2010, of the Common Market. The negotiations for the East African Monetary Union, which commenced in 2011, and the fast-tracking of the process towards the establishment of the East African Federation all underscore the serious determination of the East African leadership and citizens to construct a powerful and sustainable East African economic and political bloc.

Currently, intellectual property rights in the EAC are mainly governed by each member States’ legislation. For protection of intellectual property rights, stakeholders apply for protection with the relevant intellectual property offices in all member States, or, if applicable, use the African Regional Intellectual Property Organization (ARIPO) or Patent Cooperation Treaty (PCT) systems. The new EAC Council Directives hope to create an intellectual property rights protection system that allows trademarks, copyrights and patents to have effect throughout the community. A draft EAC Regional Intellectual Property Rights Policy on the Utilization of Public Health related to WTO TRIPS flexibilities and Approximation of the National Intellectual Property Legislation has been initiated too. Cooperation in intellectual property among EAC partner States is expressed in article 5(3) (k) and article 43 of the Protocol. According to the article, partner States undertake to cooperate in the field of intellectual property rights to: (a) promote and protect creativity and innovation for economic, technological, social and cultural development in the Community; and (b) enhance the protection of intellectual property rights.

In addition, partner States undertake to cooperate in the following areas: (a) copyright and related rights; (b) patents; (c) layout designs of integrated circuits; (d) industrial designs; (e) new plant varieties; (f) geographical indications; (g) trade and service marks; (h) trade secrets; (i) utility models; (j) traditional knowledge; (k) genetic resources; (l) traditional cultural expressions and folklore; and (m) any other areas that may be determined by the partner States. Furthermore, partner States shall: (a) put in place measures to prevent infringement, misuse and abuse of intellectual property rights; (b) cooperate in fighting piracy and counterfeit activities; (c) exchange information on matters relating to intellectual property rights; (d) promote public awareness on intellectual property rights; (e) enhance capacity in intellectual property; (f) increase dissemination and use of patent documentation as a source of technological information; (g) adopt common positions in regional and international norm setting in the field of intellectual property; and (h) put in place intellectual property policies that promote creativity, innovation and development of intellectual capital. The partner States shall establish mechanisms to ensure: (a) the legal protection of the traditional cultural expressions, traditional knowledge, genetic resources and national heritage; (b) the protection and promotion of cultural industries; (c) the use of protected works for the benefits of the communities in the partner States; and (d) the cooperation in public health, food security, research and technological development.

The EAC Council shall issue directives for: (a) cooperation in the administration, management and enforcement of intellectual property rights; (b) the elimination of discriminatory practices in the administration of intellectual property rights amongst partner States. And partner States shall honour their commitments in respect of international agreements that relate to intellectual property rights.

Furthermore, the EAC Council has drafted an Anti-Counterfeit Policy and Bill to be enacted into law that will be enforceable across the entire region. The EAC Anti-Counterfeiting Bill intends to lead to an Act of the East African Community to prohibit trade in counterfeit goods, to establish national anti-counterfeit institutions and for connected purposes. The Bill takes precedence over all the laws of the partner States with respect to any matter to which its provisions relate. This means that should there be a conflict in the provisions of this Bill with any partner State legislation, the provisions of the Bill will stand.

In addition, the EAC has the “Regional Intellectual Property Policy on the Utilization of Public Health-Related WTO TRIPS flexibilities and the Approximation of National Intellectual Prop-
tery Legislation” that provides guidelines on how to amend national legislation to be TRIPS-compliant, taking into account all public health-related flexibilities accorded in the TRIPS Agreement for optimizing the populations’ access to health products and medical devices. The policy provides recommendations on what each of the partner States has to do to address the legal gaps regarding intellectual property and access to medicine.

Generally, most Member States of the EAC have not yet amended their laws to utilize the flexibilities provided by TRIPS. There is need for harmonization of national laws with good intellectual property laws at EAC level, for example, the EAC Intellectual Property Policy on Utilization of Health-Related TRIPS flexibilities in line with CMP. Other drafts being considered by the EAC include: the Draft EAC Regional Pharmaceutical Manufacturing Plan of Action (2011-2016) and the EAC HIV and Aids Prevention and Management Bill 2010. Thus, overall, the EAC Intellectual Property Policy has laid a solid foundation for intellectual property rights protection in the region and endeavours to strengthen them within its partner States. However, challenges still remain on intellectual property in EAC with respect to: the question of claiming the priority for the date of registration in a given member State, conversion from national to EAC-level protection, the Counterfeit Bill still has a number of contentious provisions including the broad definition of counterfeits, issues of seizure of goods etc. The enforcement of intellectual property can, however, hamper access to medicines specifically considering that EAC still lacks the capacity to produce its own drugs.

From the foregoing, the intellectual property landscape varies markedly within the tripartite. Whereas COMESA and EAC have subregional frameworks, SADC still has to develop one. In line with the harmonization envisaged under the tripartite, the SADC framework should adapt the EAC and COMESA frameworks and introduce other specific issues peculiar to Southern Africa but harmonized with the EAC and COMESA provisions.

C. Continental and international intellectual property frameworks

The following section discusses the continental and international intellectual property frameworks including: AUC, ARIPO and OAPI, WIPO and WTO. It also outlines relevant aspects/components of the European Union Intellectual Property Framework. ARIPO and OAPI are the two main institutions for regional cooperation on intellectual property in Africa.

1. African Union Commission (AUC)\(^\text{18}\)

In September 1999, the Heads of State and Government of the Organization of African Unity (OAU) issued a Declaration (the Sirte Declaration) calling for the establishment of an African Union, with a view, inter alia, to accelerate the process of integration in the continent to enable it play its rightful role in the global economy while addressing multifaceted social, economic and political problems compounded as they are by certain negative aspects of globalization. The main objectives of the OAU were: to rid the continent of the remaining vestiges of colonization and apartheid; to promote unity and solidarity among African States; to coordinate and intensify cooperation for development; to safeguard the sovereignty and territorial integrity of member States and to promote international cooperation within the framework of the United Nations. The Commission is the secretariat of the Union entrusted with executive functions. It is composed of 10 officials: a chairperson, a deputy chairperson, eight commissioners and staff members. The structure represents the Union and protects its interests under the auspices of the Assembly of Heads of State and Government as well as the Executive Committee.

The AU Scientific, Technical and Research Commission has proposed a statute to establish the Pan-African Intellectual Property Organization (PAIPO). The statute is to establish a region-wide

\(^{18}\) http://www.au.int/en/about/nutshell.
intellectual property organization with the sole agenda of expanding intellectual property rights, strengthening enforcement, harmonizing regional legislation, and eventually facilitating the granting of intellectual property monopolies by a central-granting authority that may well be legally binding on member States. The establishment of PAIPO is discussed further in section 8 of this report.

The final draft statute to establish PAIPO was published in September 2012. PAIPO is intended to complement and supplement ARIPO and OAPI. Its objectives are very similar if not identical to those of the two existing regional organizations. The objectives include: promoting the harmonization of the intellectual property rights systems of the African Union member States; initiating activities designed to help member States use their intellectual property systems to effectively fight intellectual property piracy and counterfeits; developing African common positions on intellectual property matters – in particular, developing common positions on intellectual property issues relating to genetic resources, traditional knowledge, geographic indicators, expressions of folklore and the Convention on Biological Diversity; and helping develop and lead African intellectual property positions in international negotiations.

Under the statute, the organization “shall enjoy in the territory of each member State, the legal capacity accorded to legal persons under the national laws of the member States as may be necessary for the fulfillment of its objectives”. Article 5 of the statute sets out the objectives of the organization as follows:

i. Ensure the effective use of the intellectual property system as a tool for economic, cultural, social and technological development of the continent.

ii. Contribute to the accelerated achievement of the objectives of the African Union as stated in the Constitutive Act of the African Union.

iii. Promote the harmonization of intellectual property systems of its member States, with particular regard to protection, exploitation, commercialization and enforcement of intellectual property rights.

iv. Provide common services to member States and/or regional economic communities in the administration and management of intellectual property rights that maximize and build upon the solid achievements of ARIPO, OAPI and/or WIPO.

v. Provide a forum for policy discussions and formulation, addressing political issues and developing African common positions relating to intellectual property matters, particular regard being given to genetic resources, traditional knowledge, geographic indicators, expressions of folklore, matters pertaining and arising from the Convention on Biological Diversity and emerging topics in the field of intellectual property.

vi. Initiate activities that strengthen the human, financial and technical capacity of member States to maximize the benefits of the intellectual property system to improve public health and eradicate the scourge of piracy and counterfeits on the continent.

vii. To foster and undertake positive efforts designed to raise awareness on intellectual property in Africa and to encourage the creation of a knowledge-based and innovative society as well as the importance of creative industries including, in particular, cultural and artistic industries.

viii. To lead African negotiations in the international intellectual property issues and to ensure the African common position.
Article 6 further articulates the functions of the organization as follows:

i. Set intellectual property standards that reflect the needs of both the African Union and its member States and regional economic communities of the organization.

ii. To grant and register industrial property titles.

iii. Facilitate the realization and harmonization of national legislation and regional treaties and intellectual property standards in all African Union levels.

iv. Facilitate the use of intellectual property to promote creativity and innovativeness on the continent.

v. Assist its member States in formulating policies and addressing current and emerging intellectual property issues in conformity with the objectives of the organization.

vi. Initiate strategies that will promote and develop intellectual property systems.

vii. Strengthen the existing regional organizations or such other organizations as may be necessary.

viii. Strengthen the existing collective management organizations and facilitate their establishment in the member States that have no collective management organizations in the field of copyright and related rights.

ix. Take deliberate measures to promote the protection and exploitation of intellectual property rights within the member States, including conclusion of bilateral and multilateral agreements.

x. Collect, process and disseminate relevant information on intellectual property to member States and support the establishment of databases on genetic resources, traditional knowledge and traditional cultural expressions and folklore in order for member States to derive regular and maximum benefit.

xi. To develop updated policy guidelines and training modules to support member States to achieve world-class intellectual property systems and

xii. Do such other things as may be necessary for the achievement of the objectives of the organization.

The organization will be split into a Council of Ministers (made up of African Union member State Ministers in charge of intellectual property issues in each relevant member State), an Experts Committee (also effectively representing the African Union member States), a Board of Appeal, and “the Office”, which will be held by a Director General appointed directly by the Chair of the African Union for a 4-year term.

The African Union Commission, in its pursuit to ensure that intellectual property protection is managed at a continental level, has made several proposals for the establishment of PAIPO. This proposal is largely aimed at ensuring that intellectual property is harmonized at the continental level. Discussions on this matter are still ongoing but it is important to note that in such developments in other continents such as Europe, the focus is mainly giving directives for implementation by various regional groupings such as the European Patent Office (EPO), Office for Harmoniza-
tion in the Internal Market (OHIM), Benelux and the European Seed and Plant Variety Protection Organisation (ESPVPO).

(a). African Regional Intellectual Property Organization

The African Regional Intellectual Property Organization (ARIPO), formerly the African Regional Industrial Property Organization, is an intergovernmental organization for cooperation among African States in patent and other intellectual property matters. ARIPO embodies all the aspirations of WIPO in its overall objectives. ARIPO was established by the Lusaka Agreement of 1976 following the request of English-speaking African countries for assistance in pooling resources together towards creating a regional body responsible for industrial property issues. A significant aspect of the Lusaka Agreement is that under Article 4, membership to the organization is open to the members States of the United Nations Economic Commission for Africa (ECA) or the African Union. ARIPO has the capacity to hear applications for patents and registered trademarks in member States that are parties to the Harare (patents) and Banjul (marks) Protocols. ARIPO also features a protocol on the protection of traditional knowledge, the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, signed in 2010 by 9 member States of the organization. The current membership of ARIPO consists of Botswana, Gambia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Sierra Leone, Somalia, the Sudan, Swaziland, the United Republic of Tanzania, Uganda, Zambia and Zimbabwe. A parallel regional intellectual property rights system organization, Africaine de la Propriété Intellectuelle (OAPI), exists for a number of French-speaking African states.

The objectives of ARIPO are, inter alia:

- To promote the harmonization and development of the industrial property laws, and matters related thereto, in accordance with the needs of its members and of the region as a whole.
- To establish such common services or organs as may be necessary or desirable for the coordination, harmonization and development of the industrial property activities affecting its members.
- To assist its member States in the development and acquisition of suitable technology and
- To facilitate the evolution of common views on industrial property matters.

Member States of ARIPO may choose not to recognize, in their territory, patents granted by ARIPO if they deem that the patents are contrary to national legislations. Overall, ARIPO is geared towards intellectual property harmonization on the continent. However, as of December 2013, only two African countries had domesticated the ARIPO framework. Of the two ARIPO Protocols, the Harare Protocol is performing better than the Banjul Protocol in terms of domestication by member States. The ARIPO framework provides the foundation for harmonization in the region and, thus, the region needs to investigate the reasons behind the slow uptake. The first step towards harmonization requires that SADC member States move towards alignment with ARIPO and WIPO aspirations through an update of intellectual property legislation with support from the two organizations.

ARIPO Protocols: Since the Lusaka Agreement merely created the organization without elaborating its powers and functions as an industrial property office, it was necessary to adopt legal instruments that would give ARIPO specific functions to perform on behalf of member States in

19 See www.aripo.org.
the field of intellectual property. These additional legal instruments are: the Protocol on Patent and Industrial Designs within the Framework of the African Regional Industrial Property Organization (the Harare Protocol) and the Banjul Protocol on Marks.

**Harare Protocol**: The Administrative Council of ARIPO adopted the Harare Protocol in December 1982. The Protocol empowers the ARIPO Office to receive and process patent and industrial design applications on behalf of States party to the Protocol. The Protocol entered into force in 1984 and the following member States are party to it (contracting parties): Botswana, the Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, the Sudan, Swaziland, the United Republic of Tanzania, Uganda, Zambia and Zimbabwe. Under the Harare Protocol, an applicant for the grant of a patent or the registration of an industrial design can, by filing only one application, designate any of the contracting States in which he wishes his invention or industrial design to be accorded protection. The Protocol requires the filing of the application to be made with either one of the contracting States or directly with the ARIPO Office.

The ARIPO Office, on receipt of the patent application, carries out the substantive examination to ensure that the invention, which is the subject of the application, is patentable (that it is new, involves an inventive step and is capable of being applied in industry). When the application complies with the substantive requirements, copies thereof are sent to each designated contracting State and a State may, within six months, indicate to the ARIPO Office that, according to the grounds specified in the Protocol, should ARIPO grant the patent, that grant will not have effect in its territory. The substantive examination of ARIPO applications makes an ARIPO patent a particularly strong one as the examination substantially raises its presumption of validity. For industrial design applications, only a formality examination is performed. If the application fulfils the formal requirements, the ARIPO Office registers the industrial designs, which affect designs in the designated States. However, the same right to communicate to the ARIPO office within six months that the registration may not have effect in the designated States concerned is reserved.

The Administrative Council adopted amendments to the Harare Protocol and its Implementing Regulations in April 1994 to create a link between the Protocol and the Patent Cooperation Treaty (PCT). This link, which took effect on 1 July 1994, has the following effects: (i) Any applicant filing a PCT application may designate ARIPO, which in turn means a designation of all States party to both the Harare Protocol and the PCT; (ii) The ARIPO Office shall act as a receiving office under the PCT for such States and (iii) The ARIPO Office may be elected in any PCT application.

The following 17 countries are party to both the Harare Protocol and the PCT: Botswana, the Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, the Sudan, Swaziland, the United Republic of Tanzania, Uganda, Zambia and Zimbabwe. In 1999, the Administrative Council amended the Harare Protocol to make provisions for patent applications involving micro-organisms in accordance with the Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the Purposes of Patent Procedures. It is expected that the provisions of the Protocol relating to utility models will come into force on 1 January 2001 after their implementing regulations have been adopted by the Administrative Council. In November 1999, the Council further adopted amendments to provide for the choice of the office of filing applications, the period of protection for patents and industrial designs and the protection for utility models. Since 1997, the Protocol has been extensively revised in order to make it compatible with the TRIPS Agreement and the Trademark Law Treaty as well as make it more user-friendly.

**Banjul Protocol on Marks**: The Protocol, adopted by the Administrative Council in 1993, establishes a trademark filing system along the lines of the Harare Protocol. Under the Protocol, an applicant may file a single application either at one of the contracting States or directly with the ARIPO Office and designate States in the application where he wishes his/her mark to be protected. The Banjul Protocol is still undergoing reforms to make it more attractive to member States as well as
The location of the ARIOPO Office in the SADC region makes it easier for member States to seek technical support in policy development and harmonization. Member States and the secretariat should take advantage of the ARIOPO office to accelerate policy harmonization. Furthermore, the SADC secretariat could coordinate dialogue between member States and organizations such as ARIOPO and WIPO.

(b). African Intellectual Property Organization

The African and Malagasy Patent Rights Authority was created on 13 September 1962 by the Libreville Agreement signed by 12 African French-speaking countries. Three principles governed the Libreville Agreement, namely, uniform legislation, common office and centralization of procedures. The Authority dealt with patents, trademarks and industrial designs in 1977. However, the withdrawal of the Malagasy Republic and the need to amplify intellectual property led the founding States to revise the Libreville Agreement and to create the African Intellectual Property Organization (OAPI). This was adopted through the Bangui Agreement; a new Convention signed in Bangui on 2 March 1977 and came into force in February 1982. The Bangui Agreement governs intellectual property within six OAPI member States and serves as a national law on intellectual property for each of the States. The Agreement was last revised on 24 February 1999 to bring it into compliance with the TRIPS Agreement administered by the WTO. The new Agreement, together with its Annexes I-IX, came into force on 28 February 2002 for all member States. Annex X came into force on 1 January 2006. The OAPI member States are: Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, the Comoros, the Republic of the Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Mauritania, the Niger, Senegal and Togo. With its headquarters in Yaoundé, Cameroon, OAPI works to make full use of patent rights as a factor of development. It has the triple mission of: issuing of protection titles, documentation and information and involvement in intellectual property development. Currently, OAPI deals with the following intellectual property titles under its annexes: patents (see annex 1), utility models (annex 2); trademarks and service marks (annex 3); industrial designs (annex 4); trade names (annex 5); geographical indications (annex 6); literary and artistic property (annex 7); protection against unfair competition (annex 8); layout-designs (topographies) of integrated circuits (annex 9); and plant variety protection (annex 10).

The OAPI system is based on strategic choices of Heads of States who signed the Agreement. It has implemented and applied a uniform law: the Bangui Agreement and its annexes. The Bangui Agreement acts as a common code of intellectual property as the principles and provisions of the Agreement have the force of national laws in each member State. The intellectual property rights set forth in the Bangui Agreement are independent national rights, subject to the legislation of each member State. No domestic legislation is issued to give effect to the Bangui Agreement as it constitutes the national law in each member State. Furthermore, should there be any conflicts between an International Convention and the Agreement, the International Convention shall prevail.

OAPI centralizes all procedures for issuing industrial property rights such as patents, trademarks or service marks. There is no coexistence of national protection systems with regional systems. Sanctions for violations of intellectual property rights are the responsibility of the courts of each member State. In addition, final judicial decisions rendered on the validity of the securities in any

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21 Agreement on Revising the Bangui Agreement, supra note 2, Articles 4§1 and 4§2.
22 Id., Article 3§1.
of the member States is authoritative in all other States, except those based on public order and morals.

From the above, OAPI and ARIPO share the same goals and aspirations targeted at strengthening intellectual property rights through harmonization and pooling of resources. While OAPI offers a system that, by its nature, forces all member States to have a unified structure, for instance, all trademarks registered through OAPI are valid in all member States, the ARIPO system relies heavily on national filing systems that are very diverse. Furthermore, member States of OAPI do not maintain national intellectual property offices and depend solely on the authority of OAPI on industrial property matters, which is different from ARIPO’s approach. The African Union Commission has established the Pan-African Intellectual Property Organization in an effort to harmonize African intellectual property systems.

2. World Intellectual Property Organization

The World Intellectual Property Organization (WIPO) is one of the 17 specialized agencies of the United Nations. It was created in 1967 “to encourage creative activity, to promote the protection of intellectual property throughout the world” by the Convention Establishing the World Intellectual Property Organization, which entered into force on 26 April 1970. Under Article 3 of this Convention, WIPO seeks to “promote the protection of intellectual property throughout the world.” The 184 member States of WIPO comprise over 90 per cent of the countries of the world that participate in WIPO to negotiate treaties and set policy on intellectual property matters such as patents, copyrights and trademarks. Headquartered in Geneva, Switzerland, WIPO currently administers 24 treaties and facilitates the negotiation of several proposed treaties covering copyrights, patents and trademarks.

WIPO is committed to the development of all global intellectual property systems. Originally established explicitly to promote the protection of intellectual property, but when it joined the United Nations family in 1974, WIPO’s objective had to be redefined as a public-interest or humanitarian goal. According to Article 1 of the key Agreement establishing the relationship of WIPO to the United Nations, the purpose of WIPO is to promote creative intellectual activity and to facilitate the transfer of technology related to industrial property to developing countries in order to accelerate economic, social and cultural development. Fundamentally, WIPO seeks to:

• Harmonize national intellectual property legislation and procedures.
• Provide services for international applications for industrial property rights.
• Exchange intellectual property information.
• Provide legal and technical assistance to developing and other countries, and to facilitate the resolution of private intellectual property disputes and
• Marshal information technology as a tool for storing, accessing and using valuable intellectual property information.

WIPO undertakes various activities and pursues various goals. Among the strategic goals for the organization in 2013 were to: facilitate balanced evolution of the International Normative Framework for intellectual property; provide premier global intellectual property services; facilitate the security of intellectual property for development and coordinate and develop global intellectual property infrastructure and a responsive communications interface between WIPO, its members

and all stakeholders. Through such objectives, WIPO has played a major role in shaping intellectual property rules across the globe and member States, regional economic communities and organizations have benefited greatly from support in strengthening intellectual property rights systems.

3. World Trade Organization

WTO is at the heart of the international trade agreements negotiated and signed by the bulk of the world’s trading nations and ratified in their parliaments. The goal of WTO is to help producers of goods and services, exporters and importers conduct their business. All SADC member States are also members of the WTO and are bound by the organization’s rules. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), an international Agreement administered by WTO, sets down minimum standards for many forms of intellectual property regulation as applied to nationals of WTO members. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994. The Agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international Agreement on intellectual property to date. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the Doha Declaration. The Doha Declaration is a WTO statement that clarifies the scope of TRIPS and states that the latter can and should be interpreted in light of the goal “to promote access to medicines for all.”

3. European Patent Organisation

The European Patent Organisation (EPO) undertakes the preparation of search reports, their publication and the examination of patent applications for compliance with the substantive requirements of patentability, namely, novelty, inventive step and industrial applicability. Under the system of intergovernmental cooperation introduced by the Convention, it is possible to file a single patent application, in one of the three official languages (English, French and German), and thereby obtain a European patent with effect in one, several or all of the contracting States. The Convention established a system of law common to the contracting States and a uniform procedure for the grant of patents. Prior to the entry into force of the Convention, it was necessary, where protection of an invention was desired in a number of countries within the region, to file separate applications in each of those countries.

4. Office for Harmonization in the Internal Market

In the European Union, the Council Regulation (EC) No. 40/94 on the Community Trade Mark was adopted on 20 December 1993, and the Council Regulation (EC) No. 6/2002 on the Community Design on 12 December 2001. Together, they establish the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), which has its headquarters in Alicante (Spain). The task of the Office is to administer the procedure for the registration of the (European) Community Trade Mark and Community Design, which have effect in the territory of the European Union. As regards designs, they are protected as so-called “unregistered Community design patents.” Along with this intellectual property right, further protection of design can be obtained by registration. Application for the registration of a Community trademark or a Community design may be filed either directly with the Office at Alicante or through one of the industrial property offices of a State member of the European Union.

6. Benelux Trademark Office and the Benelux Designs Office

The Benelux Convention on Trademarks, signed on 19 March 1962, came into force on 1 July 1969, and the uniform Benelux Law on Trademarks (which was appended to the said Con-
vention) came into force on 1 January 1971. The Benelux Convention on Designs, signed on 25 October 1966, and the Uniform Benelux Designs Law (appended to the said Convention) entered into force on 1 January 1974, and 1 January 1975, respectively. According to Article 1 of each of the Conventions, the Benelux countries incorporated the Uniform Benelux Laws on Marks and Designs into their national legislations. They also established administrative offices in their countries, namely, the Benelux Trademark Office and the Benelux Designs Office, which have their headquarters in The Hague (Netherlands). These offices have, to a large extent, a combined administrative structure and are financially self-supporting. The registrations have effect in all the three member States making the Benelux (Belgium, the Netherlands and Luxembourg). There are no national procedures in the Benelux countries for the registration of marks or the deposit of industrial designs.

7. Eurasian Patent Organization

The Eurasian Patent Convention entered into force on 12 August 1995. The treaty establishes a new intergovernmental organization called the Eurasian Patent Organization. Once operations have begun, the treaty will allow nationals of any country to obtain patents of invention from the Eurasian Patent Office to be established in Moscow. Such regional (Eurasian) patents will have effect in all countries of the Eurasian patent system.

The Convention provides for modalities of applying for and obtaining Eurasian patents as well as for their legal effects: patented inventions can be used only with the authorization of the holders of the patents. Subject to the payment of a yearly renewal fee, any Eurasian patent can be enforced for 20 years. The Eurasian Patent Office establishes a scheme for harmonization in the field of patents for former Soviet Union Republics.

D. Harmonization of intellectual property rights policies

Generally, the harmonization of policies and legal and regulatory frameworks create 5 common standards and approaches at international, regional or bilateral levels. As intellectual property is increasingly becoming a valuable asset internationally, the harmonization of intellectual property policies, laws and regulations has become necessary at all levels and countries are working on ensuring that the frameworks are as closely aligned as possible. Initiatives towards stronger economic cooperatives have included harmonization of policies, laws and regulations.

1. International level

At the international level, harmonization of intellectual property laws and regulations is largely through WIPO and WTO. Through its mission, WIPO promotes international cooperation in the creation, dissemination, use and protection of works of the human mind for the economic, cultural and social progress of all mankind. This contributes to creating a balance between the stimulation of creativity worldwide by sufficiently protecting the moral and material interest of creators on one hand, and providing access to the social, economic and cultural benefits of such activities worldwide on the other hand. Furthermore, the cooperation for development programme under WIPO is closely interwoven with governmental and intergovernmental cooperation, including the agreement with WTO where the former assists developing countries in the implementation of TRIPS, which sets minimum standards for many forms of intellectual property regulation as applied to nationals of WTO members.25 This is the basis of international harmonization in intellectual property in a way that is transparent and efficient. WTO and WIPO provide the broadest possible base

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25 World Trade Organization.
throughout the world as well as availability of several advisory bodies and, with their policies on public outreach, they are better placed to deal with harmonization at an international level.\(^{26}\)

2. **Regional level**

The harmonization of national laws\(^{27}\) in the European Union shows another level of developing and maintaining common standards. It is implemented through European Union directives and various key directives in the field of intellectual property are in place. In addition, the European Patent Organization, as well as the Benelux Trademark Office and the Benelux Designs Office, provide platforms for harmonization. Another regional framework is the Eurasian Patent Organization, which establishes a scheme for harmonization in the field of patents for former Soviet Union Republics. The discussion on ARIPO and OAPI and the initiatives under COMESA, EAC and SADC covered key aspects of harmonization on the continent.

3. **Bilateral level**

At the bilateral level, countries have developed mechanisms for cooperation on intellectual property. For example, in 2008, the Canadian Intellectual Property Office and the Intellectual Property Office of the United Kingdom established a number of collaborative projects under the Vancouver Group. The Vancouver Group aims to: share information and experiences on common issues and areas relevant to managing a mid-sized national intellectual property office and contribute to a more effective multilateral approach to work sharing. Through its focus on the four main areas of mutual exploitation, business performance reporting, economic research and trademarks business processes, the Vancouver Group aims to protect intellectual property in the two countries.

Similarly, in North and Southern America\(^{28}\), harmonization is through the Andean Pact or the Cartagena Agreement (Decision 486 also known as the Common Intellectual Property Regime), which was concluded in 1969. Even though matters not covered by Decision 486 remain governed by the provisions of national laws, its provisions operate a far-reaching harmonization of the industrial property legislation in the Andean Group countries. In addition, the Common Market of the South established in 1991 concluded a Protocol for the Harmonization of Norms Relating to Marks and Geographical Indications. A free trade agreement concluded between Colombia, Mexico and Venezuela in 1994 includes a special chapter (XVIII) on intellectual property. The provisions contained in this chapter deal, in particular, with copyright and related rights, marks, geographical indications and appellations of origin, trade secrets and plant breeders’ rights, and the enforcement of those rights. Furthermore, the North American Free Trade Agreement between the United States of America, Canada and Mexico entered into force on 1 January 1994 provides for adequate and effective protection and enforcement of intellectual property rights. Similarly, harmonization of intellectual property in Asia\(^{29}\) hinges on the ASEAN Framework Agreement on Intellectual Property Cooperation signed in 1995 and the Hanoi Plan of Action of 1997. The Plan includes measures related to regional intellectual property cooperation, thus reaffirming that intellectual property forms an integral part of the ASEAN leaders’ commitment to greater economic integration.

Since intellectual property deals with trade and economic development of the global economy, one of the key issues that WIPO and WTO must concern themselves in harmonization is the establishment of highly-transparent international protection rules and greater efficiency on international rights acquisition. It is also highly desirable that intellectual property systems should be geared towards the new society in the use of technology innovation. In this regard, particular atten-


\(^{27}\) EU Directives on Intellectual Property.


tion should be paid to information and communications technology (ICT) and biotechnology and medical technologies, as adequate and proper protection for patents dealing with these technologies will be of uttermost importance for the future development of the society. In this process, consideration for future development of intellectual property should take cognizance of geographical universality of networks. Further, international harmonization of industrial property should be geared towards the development of an attractive international business environment that respects intellectual property rights. Important in these trends of intellectual property harmonization should be the use of intellectual property rights to hasten investments, technology transfer, as well as to contribute to the orderly development of the world economy.\footnote{Towards International Harmonization of Industrial Property Rights, by Japan Patent Office, 2006.}

Internationally harmonized grant and registration systems such as the Patent Cooperation Treaty (PCT) and the Madrid System have proved successful in patents and trademarks harmonization. These, however, need a strong complement from regional systems such as ARIPO, OHIM and OAPI.

**E. Summary**

This chapter has shown that the protection of intellectual property is strategically important for businesses. Continental and international organizations have developed mechanisms to shape the global intellectual property environment and protect the abuse of intellectual property rights. WIPO leads the creation and maintenance of a harmonized intellectual property policy environment throughout the world and the TRIPS framework is the common denominator worldwide. Within Africa, ARIPO and OAPI are the two main institutions for cooperation on intellectual property and they work closely with WIPO and their systems are aligned to the international framework. At regional level, the EAC-COMESA-SADC tripartite seeks to create a harmonized policy environment in all sectors, including intellectual property and this will eventually lead to a uniform environment in all countries. The SADC region still has more to do in developing a comprehensive regional framework on intellectual property. The SADC policy framework, harmonized under the tripartite, will facilitate harmonization of national policies of intellectual property. As shown in this review, COMESA and EAC already have frameworks.
III. Status of intellectual property rights protection in the SADC region

A. Overview of national intellectual property policies and laws in SADC member States

This chapter is an overview of intellectual property policies and legislations in SADC member States (see annex 1). It highlights, on a country-by-country basis, the intellectual property policy framework and the related infrastructure. The chapter deals with the vital issues for policy harmonization and alignment of national frameworks with regional and international intellectual property mechanisms.

1. Angola


The fee for each patent petition varies by type of request. Generally, Angola’s intellectual property legislation predates TRIPS. The patent office provides for substantive examination of patent applications, but like other SADC member States, it does not have the necessary staff to conduct the required substantive examination. Issuance of compulsory licences is made on grounds of failure to work, as well as failure to meet demand and on grounds of public interest, national security, public health, and in the interests of the economy. No exceptions or other flexibilities are provided for.

The status of Angola’s intellectual property rights system is at the developmental stage in terms of sufficiency of legislation and effectiveness. There is need to undertake a detailed intellectual property audit in order to establish the exact gaps in Angola. However, a review of the intellectual property status indicates that there is need for Angola to revise its intellectual property laws to bring them in line with the TRIPS Agreement. Angola should consider joining ARIPO in order to tap on expertise. Furthermore, efforts should be made to create a semi-autonomous intellectual property office with an expanded staff complement to include at least two examiners with technical backgrounds, and an ICT expert to support the computerization activities of the office. In addition, the current office should enhance relevance through being proactive so as to become relevant to the economic development needs of Angola. The linkages between the intellectual property office and other stakeholders should be established. The intellectual property policy in Angola, alongside the implementation of its intellectual property statutes, should be expedited.

2. Botswana

Intellectual property issues in Botswana are governed by post-TRIPS legislation and the main intellectual property laws are: the Industrial Property Act enacted in 1996, and the Copyright and Neighbouring Rights Act of 2002, amended in 2005, for the protection of copyright and related rights. The national laws and regulations pertaining to anti-piracy measures and copyright enforce-
ment include the Copyright Arbitration Panel 6 of 2006 and the Customs and Excise Duty Act. Copyright in Botswana is also protected through international treaties, conventions and protocols as provided in Section 36 of the Copyright and Neighbouring Rights Act. The country’s Industrial Property Act is aligned to international trends. With respect to patents, Botswana is a member of the Patent Cooperation Treaty. In addition, the Act covers applications and procedures for patents and allows for pre-grant oppositions of patents. Patent applications are examined through ARIPO since Botswana is a member. Provision is made to issue compulsory licences on account of failure to supply the domestic market on reasonable terms, and for government use orders. With respect to Marks, Botswana is a member of the Madrid Protocol. The Office of the Registrar of Companies and Intellectual Property has always been a statutory body under the Ministry of Trade and Industry, which is responsible for the management of intellectual property including copyright in Botswana. In order to consolidate its intellectual property, a Technical Committee on Intellectual Property Rights was established.

The Copyright Act of Botswana provides for civil remedies, criminal sanctions and other remedies for protecting copyright holders in case of copyright infringement. The Act provides for the establishment of the Copyright Office, establishment of a Collective Management Organization, introduction of a levy on technical devices, the use of a hologram device as a tool to curb piracy and the establishment of a Copyright Arbitration Panel.

Botswana is a member of the Berne Convention on the Protection of Literary and Artistic Works, WTO TRIPS, WIPO Copyright Treaty (WCT) in force since 27 January 2005 and WIPO Performances and Phonograms Treaty (WPPT). However, there are no specific provisions concerning internet copyright infringement under the copyright law of Botswana. Although Botswana has no intellectual property policy, the Government has initiated the process of developing one with the assistance of WIPO. It has also developed a National Intellectual Property Development Plan/Strategy meant to improve the country’s intellectual property landscape. The intellectual property challenges in Botswana include: lack of a national intellectual property policy, low levels of awareness and utilization of intellectual property rights by SMEs and lack of technical skills in patent drafting. To address some of these challenges, the Government of Botswana has recognized the importance of intellectual property in its national vision, Vision 2016 which envisages Botswana as a productive and innovative nation. Intellectual property will be critical in the achievement of this vision and to transform Botswana from being a resource-based economy to a knowledge-based one.

In summary, the intellectual property rights system in Botswana is reasonably well developed and has modern legislation. The country has domesticated regional and international treaties. The country has TRIPS-compliant laws and the intellectual property offices are semi-autonomous. However, the intellectual property office is poorly staffed and, thus, cannot efficiently discharge its responsibilities. Therefore, there is need for staff training and to establish the infrastructure to enable the development of technologies in the lines recommended in this report under Innovation Structures. Capacity building and intellectual property infrastructure development will greatly complement the current initiative to strengthen the Botswana Office semi-autonomous.

3. Democratic Republic of the Congo

The Democratic Republic of the Congo is still using an Industrial Property Law issued in 1982 and a Literary and Artistic Work Law issued in 1986. All its legislation pre-dates TRIPS and, thus, is not compliant with the Agreement. The country is party to the Berne Convention of 1886 for the Protection of Literary and Artistic Works and, since 31 January 1975, the 1883 Paris Conven-

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34 See Alphonsus Neba, IPR and Technology Transfer from Research and Higher Education Institutions: Snapshots from Southern Africa.
35 Report on the IP Situation in Botswana, CIPA
tion for the Protection of Industrial Property. As regards industrial property, the legislative reform culminated in Law No. 82-001 of 7 January 1982 on Industrial Property. With respect to the reform of the Law on Literary and Artistic Works, this led, four years later, to the Ordinance Law No. 86-033 of 5 April 1986 on the Protection of Copyright and Neighbouring Rights. Both legal instruments are currently in force. However, from 1982 to date (1982 for industrial property and 1986 for literary and artistic works), legislative action in the Democratic Republic of the Congo concerning both areas has seen no progress.

The country has been both a member of WIPO since 28 January 1975 and WTO since 1 January 1997. In addition to the aforementioned Paris and Berne conventions and, among the 22 intellectual property treaties administered by WIPO, the Democratic Republic of the Congo has acceded, since 29 November 1977, to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Geneva Convention, 1971). Similarly, the country is party to the Singapore Treaty on the Law of Trademarks.

The intellectual property rights system in the Democratic Republic of the Congo has not developed much in recent years. The country’s outdated laws neither conform to international standards nor cover newer intellectual property areas such as utility models. There is need for intellectual property auditing to isolate details on the deficiency in the system. The intellectual property office is poorly developed and only limited to registration of a few foreign intellectual property titles and there is low awareness on intellectual property issues. Furthermore, the Democratic Republic of the Congo does not belong to any other regional organizations and cannot benefit from membership of these regional arrangements. The potential for intellectual property development in the country is high given its vast mineral resources. The potential is even greater in the area of copyright since the Democratic Republic of the Congo is endowed with talent in the field of music. Overall, the country will need to revamp its intellectual property system for compliance with contemporary development trends.

4. Lesotho

Intellectual property protection is regulated by the Industrial Property Order No. 5 of 1989 and the Copyright Order No. 13 of 1989, which conform to the standards set out in both the Paris and Berne conventions respectively. The law protects patents, industrial designs, trademarks and copyright. The courts of law enforce copyrights. The pre-TRIPS legislation makes provision for the issuance of compulsory licences for failure to work locally, in the public interest and national security, research exceptions, but not for early working and the exhaustion principle has only national application.

Patent and design protection are obtainable via national filings or by way of ARIPO applications. Lesotho is a member of the Patent Cooperation Treaty (PCT) and of ARIPO. No adequate steps have been taken to implement and enforce the WTO TRIPS Agreement and the Government has not signed and ratified the WIPO Internet Treaties. Copyright law in Lesotho subsists automatically; there is no provision for the registration of copyright protected works. Copyright subsists on an author’s original literary, artistic and scientific works.

In general, there is no documented knowledge diffusion that can be traced with patent data in the country. There is a very low level of patenting by nationals. The biggest challenge is that there is no government funding for research and development. The intellectual property legislations have enforcement provisions. However, enforcement is limited, with several challenges that range from lack of capacity to uncoordinated efforts.

In addition, Lesotho has developed a draft policy on intellectual property and strategy. The vision of this policy includes: coordination of intellectual property activities and promotion of innovation.

38 Lesotho presentation
The policy brings together key ministries and private sector institutions that have interests in intellectual property, such as ministries of Education, Agriculture, Health, Science and Technology, and Small and Medium-sized Enterprises. This encourages the leveraging of Lesotho’s economy from being raw material- or resource-based to knowledge-based. The objective is to put at centre stage capacity building of institutions for intellectual property innovation.

The Registrar’s Office in the Ministry of Law, Constitutional Affairs and Human Rights is the intellectual property office. There is urgent need to streamline the patent office so that it can only deal with the core functions of an intellectual property office. There is need to create a semi-autonomous institution. There is an established inter-ministerial committee that is driving the proposed National Intellectual Property Plan for Lesotho (the committee is composed of ministries such as Trade and Industry, Education, and Science and Technology). It would be ideal if the same committee is to be tasked with delinking the services in future. There is limited teaching of intellectual property issues at the National University of Lesotho in Roma; the teaching of intellectual property forms part of the curriculum for law students only and other relevant disciplines like engineering are not included. There is need to extend it to other institutions as well. The technical schools/ schools of technology should also introduce intellectual property in their curricula and indeed within all schools.

Lesotho has a good practice of utilizing ARIPO for its search and examination of patent applications, however, this facility can be better utilized if the intellectual property office recruited additional experts especially in the area of ICT where Lesotho is lagging, and one or two technical experts to support patent information dissemination activities. In the recent past, the Lesotho Intellectual Property Office has been very active in creating awareness on the importance of intellectual property for economic development, but these awareness activities need to be matched with the development of appropriate innovation infrastructure. The office should also be encouraged to closely look into the TRIPS flexibilities so that they can be utilized to improve the accessibility of essential drugs and medicines. There is an influx of Chinese merchandise into the country and this too calls for more stringent enforcement mechanisms. This is particularly important given the geographical position of Lesotho, which is entirely surrounded by an economic giant – South Africa. Furthermore, the large gaps in Lesotho’s outdated laws that are also non-TRIPS compliant need to be addressed.

5. Madagascar

Madagascar’s intellectual property regime is governed by pre-TRIPS legislation, which entails both formal and substantive examination of patent applications. However, substantive examination is currently not carried out as the office has no qualified examiners. The country’s intellectual property system is administered by the Malagasy Industrial Property Office (OMAPI) in the case of industrial property, and the Malagasy Copyright Office (OMDA) in the case of literary and artistic works. Madagascar subscribes to a number of WIPO-administered treaties, such as PCT, the Berne Convention for the Protection of Literary and Artistic Works, the Convention for WIPO Establishment, the Paris Convention for the Protection of Industrial Property, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Singapore Treaty on the Law of Trademarks, the Nairobi Treaty on the Protection of the Olympics Symbol, and the Beijing Treaty on Audio-Visual Performances.

The intellectual property rights system in Madagascar is developing slowly compared to other countries in the region. The intellectual property laws are outdated and non-TRIPS compliant. The country withdrew from OAPI and currently does not belong to any regional intellectual property organization in Africa and, thus, cannot benefit from the technical support offered by such organizations. Madagascar requires a comprehensive plan to revamp its intellectual property system, as well as to develop appropriate infrastructure and to link the intellectual property framework to the
country’s development aspirations. The development of relevant intellectual property policies will be a vital step in the process.

6. Malawi

Malawi’s Patent Law dates back to the 1890s and the Trademark Law to the 1960s. Patent protection is provided under pre-TRIPS legislation. The Patent Act 1958 (Cap 49:02) sets out to make provisions relating to patents for inventions and for other purposes incidental thereto. The Act is administered by the Registrar of Patents nominated by the Minister Responsible to Head the Patents Office as provided for in Part I of the Act. Apart from defining an intervention, the Act does not offer guidelines on what is patentable subject matter in Malawi and does not include exceptions to patentability. Patent and design protections are obtained via national filings in Malawi and by way of an ARIPO filing. A patent specification in the English language is required. Patents in Malawi must be registered through an agent.

The Trademark Law of Malawi does not provide for service marks. Trademarks are registered publicly following an advertisement and a specified period of no objection. The Ministry of Industry and Trade has been working with the Registrar General and ARIPO to align relevant domestic legislation with the WTO TRIPS Agreement. The Copyright Society of Malawi, with financial and technical support from the Norwegian Reprographic Rights Organization, has reviewed the Copyright Act 1989 to align it with the TRIPS Agreement as well as the WIPO Internet Treaties, the Beijing Treaty for the Protection of Audiovisual Performances and the Marrakesh Treaty. The Government of Malawi has signed and adheres to bilateral and multilateral investment guarantee treaties and key agreements on intellectual property rights. Malawi is a member of the Convention Establishing the Multilateral Investment Guarantee Agency, WIPO, the Berne Convention and the Universal Copyright Convention. The Copyright Society of Malawi was established in 1992 and administers the 1989 Copyright Act, which protects copyright and “neighbouring rights” in Malawi. The Registrar General administers the Patent and Trademarks Act, which protects industrial intellectual property rights in Malawi. A public registry of patents and patent licences is maintained.

The status of Malawi’s intellectual property rights system is similar to the majority of other least developed countries in terms of outdated laws with inadequate coverage of intellectual property rights. However, Malawi is presently developing its first-ever Intellectual Property Policy. The Policy aims to stimulate, generate, protect and commercialize intellectual property rights as an economic tool for wealth creation in all the sectors of the economy, encourage public and private institutions in Malawi to adapt their own intellectual property policies, and integrate the intellectual property system into the Government’s development strategies. Prior to this development, the country did not have a policy on the use, management and administration of intellectual property rights to accelerate its socio-economic and technological development endeavours. The thrust of the Policy is to provide a vision for the use of the intellectual property system to enhance the country’s development agenda. The Policy provides the necessary framework for ensuring that the generation, protection and commercialization of intellectual property rights are used as a tool for wealth creation so that the intellectual property system effectively contributes to the sustainable socioeconomic and technological growth of the country.

The intellectual property authority in Malawi still retains the status of being a general registration office administered under the Attorney General’s Office. Overall, the intellectual property laws of Malawi are old and non-TRIPS compliant but currently there are efforts to revamp them so that

40 Id.
41 Id.
they are modern and TRIPS compliant. The restructuring of the intellectual property office and delinking it from the Government are important steps in strengthening the intellectual property framework. The level of awareness on intellectual property in Malawi is reasonable but the relationship between intellectual property and industrial development is not well understood. This is an area that requires urgent focus. The copyright situation in Malawi, which is under the administration of the Copyright Society, seemingly outstages the sluggish development of an intellectual property office. There is, however, a higher opportunity for intellectual property development in Malawi and this should take into account the Intellectual Property Policy, auditing and operationalization of the new Intellectual Property Acts once they are put in place.

7. Mauritius

Mauritius adopted the Patents, Industrial Designs and Trademarks Act 2002 in order to align the country’s legislation to TRIPS. The Act protects patents, inventions, industrial designs, marks (i.e. trademarks, service marks and collective marks), trade names, layout designs of integrated circuits and geographical indications. Registration is done through the Office of the Controller of Industrial Property (the “Controller”). Copyright is not accommodated within the definition of intellectual property, but it is recognized and protected under Mauritian law. Two additional Acts, the Layout-Designs (Topographies) of Integrated Circuits Act 2002 and the Geographical Indications Act 2002 were enacted but are yet to come into force.

Mauritius is a member of WIPO, and signatory to the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention and the Berne Convention. Intellectual property is increasingly recognized as an economic asset as Mauritius moves towards a knowledge-based economy. The capacity to tap into the intellectual property assets will be a determining factor in the development of the economy during the next decade. An Intellectual Property Development Plan was developed with the assistance of WIPO in 2009. The Plan seeks to ensure, among other things, intellectual property enforcement. In recent years, potential users as well as generators of intellectual property have developed the technical capacity and know-how to use it as a tool to promote research, innovation, investment and economic growth. Mauritius has been very proactive in updating its intellectual property legislation, making it one of the most progressive member States in terms of national intellectual property regimes. In order for Mauritius to be active in the area of intellectual property within the region and internationally, it should subscribe to ARIPO as well as become party to WIPO treaties and conventions.

8. Mozambique

Mozambique’s intellectual property legislation is TRIPS-compliant and the legal instruments in copyright include: Law on Copyright and Related Rights – Law No. 42/01 of February 27, 2001; Regulation on the Compulsory Affixing of Seals to Phonograms – Decree No. 27/2001 of September 11, 2001; Regulation on Implementation and Feasibility Rules in Decree No. 27/2001 of September 11, 2001 and the Ministerial Order No. 8/2003 of 15 January 2003.

Industrial property was regulated by the Portuguese Industrial Property Code, approved by Decree No. 30679 of 24 August 1940 and extended to other overseas provinces of the time by Order No. 17043 of 20 February 1959. In addition to these rules, the Government of Mozambique has acceded to a number of regional and international organizations active in intellectual property, in particular WTO, WIPO and ARIPO. Mozambique has acceded to the Berne Convention for the Protection of Literary and Artistic Works of 1886; TRIPS and the Annex to the Marrakesh Agreement, which set up WTO. As a member of ARIPO, the country is party to the Harare Protocol on Patents and Industrial Designs. It is also party to the Patent Cooperation Treaty of 19 June 1970 and its implementing regulation of 1 January 1993, concerning the international reg-

istration of patents and utility models, through Resolution No. 35/99 of November 1999; Agreement on Trade-Related Aspects of Intellectual Property Rights and the Annex to the Marrakesh Agreement, which set up WTO.

Mozambique does not have a National Intellectual Property Policy. However, the Constitution of Mozambique enshrines rules and principles on the right to creativity and to the protection of property created by the mind. Grounded on these constitutional provisions, apt rules and principles are embodied in a range of legal instruments establishing the legal regime governing the grant and protection of copyright and related rights, industrial property and the accession to the principal regional and international legal instruments on intellectual property.

The intellectual property system in Mozambique is run by the Mozambique Institute of Intellectual Property. Until recently, the laws of Mozambique were based on an old Portuguese Industrial Code. Intellectual property enforcement regimes in Mozambique are weak and, given its large sea frontier, the need for appropriate enforcement mechanisms becomes mandatory. In recent years, Mozambique has embarked on an industrialization drive, and this will need supportive innovation structures that are currently lacking.

There is political will for the protection of intellectual property in Mozambique but this needs to be supported by a well-equipped intellectual property office with appropriate staff currently unavailable in the concerned Institute. The linkage between the intellectual property office and industries is being carried out through Patent Promotion Units. However, lack of expertise has delayed this project. Although the country is a member of ARIPO, it is yet to accede to the Banjul Protocol on Marks.

9. Namibia

The legislation that protects Copyright in Namibia is the Namibian Copyright and Neighbouring Rights Protection Act (Act 6 of 1994). The Act was amended in 2001 and is undergoing further review. The Ministry of Information and Communication Technology is the custodian of the Copyright Act. The Directorate for Audio-Visual Media and Copyright Services deals with the day-to-day activities related to copyright issues. Namibia is a member of the Berne Convention for the Protection of Literary and Artistic Works. It is also a signatory to the two WIPO Internet Treaties (WCT and WPPT of 1996). With respect to industrial property, the Ministry of Trade and Industry has been the custodian of the Industrial Property Office in Namibia responsible for the registration, recording, maintenance and administration of industrial property rights. Recently, however, there has been an initiative for the establishment of an intellectual property rights regulatory institution – the Business and Intellectual Property Authority – pending the enactment of enabling legislation. It will become an independent authority on business and intellectual property matters. This will ensure that the use of intellectual property rights promotes national developmental objectives and the industrialization strategy.

Namibia recently updated its intellectual property rights system in 2013 to make it TRIPS compliant. Furthermore, a decision has been made to establish a semi-autonomous intellectual property office and the Industrial Property Act No. 1 of 2012 has been enacted. The implementation of the Act is awaiting the promulgation of regulations. These developments will inevitably lead to the development of an Intellectual Property Policy to be preceded by an audit. The audit is required to precede the establishment of an effective intellectual property authority, relevant innovation structures, and enforcement regimes including quasi-judicial administrations. The process has been tedious as it included movement from a South African-controlled intellectual property system to a department in the Ministry of Trade and Commerce, and now to a semi-autonomous agency. The immediate requirements, therefore, include recruitment and training of experts in various areas. Namibia is fairly well-represented in WIPO treaties and conventions. Like all other SADC countries, awareness continues to be required in line with the intellectual property development process.
10. Seychelles

The main intellectual property protection laws in Seychelles are: the Copyright Act, Chapter 51 (1991), the Patents Act, Chapter 156 (1991) and the Trade Marks Decree, Chapter 239 (1991). All these laws contain provisions that lay down the procedures and measures for dealing with infringement of intellectual property rights. The three laws are administered by two different ministries. Patents and trademarks fall under the administration of the Office of the Registrar General. The Copyright Act falls under the purview of the Department of Culture. In addition to the Registrar General’s Office and the Department of Culture, there are also several intellectual property rights stakeholders such as the Judiciary, the Police, Customs, the Small Enterprise Promotion Agency and the National Arts Council.

Efficient and effective protection of intellectual property rights is considered vital by the Government for promoting foreign investment, the transfer and dissemination of technology, and protecting local businesses and artists as well as facilitating the integration of the Seychelles’ economy into the regional and global economies. Seychelles has been a member of WIPO since March 2000. In addition, it is a contracting party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty in November 2002. Seychelles is in its final stages of accession to WTO.

The laws that are currently in force are outdated and not sufficient. Seychelles is in the process of strengthening and updating its laws. Nevertheless, the Government recognized that there were shortcomings in intellectual property development and enforcement in the country and has taken various steps to improve the situation. Seychelles, in 2010, undertook an intellectual property system evaluation and needs assessment. The mission objectives were to assess the intellectual property system, identify weaknesses, constraints and opportunities and make concrete proposals with the view to define specific needs-oriented activities and projects for implementation within the Intellectual Property Development Plan to enhance Seychelles’ capacity to create, protect and make strategic use of intellectual property rights and assets for economic growth and development.

Following the Intellectual Property Development Plan, the Government signed a Memorandum of Understanding with WIPO in November 2010. The aim of the memorandum is to delineate a framework of cooperation geared towards the implementation of the Intellectual Property Development Plan in a manner to ensure that activities are successfully executed and that there is good coordination between the various stakeholders to better enable the Government to protect, encourage and enable the use of the intellectual property system to complement the country’s development strategies.

Seychelles, like Mauritius, is not a member of ARIPO and thus cannot access the available technical support. Its main IP challenges include; outdated laws, lack of expertise and lack of staff. In addition, membership to WIPO treaties also needs to be considered for selected treaties of interest. The establishment of intellectual property infrastructure is required as well as the development of a National Intellectual Property Policy to operationalize intellectual property legislations.

11. South Africa

South Africa has a well-developed intellectual property policy legal and regulatory framework. The Patents Act has been amended to become TRIPS-compliant, extending the patent term to 20 years (from a previous 16). Currently, South African intellectual property legislation has 18 legislations governing intellectual property rights including: the Patent Acts 1978, Trade Marks Act 1993, Copyright Act 1978, Designs Act 1993, and the Intellectual Property Laws Amendments. Policy formulation and implementation for patents, trademarks, designs, and copyright is

See generally, U.S. State Department: Seychelles http://www.state.gov/e/eb/rln/othr/ics/2013/204905.htm
carried out by the Department of Trade and Industry. The department is also responsible for the registration of property rights, examination of materials and adjudication, in conjunction with the Companies and Intellectual Property Registration Office. It is important to note that South Africa is a non-examining country. It does not inspect creations for novelty. The responsibility for ensuring that the application is valid resides with the applicant. A patent is registered if it meets the stipulated formalities for registration.

The South African intellectual property rights system is arguably the most advanced in the region and the legislation is on par with international trends and in line with all requirements. However, South Africa is not a member of ARIPO, a step that would enhance harmonization in the region. While South Africa has a relatively developed intellectual property system, and for the purposes of TRIPS is considered as a developed country, it is equally poorly staffed and, for many years, the system of substantive examination has never been under its consideration and, hence, the lack of trained examiners within the establishment. The intellectual property agency system in South Africa is well developed but lacks an equally developed intellectual property system with the required staffing inclusive of technically qualified examiners.

However, the teaching of intellectual property needs to be extended to more universities as it is currently limited to a few. Membership to ARIPO has been long outstanding though South Africa has indicated its desire to join the organization. Given its advanced IP frameworks, South Africa could provide a suitable learning platform for the developing intellectual property systems in other SADC member States. However, some of its IP laws fall short of WIPO treaties and conventions. It is the only country in the SADC member States with an active Innovation Support Unit and a formidable Institute of Patent Agents servicing its clientele.

12. Swaziland

The intellectual property rights statutes in Swaziland include the following: Seed and Plant Variety Act No. 7 of 2000, Patents, Utility Models and Industrial Designs Act No. 6 of 1997, Trade Marks Regulations of 1989, Trade Marks Act No. 6 of 1981, Merchandise Marks Act No. 24 of 1937, Copyright (Rome Convention) Act No. 1 of 1933, Copyright (Prohibited Importation) Act No. 35 of 1918 and Copyright Act No. 36 of 1912.

Patents are currently protected under an Act enacted in 1936. Swaziland’s Patents, Designs and Trade Marks Act No. 72 of 1936 was last amended in 1969 and is TRIPS-compliant. The intellectual property rights system in Swaziland automatically extends patent and registered trademarks protection to products that have been patented and registered in either South Africa or Great Britain upon proper application.

A Bill for a new Intellectual Property Act has been published in Swaziland but has not yet been promulgated. The draft law includes protection for pharmaceutical and agricultural chemical products. Swaziland is a member of the Patent Cooperation Treaty and ARIPO though adherence to key international agreements on intellectual property rights appears to be minimal. However, the Government has acceded to the WTO TRIPS Agreement.

Swaziland’s current laws do not sufficiently protect trademarks, patents and copyrights. The Swazi Patent Office is under the Ministry of Trade. Swaziland’s intellectual property laws are still outdated and are not TRIPS compliant. Consideration should be for the establishment of a semi-autonomous office and the associated structures required to propel innovation and invention in Swaziland.
Intellectual property rights aspects were introduced by the colonial administration, and this was in 1922 through Chapter 217 of the Patent Legislation and the introduction of Trade Marks and 1924 through “Chapter 218 of the Copyright Legislation.” After independence, there were significant changes on the contents of the intellectual property legal system. In 1966, the Copyright Ordinance Cap. 218 was repealed by Copyright Act No. 61 of 1966. The current Copyright Act was enacted in 1999. The Act establishes the Copyright Society of Tanzania (COSOTA) under Section 46. The functions of COSOTA include: promotion and protection of authors, performers, publishers, translators of works and broadcasters as well as collection and distribution of royalties in respect of uses of the works of its members.

Patents in the United Republic of Tanzania are governed by the Patents Act No.1, 1987, as amended by Acts Nos. 13 and 18 of 1991. The Business Registrations and Licensing Agency (BRELA) is the receiving national office for patents and trademarks. The patents that are protected under this Act are patents of inventions and utility models. Other inventions that can be registered are inventions “other than a discovery, scientific theory, mathematical method, aesthetic creation, computer program or presentation of information meeting specified requirements relating to novelty, utility and inventiveness”. The registered patents last for 20 years subject to the payment of annual fees, while utility models last for seven (7) years. An invention is regarded as new if it is not anticipated by prior art; however, a utility model “must not form part of the state of the art, that is to say, not made available to the public by means of a written description anywhere in the world or by public use in the United Republic of Tanzania before the filing or priority date”. In relation to this, the patent granted by ARIPO designating the United Republic of Tanzania is allowed to be protected once the patent office is notified. Since the United Republic of Tanzania has endorsed the Patent Cooperation Treaty, any patent granted through the treaty designating the country also qualifies to be protected. According to BRELA, 2005, “the time limit for entering the national phase for Patent Cooperation Treaty patents is 21 months from priority date and the time limit for filing translations is 31 months from priority date. BRELA is a semi-autonomous agency answerable to the Ministry of Industry and Trade. The United Republic of Tanzania, is a union of Tanganyika and Zanzibar.

The Registrar General’s Office in Zanzibar is established in the Ministry of Justice and Constitutional Affairs. Legislation predates TRIPS. The country is a member of a number of WIPO-administered treaties and these include: the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, the Patent Cooperation Treaty, the Paris Convention and the Berne Convention Establishing WIPO. The country is also a member of ARIPO and is party to the Banjul Protocol on Marks and the Harare Protocol on Patents and Industrial Designs and indeed one of the few countries in Africa that is a member of the Nice Agreement. It is also a member of WTO and, therefore, the TRIPS Agreement.

Similar to most African countries, the United Republic of Tanzania has intellectual property rights enforcement challenges. The country struggles with counterfeit and sub-standard products. Currently, the country’s intellectual property rights policy is under consideration. Stakeholders have been involved and their views are being consolidated and will be presented to an Inter-Ministerial Technical Committee.

The establishment of BRELA has seen a lot of developments in the area of intellectual property, in particular awareness creation and outreach programmes, linkages between BRELA and research communities as well as the SMEs. The country also established the Technology Information Service Centres and an Intellectual Property Department within the Tanzania Commission for Science and Technology. These efforts need to be redoubled and considerations should be made for the development of an Intellectual Property Policy as recommended in the intellectual property

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46 See WIPO/SMEs/DAR/05/2.
audit that was carried out. Issues of enforcement also need strengthening. The Institute of Intellectual Property Agents also needs to have its presence felt in economic development circles.

The country has two offices: BRELA for the mainland and the Zanzibar Intellectual Property Office for Zanzibar and Pemba. Harmonization of the two systems is required together with the modernization of the relevant laws for TRIPS compliance.

14. Zambia

In Zambia, the legal framework for intellectual property rights is contained in the following statutes: the Patents Act (Chapter 400), the Trade Marks Act (Chapter 40), the Registered Designs Act (Chapter 402), the Copyright and Performances Act (Chapter 406) and the Competition and the Fair Trading Act (Chapter 417) of the Laws of Zambia. Zambia's patent laws conform to the requirements of the Paris Convention for the Protection of Industrial Property, to which Zambia is a signatory. Zambia is also a signatory to a number of other international agreements on patents and intellectual property, including WIPO, the Berne Convention, ARIPO and the Universal Copyright Convention of UNESCO. The management of intellectual property rights is vested in two separate government ministries – the Ministry of Commerce, Trade and Industry and the Ministry of Information and Broadcasting Services.

Copyright administration falls under the Ministry of Information and Broadcasting Services. The Ministry oversees the registration of copyright and related rights, supervision and development of collecting societies, copyright awareness programmes, and administration of security devices on all authentic audio and video products sold in Zambia.

The Patents and Companies Registration Agency, which is an executive agency of the Ministry of Commerce, Trade and Industry, administers the industrial property aspect of intellectual property rights, while the Ministry of Information and Broadcasting Services deals with copyright and neighbouring rights. The mandate of intellectual property protection under the Patents and Companies Registration Agency extends to trademarks, patents and industrial designs. Other aspects of protection of intellectual property rights such as the protection of genetic resources are administered by the Ministry of Agriculture and Cooperatives through various Acts. The protection of genetic resources and traditional knowledge is not covered under current legislation although the TRIPS Agreement requires that protection for these resources be provided. Intellectual property rights are enforced in a court of law (i.e. the High Court of the Republic of Zambia).

However, enforcement of intellectual property rights is weak in Zambia, and courts have limited experience in commercial litigation. The Zambia Patent Office runs a monthly publication called the Patent and Trade Marks Journal that contains particulars of any application for registration of a trademark including a representation of the mark. The Government recently launched the implementation plan for the National Intellectual Property Policy, which spells out the national ambitions for the use of intellectual property in Zambia. The Government of Zambia is also in the process of reviewing the entire intellectual property legislation in order to modernize and align it with international agreements that Zambia is part of. Zambia’s Intellectual Property Policy aims to "ensure the effective and efficient use of intellectual property as a tool for stimulating socio-economic, industrial, technological and cultural development". In the section of the Policy specifically dealing with issues of traditional cultural expressions and folklore, strategies have been formulated that seek to collaborate efforts with other countries and tap into regional arrangements such as the African Union, ARIPO, SADC and COMESA.

The country’s national laws are generally not adequate in protecting intellectual property rights. However, the last five years have seen an increase in the awareness of intellectual property in Zam-
Zambia is battling with enforcement of intellectual property rights due to widespread counterfeiting. The Patents and Companies Registration Agency does not play a role in the enforcement of intellectual property rights. Enforcement falls under other agencies such as the police and customs officers; the police have an Intellectual Property Enforcement Unit, which does the best it can with limited resources. Zambia is in the process of introducing new statutes that have a component of enforcement that the Patents and Companies Registration Agency will have a role in.

The delinking of the Intellectual Property Office and establishment of the semi-autonomous office, the Patents and Companies Registration Agency, has improved delivery on intellectual property issues in Zambia. While administratively, it is still answerable to the Ministry of Trade and Commerce, the Agency has recently been on an upward trend in its development and is sufficiently funded from its own resources from its intellectual property operations. However, it also suffers from outdated laws that need immediate revamping for TRIPS compliance, an initiative which has started. Intellectual property enforcement should also be put in place and appropriate innovation infrastructure developed to prompt the generation of local technologies.

The Agency needs to be supported by modern intellectual property laws to be effective. In addition, Zambia needs to develop and operationalize an Intellectual Property Policy and develop appropriate intellectual property infrastructure to support any new statutes that will be promulgated.

15. Zimbabwe

The Zimbabwe Intellectual Property Office established an Inter-Ministerial Committee on Intellectual Property in 2013, which is responsible for linking various government intellectual property stakeholders. The administration of intellectual property in Zimbabwe is overseen by the Ministry of Justice, Legal and Parliamentary Affairs and the Ministry of Agriculture, Mechanization and Irrigation Development (for Plant Breeders Rights).

Zimbabwe has TRIPS-compliant intellectual property legislation. This includes: the Patents Act (Chapter 26:03), Trade Marks Act (Chapter 26:08), Geographical Indications Act (Chapter 26:06), Copyright and Neighbouring Rights Act, Industrial Design Act (Chapter 26:02), Integrated Circuit Layout Design Act (Chapter 26:07), Intellectual Property Tribunal Act (Chapter 26:01), Plant Breeders Rights Act (Chapter 18:16), Merchandise Marks Act (Chapter 14:13) and the Constitution of Zimbabwe (Amendment No. 20) Act 2013.

Furthermore, Zimbabwe has acceded to the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works and the Patent Cooperation Treaty. Treaties signed include: the Beijing Treaty on Audio-Visual Performances and the Marrakesh Treaty to facilitate access to published works for persons who are blind. The country is a signatory to the Harare and Banjul protocols and the Swakopmund Protocol on the Protection of Traditional Knowledge and Expression of Folklore. It has domesticated the international and regional treaties and conventions in its intellectual property laws. The laws include some of the TRIPS flexibilities, for example, compulsory licences for the abuse or insufficient use of patent rights, failure to meet demand, refusal to license, and on account of anti-competitive practices. The initial draft of Zimbabwe’s Intellectual Property Policy is yet to be released. The level of intellectual property awareness among government policymakers and senior government officials in various ministries is generally very low. Furthermore, implementing intellectual property legislation remains a challenge, as not all related Acts have corresponding regulations. Work is underway to develop regulations for the Geographical Indications Act to fully operationalize it.

47 Zambia Presentations.
Zimbabwe has had a relatively good number of inventions but these can be increased with the development of appropriate innovation structures that are currently limited. The lack of financial capacity is a major hindrance. Institutions such as the Institute of Mining Research and the Scientific and Industrial Research and Development Centre generate products that could be taken up at industrial level. Enforcement of intellectual property in Zimbabwe, like in many other SADC member States except South Africa, suffers adversely from staff as well as financial challenges. For example, the role of the Patent Office is still limited to the administration of intellectual property titles and rarely extends to functions related to economic development. Although intellectual property awareness has been pursued through agricultural shows and trade fairs, knowledge on the issues remains low.

B. Observations on intellectual property rights in the region

With the exception of South Africa and, to a limited extent, Zimbabwe and Botswana, intellectual property rights systems in the region generally show low performance.\(^4\) One measure for determining their status or performance in any given country is the International Property Rights Index, developed by the Property Rights Alliance.\(^5\) For example, Zimbabwe and Zambia ranked 100 and 105 respectively on the list of 115 countries surveyed. Between the years 2000 to 2004, only South Africa recorded major growth in intellectual property activities.\(^6\) South Africa received more than 60 per cent of the total patents issued by the US Patent Office to African inventors between 2000 and 2004.\(^7\) Mauritius, which filed 21 patents had 8 granted, and Seychelles, which filed 31 patents had 18 granted, while Angola and the Democratic Republic of the Congo both filed one patent each.\(^8\) Zambia and Malawi also recorded some activity in trademarks applications in 2001 and 2002 respectively, with Zambia recording 213 trademark applications by residents and 582 applications by non-residents and Malawi recording 440 trademark applications by non-residents and 138 applications by residents.\(^9\)

SADC member States are party to a number of international treaties, conventions, bilateral and multi-lateral agreements, which address intellectual property issues within the broader context of trade. These include:

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4. IPR Systems and Technology Transfer at Research Institutions in Southern Africa.
5. Note: IPRI assumes a significant correlation between the protection of private property rights and a nation’s economic growth and examines the legal and political environment (LP), physical property rights (PPR) and intellectual property rights (IPR) as components essential in strengthening and protecting a country’s private property system, see also Dedigama, 2009.
6. See RIMI4AC IPR & Tech Transfer from HEIs Southern Africa.
7. Id.
8. Id.
9. Id.
Box 2: Selected International IP Protocols Relevant for SADC member States

<table>
<thead>
<tr>
<th>Protocol</th>
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<tbody>
<tr>
<td>The Paris Convention (industrial property)</td>
</tr>
<tr>
<td>The World Intellectual Property Organization (WIPO) Convention</td>
</tr>
<tr>
<td>The Berne Convention (literary and artistic works)</td>
</tr>
<tr>
<td>WIPO Copyright and WIPO Performances and Phonograms Treaties</td>
</tr>
<tr>
<td>The Rome Convention; and the UPOV Convention (Plant variety protection)</td>
</tr>
<tr>
<td>The Universal Copyright Convention</td>
</tr>
<tr>
<td>Beijing Treaty on Audio-Visual Performances</td>
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<tr>
<td>Patent Cooperation Treat (PCT)</td>
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These conventions deal with several aspects of industrial property, copyright and plant variety protection. Annex 2 gives a summary of SADC membership to treaties and agreements administered by WIPO. In addition, all countries in the region have become members of WTO. Thus, they are obligated to implement the Agreement on Trade-Related Intellectual Property Rights (TRIPS). Article 7 of TRIPS requires the protection and enforcement of intellectual property rights in the belief that such protection and enforcement “should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive for social and economic welfare”. Consequently, all members of SADC must comply with the minimum standards stipulated by TRIPS.

In addition, individual SADC member States have entered into, and are members of several free trade or bilateral trade agreements negotiated with a number of developed countries. For example, the Cotonou Agreement (EU-ACP countries), an agreement between developing countries and the European Union. Since 2000, it has been the framework for the EU’s relations with 79 countries from Africa, the Caribbean and the Pacific (ACP). In addition, some SADC members States are also members of the ACP Group of States. Article 46 of the Cotonou Agreement obliges the Parties to recognize and acknowledge the need to ensure sufficient and effective levels of protection of intellectual property, industrial, commercial property rights and other rights covered by the TRIPS Agreement including the protection of geographical indications. The main objective of this obligation on the ACP member States is to achieve the necessary international standards to reduce distortions and any other forms of barriers to bilateral trade.

Three important issues emerge from the above review of intellectual property rights in SADC member States. The first issue is on intellectual property administration. The survey showed that intellectual property matters in the SADC region are administered across several ministries including the Ministries of Trade, Commerce and Industry or their equivalents, and the Ministries of Law and Constitutional Affairs or their equivalents. A few countries have set up dedicated industrial property offices or organizations, e.g. the Zimbabwe Intellectual Property Office in Zimbabwe, the Registrar of Companies and Intellectual Property, the Patent and Companies Registration Office in Zambia, and the Copyright Society of Malawi.

The second issue is coverage. The review shows that, in a majority of member States, legislations is outdated with respect to intellectual property issues. Historically, intellectual property rights systems in most developing countries are either derived or inherited from colonial laws and legal systems. Intellectual property rights were introduced to provide protection for innovations

54 Blackeney and Mengistie, 2011.
55 Blackeney and Mengistie, 2011.
56 Adewopo , Section 3, IPR Systems and Governance Structures in the Southern African Development Community.
originating from the colonizing power and not to protect domestic innovations. Many of these laws were introduced before the coming into force of the TRIPS Agreement. In addition, each national policy and strategy appears to have been developed in isolation, without due regard to the commonalities that exist in the region; resulting in poor coordination of policy within and across national boundaries.

The final issue is TRIPS compliance. The study shows that the laws in most cases cover only a few intellectual property rights such as patents, copyright and trademarks and do not extend to all the categories covered by the TRIPS Agreement. Even in cases where relatively recent regulations are in place, they are in most cases a little more than a framework, with detailed rules yet to be developed for their full implementation. Countries such as Botswana and South Africa have updated their legislation to become TRIPS compliant.

Copyright is also part of intellectual property and, hence, it is instructive to review the copyright situation internationally and in SADC member States. The issue requires separate treatment.

1. Copyright situation in SADC member States

Most of the SADC member States have copyright laws and have established copyright offices. The copyright offices are usually government departments in many cases and, in some countries, the copyright offices are housed together with industrial property offices. In others, they operate independent of the industrial property offices. It is observed that in those countries where the two offices operate separately, they often collaborate on issues such as creating awareness, training and representation in international meetings. Many of the SADC countries are party to the Berne Convention and thus observe its requirements.

Furthermore, most of the SADC member States are also members of the Southern and Eastern Africa Copyright Network (SEACONET), a network that was established to promote copyright and related rights' protection in Southern and Eastern African countries and is headquartered in Malawi. Its membership is open to Governments and organizations that deal with copyright and related rights.

2. Management of copyright and related rights internationally

Although the study mainly deals with industrial property, it is also important to look at the aspects of copyright and related rights at the international level within WIPO. There are two treaties on copyright: the Berne Convention on the Protection of Literary and Artistic Works and the WIPO Copyright Treaty. The Berne Convention aims “to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works.” Article 1 names the countries to which the Convention applies and emphasizes that these constitute a Union for the protection of the rights of authors in their literary and artistic works. The Berne Convention has three main principles: the principle of national treatment, principle of automatic protection and independence of protection. Other main provisions of the treaty include a list of works that are protected, owners of rights, persons protected, and minimum standards of protection, rights protected, limitation and duration.

57 Id.
58 Id
60 Fikremarks Merso Policy Brief, Number 16, June 2013.
61 WIPO Handbook.
The WIPO Copyright Treaty takes care of the latest developments in the area of reprography, video technology, satellite broadcasting and cable television. The WIPO Copyright Treaty bears some relationship with other treaties such as the Berne Convention itself and the TRIPs Agreement. In relation to the Berne Convention, the WIPO Copyright Treaty makes it clear that any protection that is provided under the WIPO Copyright Treaty may not be lower than any under the Berne Convention. Therefore, the treaty also guarantees the fullest respect to the Berne Convention and also guarantees similar clauses in the TRIPS Agreement. The substantive provisions that are provided in the WIPO Copyright Treaty include provisions relating to the digital agenda, storage of works in digital form in an electronic medium, transmission on digital networks, limitations and exceptions in the digital environment, technological measures of protection and rights management etc.

With respect to related rights, there are three conventions: the Rome Convention, the WIPO Performances and Phonographs Treaty (WPPT) and the Beijing Treaty for the Protection of Audio-Visual Performances. The Rome Convention is mainly intended to provide protection of performers, producers of phonographs and broadcasting organizations. The principal provisions of the Convention include: national treatment, eligibility for protection, the minimum protection required and provision for discretion, limitations and duration of protection. This treaty is very important for developing countries as most of them are endowed with a number of creations of their national heritage including dance and music.

The WIPO Performances and Phonographs Treaty is also aligned to other treaties such as the WIPO Copyright Treaty and the Rome Convention. Its major provisions include: storage of works in digital form, transmission in digital networks and other important provisions such as the moral and economic rights of performers and rights of producers of phonograms.

The Beijing Treaty on Audio-Visual Performances, which was adopted in June 2012, is a multilateral treaty that regulates copyright for audio-visual performances and expands the performers’ rights. The treaty brings, for the first time, audio-visual performers into the fold of the international copyright framework in a comprehensive way. It further boosts the economic rights and moral rights of performers. The expanded economic rights give performers an opportunity to share the income collected from internationally distributed audio-visual works. Once ratified by SADC member States, it will give assurance of protection, at international level, of audio-visual performers in the region.

Copyright is easier to administer than industrial property. There are, however, some countries that have a registration system and, where registration is permissible, then copyright registration offices exist. However, what is commonly available in many countries are associations of copyright management. At the international level, there are two important copyright-related institutions that have a collaborative relationship with WIPO: the International Confederation of Societies of Authors and Composers and the International Federation of Reproduction Rights Organisations (IFRRO). In addition, there are functioning collective management organizations for copyright in some if not most of the countries in the region. Managing of copyright and related rights has largely to do with the work of collective management organizations. Furthermore, the ARIPO Copyright Strategy ensures that there is proper management of copyright and related rights, encouraging member States to ascertain the value of creative industries with respect to their economies through studies.

The International Federation for Reprographic Rights Organisations deals mainly with reprographic reproduction rights. Reprographic reproduction concerns itself with copying of material necessary for education, research and library services in respect of which special public considerations prevail. The phenomenon of private reprographic reproduction remains relatively small even though sophisticated reprographic machines have become more widespread partly because of their
cheaper selling price and their small size. CISAC\textsuperscript{62} is the International Confederation of Societies of Authors and Composers and is the leading worldwide network of authors’ societies with collective management organizations in 120 countries protecting the interests of millions of creators and rights holders. It provides the highest business standards to protect their rights.

C. Coordination and harmonization of intellectual property rights

As discussed earlier, harmonization is key to achieving an effective intellectual property rights system in the region. This regional and global harmonization is at the heart of international cooperation on intellectual property. International harmonization of industrial property should be geared towards the development of an attractive international business environment that respects intellectual property rights. Such harmonization will improve the flow of investment, technology transfer, as well as contribute to the orderly development of the world economy. This can be achieved through the updating of intellectual property legislation and alignment to TRIPS guidelines and domestication of the ARIPPO framework. As noted earlier, harmonization of policies occurs at least at three levels: international, continental and regional. In addition, there is harmonization at national level where various pieces of legislation relate to each other on matters of intellectual property.

The discussion in Chapter 2 noted that at the international level, WIPO and WTO are the primary mechanisms for coordination. The mission of WIPO is to promote international cooperation, the creation, dissemination, use and protection of works of the human mind for the economic, cultural and social progress of all mankind, contributing to a balance between the stimulation of creativity worldwide by sufficiently protecting the moral and material interest of creators on one hand, and providing access to the social, economic and cultural benefits of such activities worldwide on the other hand. WIPO programmes\textsuperscript{63} are closely interwoven with governmental and intergovernmental cooperation. This includes the agreement between WIPO and WTO to assist developing countries in the implementation of TRIPS.

At the bilateral level, the work of the Vancouver Group noted earlier is instructive and so is the framework under the European system. The African framework under ARIPPO, AUC and OAPI is also instructive on regional cooperation.

The preceding section has shown that the enforcement of intellectual property rights in the region is very limited and, in some countries, non-existent. Yet enforcement plays a pivotal role in the success of intellectual property rights regimes.\textsuperscript{64} Enforcement must exist in order for stakeholders to have confidence in the system. Although all SADC member States have intellectual property legislation in place\textsuperscript{65} enforcement mechanisms are lacking. Enforcement has been one of the biggest challenges faced by African countries. Generally, intellectual property is of low priority in member States so efforts towards its enforcement are not sufficient, and in some cases they are minimal. The lack of political will is a major inhibitor of intellectual property enforcement. Without political will, enforcement agencies do not get the funding required to be effective. Enforcement agencies such as the police, customs and the judiciary need special training, staff and resources to be able to effectively curb intellectual property rights infringement.

Mechanisms for enforcement under TRIPS could be adopted. The TRIPS Agreement provides specific provisions on enforcement of intellectual property rights\textsuperscript{66}. It also sets the minimum stan-

\textsuperscript{62} www.cisac.org.
standards for intellectual property protection to be complied with by all members of WTO. Nearly all SADC member States are members of WTO. In implementing the enforcement of intellectual property rights, the TRIPS Agreement puts no obligation on member States to put in place a judicial system that is distinct from the existing enforcement laws in general in each country. There is no obligation for a member State to provide for additional resources for intellectual property enforcement other than those resources that are already deployed for enforcement of law in general. The implementation of enforcement is better achieved through national cooperation and coordination. International cooperation and coordination can be in the form of bilateral or multinational cooperation. Some of the measures to strengthen cooperation include: public awareness, right holder cooperation, judicial enforcement and administrative enforcement. Some of these measures are discussed below.

1. National cooperation and coordination

Dealing with counterfeiting and piracy in each country is best achieved through national cooperation and coordination by various intellectual property stakeholders including through the establishment of inter-ministerial committees and stakeholder forums. The major agencies in this respect will be industrial property offices, customs, the police and judiciary. Other bodies that should be included in the stakeholder associations are copyright societies, medicine control agencies, standard authorities and leading manufacturing, retail and consumer organizations. The focus for such associations should largely be geared towards enforcement activities; the development of expertise, particularly among customs officers at all points of import and export; the improvement in general liaison procedures with all national agencies involved in enforcement; the enhancement of contacts with right holders and their representative organizations; the establishment of benchmarks with specialist anti-counterfeiting units in other customs administrations; and the participation in public awareness campaigns. The exchange of officials in the fight against counterfeiting and piracy is very important in sharing of experiences by different authorities on the best practices. In the fight against counterfeiting and piracy, it is advisable to encourage right holders to contribute to the training of customs staff in the identification of counterfeit and pirated goods, and in intelligence reporting from their own sources to assist officers in identifying consignments of counterfeit or pirated goods.

2. International cooperation

The multifaceted and multinational nature of intellectual property, by default, demands involvement of different stakeholders and multinational involvement in combating counterfeiting and piracy. International frameworks already exist for both norm setting and in supporting the fight against counterfeiting and piracy. International cooperation can be of particular benefit to developing countries where technical cooperation is required from a developed country to a developing country in the establishment of appropriate enforcement mechanisms.

3. Public awareness and cooperation

The fight against counterfeiting and piracy should involve the public since it is its purchasing power that causes these practices to flourish. National anti-counterfeiting and anti-piracy campaigns could be used to indicate the link between intellectual property, crime and job losses, the debilitating effects of organized crime, and the dangers to health and safety of infringing goods.

4. Right holder cooperation

The intellectual property right holder is naturally an interested party in ensuring that his rights are protected and more often than not will be keen to assist in enforcement particularly by providing

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information on infringement and also in supporting awareness and training programmes. This is particularly relevant when it comes to border control measures where prior information may be required to intercept pirated or counterfeit products.

5. Judicial enforcement

Products on sale are always on the move particularly counterfeited products that tend to move faster. In this case, prompt provisional measures to preserve evidence and prevent infringement play a very crucial role in enforcement. The applications for ex-parte orders should be dealt with within a reasonably short period and security requirements should not unreasonably delay the procedures. In cases involving infringement, there should be provisions for damages, i.e. damages should be awarded as compensation to the right holder. Judicial procedures may also provide for auxiliary orders where courts can order the destruction of pirated or counterfeit goods particularly those that have been found in the market and recalled.

6. Administrative enforcement

Administrative enforcement is also highly preferable considering that judicial enforcements of intellectual property can sometimes be expensive and complex. Administrative enforcements can be particularly speedy and less expensive particularly in disputes arising from trademark disputes and usually disputes can be settled without recourse to the court (see Box 3).

7. Controls at the point of production

The emphasis in the enforcement part of the TRIPS Agreement is on internal enforcement. However, considerations should also be made for border controls and controls at the point of production. Control at the point of production should be a more efficient way of enforcing intellectual property rights and less liable to give rise to risks of discrimination against imports than special border measures. The Agreement, therefore, also recognizes the importance of border enforcement procedures that will enable right holders to obtain the cooperation of customs administrations so as to prevent the release of infringing imports into free circulation. The special requirements related to border measures are contained in Section 4 of the enforcement part of the Agreement.

8. Criminal procedures

Article 61 of the TRIPS Agreement requires criminal procedures and penalties for cases of willful trademark counterfeiting or copyright piracy on a commercial scale. In relation to piracy and counterfeiting, civil remedies and criminal penalties have been applied by some countries. This also applies to seizure, forfeiture and destruction of the infringing goods and of any materials and implements.

9. Right to information

“Right to information” has been identified as a valuable instrument in the fight against counterfeiting and piracy. It would enable right holders to identify the key persons involved in infringing activities particularly where the infringing activity involves a number of countries. Providing the right holder with information about infringing goods, as well as about persons involved in the infringements, enables the rights holder to identify the chain of distribution.

10. Deterrent of publicity

In some countries, to provide protection for the public, as well as raising the awareness of the value of intellectual property rights, judicial authorities have the power to order the official publication of court decisions, particularly those with a deterrent effect.
11. Specialized courts

While in the TRIPS Agreement members are not obliged to establish other enforcement measures specifically for intellectual property, some countries have established specialized courts to hear intellectual property-related cases as a means of improving their capacities for national enforcement. This has its own advantages for developing countries as it will strengthen enforcement mechanisms that may deal with such cases only. Where such courts exist, training programmes specifically for the judiciary and other enforcement agencies becomes a priority and, therefore, an advantage to intellectual property stakeholders. Specialized courts may be too resource-intensive for the current economic climate of most member States.

12. Accelerated procedures

Procedures must be fair, equitable and not unnecessarily complicated or likely to cause unwarranted delays. It is, therefore, in the best interest of the parties as well as the courts that often have congested schedules to consider accelerated procedures as they are normally cost effective and can be concluded within a short time, particularly where the issue of dispute is agreeable.

13. Mediation and arbitration

A means of reducing the expense and bureaucratic delays in the enforcement process is sometimes employed as an alternative dispute resolution mechanism in the form of mediation and arbitration. These procedures encourage the exchange of information in order to facilitate the settlement of disputes at an early stage.

14. Contact points and information providers

Access to information concerning the right holders is very important for enforcement. In order to achieve this, the contact points, in a number of WIPO member States, have been established as the national intellectual property offices, which under the right circumstances, can provide useful and quick information on right holders and rights. In some member States, the intellectual property office plays a pivotal role in the drafting of clear instructions to enforcement officials on how to proceed in these cases and do studies and compile useful reports to assist in this aim.

Box 3: Intellectual Property Enforcement Trends in the United States and the European Union

In the United States, the enforcement of intellectual property rights is strengthened by measures implemented throughout government agencies. Intellectual property rights’ enforcement involves the Office of the United States Trade Representative, the Department of Commerce, the Patent and Trademark Office, the International Trade Administration, the Department of Homeland Security, which includes Customs and Border Protection and Immigration and Customs Enforcement, and the Department of Justice and the State Department. The efforts of these organs is coordinated by the National Intellectual Property Law Enforcement Coordination Council established in 1999.

The European Union has been actively pursuing measures to harmonize standards and institutional mechanisms for intellectual property rights enforcement. In 2003, a new common regulation concerning customs action against goods suspected of infringing certain intellectual property rights, and the measures to be taken against goods found to have infringed such rights, entered into force. The regulation extends the scope of intellectual property rights subject to action by customs authorities. In addition to trademark counterfeit goods and copyright piracy goods as defined in the TRIPS Agreement, the scope of infringement of intellectual property rights is extended to include, among others, goods infringing a patent, a supplementary certificate (plant protection or medicinal product) and geographical indications.

Currently, a network of international treaties has encouraged harmonization. In addition, there is a system of multinational organizations that also provide services that encourage harmonization. Regional organizations further harmonize intellectual property rights among the countries they
serve. However, while there has been considerable harmonization of intellectual property rights systems among countries, there remains wide variations among nations. The low priority given to intellectual property rights in developing countries is mainly due to the lack of understanding; specifically understanding that strong intellectual property rights can create jobs and contribute to the region's economy. As such, political will must be garnered. Politicians must be brought on board and made to realize that intellectual property rights offer some of the best hope for socio-economic development. Investment in innovation and creativity should be encouraged throughout the region and this must begin with law and policymakers understanding what is at stake.\textsuperscript{68}

D. Intellectual property rights coordination mechanisms in SADC

The SADC Protocol on Trade requires member States to abide by international rules with respect to the protection of intellectual property as provided for under the WTO agreement on TRIPS.\textsuperscript{69} It prescribes minimum standards and periods for which protection should be granted to different intellectual property rights and countries are required not to discriminate among foreign nationals – and between foreign nationals and their own nationals – in the acquisition and maintenance of intellectual property rights.\textsuperscript{70} Since all countries in the SADC region are members of WTO (see annex 2), they are automatically signatories to the TRIPS Agreement. The Agreement protects a “creation of the mind; for example, technological innovation” and, thus, gives these creations exclusive protection to reward the creators or innovators. The protection it offers can result in higher prices because the owners of the intellectual property right can charge whatever prices they like while they hold the protection. A patent can be registered if the product or process is new and novel and is capable of use.\textsuperscript{71} TRIPS excludes from its patenting protections, through its biodiversity provision (Article 27), surgical methods, plants and animals (not micro-organisms). Plant varieties must be protected either through patents or an independent system. SADC countries have the opportunity of creating protection for indigenous knowledge systems by creating an independent intellectual property rights system, a sui generis, and can use the Organization of African Unity’s “Model Law for the Protection of the Rights of Local Communities, Farmers and the Regulation of Access to Biological Resources.\textsuperscript{72}” This can protect local community knowledge from bio-pirates and ensure that local communities benefit materially from drugs derived from indigenous knowledge.

The TRIPS Agreement protects intellectual property rights on pharmaceutical drugs through patent arrangements that exclude third party use, offering for sale, selling or importing of such products for a minimum of 20 years from the date the patent application is filed. Civil claims around breach of patents put the burden of proof on the defendant.\textsuperscript{73} Prior to TRIPS, countries could make copies of new drugs through identifying and patenting another pathway. Least Developed Countries were originally required to have made their patent laws TRIPS-compliant by 2006 and the Doha Declaration extended the implementation date for them to 2021.\textsuperscript{74}

\textsuperscript{68} Id.
\textsuperscript{69} “Member States shall adopt policies and implement measures within the Community for the protection of intellectual property rights, in accordance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.” Article 24, Intellectual Property Rights.
\textsuperscript{70} Id.
\textsuperscript{71} Rosalina Muroyi, Riaz Tayob, Rene Loewenson (1) SEATINI, (2) Training and Research Support Centre (TARSC) Trade Protocols and Health: Issues for Health Equity in Southern and Eastern African Trade and Information Negotiations Initiative (SEATINI) and Southern African Regional Network for Equity in Health (EQUINET), see also Das, 1999.
\textsuperscript{72} Ekpere, 2002.
\textsuperscript{73} Id.
\textsuperscript{74} TWN 2003.
1. TRIPS flexibilities

The TRIPS Agreement has flexibilities to safeguard public health by allowing States to override patents and increase access to medicines in spite of intellectual property under certain public health circumstances. The principles of TRIPS flexibilities include, but are not limited to, the principle that intellectual property rules. As such, these policies should ensure rapid and effective response to public health needs; sustainability of supply of quality medicines at affordable prices; competition, through the facilitation of multiplicity of potential suppliers both from developed and developing countries; and the provision of a wide range of pharmaceuticals to meet an array of health needs, as well as the need to ensure equality of opportunities for countries in need irrespective of their level of technological capacity including countries with insufficient or lack of manufacturing capacity, and irrespective of their membership in WTO. TRIPS flexibilities include (1) transition periods; (2) compulsory licensing; (3) public, non-commercial use of patents; (4) parallel importation; (5) exceptions from patentability and (6) limits on data protection.

The implementation of TRIPS flexibilities requires national policy and legislative frameworks. This instrument radically altered the global supply of affordable medications by countries like India, Brazil, Thailand and South Africa. However, the potential for TRIPS flexibilities to enable access to essential medicines has been undermined by the United States of America and European Union’s perception that the flexibilities constitute a political and regulatory impediment to market access. Since the TRIPS Agreement, the United States of America has actively pursued and threatened trade sanctions against trade partners who have attempted to implement TRIPS flexibilities, notably South Africa, Brazil and Thailand. The ability to benefit from TRIPS flexibilities has been further curtailed by American and European Union’s promotion of TRIPS-Plus conditions in bilateral FTAs negotiations, which restrict the implementation of flexibilities across Low and Middle-Income Countries. Threats of sanctions by the United States of America on countries that utilized TRIPS flexibilities led SADC countries to convene regional meetings to discuss ways of circumventing the negative impact of American foreign policy on access to medicines within SADC.

Currently, most essential drugs are not patented. TRIPS is thus less of an issue for the vast share of existing essential drugs than it is for new and future essential drugs, patented after 1995. The increased costs of patented drugs will put a significant burden on public health budgets. These include new drugs for HIV/AIDS, resistant tuberculosis, malaria and reserve antibiotics. SADC will, thus, face a challenge in accessing these new essential drugs at affordable prices.

Such cross-cutting issues require significant foreign policy involvement and intergovernmental negotiations. The SADC health security cooperation framework could provide strategies for influencing multilateral negotiations that affect access to safe, efficacious and affordable essential medicines such as the General Agreement on Trade and Services. Through cooperation, SADC could anticipate, prevent and ameliorate the regional health security challenges of access. For example, harmonized procurement systems under the SADC Customs Union could enhance the bargaining power of countries to negotiate lower prices with pharmaceutical suppliers thereby increasing the availability of safe, efficacious and affordable quality essential medicines within countries.

E. Public health and access to medication

The SADC region’s integration agenda prioritizes social and human development and aims to foster cooperation in addressing health challenges, which are reflected in the high burden of both communicable (such as HIV/AIDS, tuberculosis and malaria) and non-communicable diseases.

In order to address these challenges, the region has adopted a collective approach and identified health as one of the priority areas in its regional cooperation and integration agenda. To this end, a SADC Health Programme was developed in 1997. The region prioritized the development of a protocol on health matters as this was seen as critical for enhancing regional integration within a legally enforceable framework. Three key policy documents have been developed to underpin the implementation of the programme, namely, the Health Policy Framework, the SADC Protocol on Health and the Regional Indicative Strategic Development Plan. One of the goals of the programme is to "establish a regional databank of traditional medicine, medicinal plants and procedures in order to ensure their protection in accordance with regimes and related intellectual property rights governing genetic resources, plant varieties and biotechnology.”

In addition to the SADC region’s programme, there are relevant aspects of the TRIPS Agreement that present opportunities for protection of public health and health equity. For example, Articles 7 and 8 of the Agreement provide a strong public interest framework for the interpretation and implementation of intellectual property rights, and requires that this be done “in a manner conducive to social and economic welfare.” Article 8 outlines the rights of members to adopt measures to protect public health, to prevent abuse of intellectual property rights and to prevent obstruction of international technology transfer. Article 30 of TRIPS provides for limited exceptions to the exclusive rights conferred by a patent, provided that they are limited, justified, and do not unreasonably affect the patent owner. The exceptions enable countries to parallel import the drugs or to compulsorily license them, provided their national laws provide for this.

A key issue, which emerges from the discussion is that many SADC member States are non-TRIPS compliant. This implies that they are unable to fully utilize TRIPS flexibilities and, hence, the region has not seen solid improvement in the access to medicines.

**F. Strengthening intellectual property issues in the region**

As part of its regional responsibilities towards harmonization and strengthening integration, the SADC Secretariat should facilitate member States’ compliance to TRIPS, take advantage of the TRIPS flexibilities and to modernize and harmonize policies. The use of TRIPS flexibilities aligns with the aspirations of SADC on public health and access to medicine. Specifically, the SADC Secretariat should promote the use of intellectual property in business strategies by regional stakeholders. The private sector is vital in wealth creation, employment generation and in the promotion of intellectual property. The SADC Regional Indicative Strategic Development Plan specifies a range of outputs related to private sector involvement in decision-making within the region as follows:

- Development of policy guidelines on public-p sector partnerships.
- Initiation of an institutionalized public-private dialogue.
- Incorporation of private sector representatives in SADC national committees.
- Establishment of a Private Sector Engagement Unit in the SADC secretariat.
- Inception of regional competitiveness and business climate surveys in the SADC region.

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76 Id.
77 Id.
79 Rosalina Munyori, Riaz Tayob, Rene Loewenson SEATINI, Training and Research Support Centre (TARSC), Trade Protocols and Health: Issues for Health Equity in Southern and Eastern African Trade and Information Negotiations Initiative (SEATINI) and Southern African Regional Network for Equity in Health (EQUINET)
80 SADC official website http://www.sadc.int/issues/private-sector/
• Development of a SADC biannual business forum and
• Facilitation of a regional private sector organization.

Intellectual property issues can be strengthened under the regional framework. As noted earlier, the SADC region does not have a specific policy instrument to guide and support the development of public-private sector partnerships. However, several of the SADC Secretariat directorates, with support from various committees, have established consultative mechanisms with the private sector on various topics, including infrastructure development, food security, customs and mining. In addition, the SADC Secretariat has established a number of Memorandums of Understanding (MOUs) with various regional business organizations, including the Association of SADC Chambers of Commerce and Industry and the SADC Business Forum. These initiatives have been further supported by the creation of a practitioner network on public-private partnerships (PPPs), with input from the SADC Development Finance Resource Centre. In addition, the SADC region should take advantage of existing structures and specifically utilize WIPO guidelines. Furthermore, the SADC Business Council should consider developing an intellectual property strategy and developing partnerships with regional organizations to strengthen its role in intellectual property through support in activities related to capacity building, auditing, policy development, technology transfer, awareness and capitalization.

Furthermore, the participation of SADC member States in the various Standing Committees of WIPO and the TRIPS Council under WTO should be encouraged so that their interests are taken into account in policy decisions. Internationally-harmonized grant and registration systems such as the Patent Cooperation Treaty and the Madrid System have proved to be a success in patents and trademarks harmonization. These, however, need a strong complement from regional systems such as EPO, ARIPO, OHIM, OAPI and member States alike.

G. Summary

This chapter reviewed national intellectual property policies and laws in SADC member States and illustrated that the laws and policies are non-homogeneous and outdated and need modification and harmonization in order to be responsive to the development needs of the region. The overview revealed that the intellectual property infrastructure necessary for promotion and development of inventions and innovations is poorly developed and, in some cases, non-existent. The development of intellectual property laws and policies should occur in tandem with the development of relevant infrastructure. It was also observed that the national intellectual property offices require restructuring as well as delinking from parent ministries to enhance efficiency. Membership to regional and international conventions and treaties on intellectual property varies among countries. Structured membership to regional and international treaties and conventions is required in view of globalization and the international character of trade and intellectual property issues. In this respect, the aspirations of WIPO, WTO and ARIPO, in as far as they are consistent with the needs of regional development, need to be considered. The chapter also observed the need for intellectual property enforcement in the region as happens elsewhere. The review of the intellectual property coordination mechanism in the SADC region also focused on TRIPS flexibilities, public health and access to medication. The chapter also examined the role of the SADC secretariat in regional development, leveraging on intellectual property.

81 For example, SADC can use WIPO 2003a, 2004; the European Commission 2001 Handbook where IP services have been roughly categorized according to their objectives and information received from business associations and chambers of commerce.
IV. Intellectual property and competition policy

A. Overview

In general, competition policy promotes or maintains the level of competition in markets. It includes governmental measures that control the behaviour of businesses and the structure of industry and markets. Generally, competition policy objectives are achieved through competition laws which: (1) prohibit anti-competition agreements and practices that harm free trade and competition; (2) prevent abuse of dominant position and anti-competitive practices that lead to such a dominant position and (3) regulate mergers and acquisitions. Competition encourages innovation, productivity and competitiveness, contributing to an effective business environment. This leads to economic growth and employment. It also removes barriers that protect entrenched elites and which reduce opportunities for corruption. Consequently, a country with a strong and effective competition policy and laws becomes attractive as a business location resulting in national and foreign investments. Competition also delivers benefits for consumers through lower prices, improved services and greater choice. In this sense, competition generates total consumer welfare. Economies of developing countries are vulnerable to anti-competitive practices as poor business infrastructure and complex regulatory and licensing regimes make it tougher for companies to enter these markets; their policies, laws and regulations are often not sufficient. In addition, their enforcement agencies are not effective. Citizens and businesses are less aware of the importance of competition and do not exercise their rights or fulfill their responsibilities.

In today's world, many competition problems have a cross-border component. Companies and supply chains are regional and international, while competition laws and enforcement agencies are primarily national. Individual countries have struggled to address anti-competitive practices at the international level, which requires regional and global collaboration to set and enforce competition rules. The successful implementation of competition policy results in the elimination of anti-competitive regulations and unnecessary barriers to competition imposed by government policies.

Consumer protection benefits all clients by ensuring that they have the right of access to: non-hazardous products; adequate information to enable them make informed choices according to individual wishes and needs; and effective redress.

B. Intellectual property rights and competition policy: the issues

Intellectual property rights and competition policy have a common objective, namely, to protect competitive markets so that they generate economic efficiency and welfare. There is no clear trade-off between competition and innovation and, therefore, the two policies must not be seen as contradictory. As the objective of intellectual property is to induce innovations that will ultimately
provide better conditions for price, quality and diversity of products available to consumers, it possesses the same final goal as competition policy, which is to promote welfare.\textsuperscript{90}

Competition law seeks to free markets from restrictive practices by encouraging new and more efficient products or processes to enter markets. On the other hand, intellectual property law provides inventors with exclusive rights to use, sell and license inventions for a limited period. This provides a long-term incentive for research and development, prompting continuity of profitable inventions.

According to UNCTAD (2008) both intellectual property and competition policies encourage firms to compete in the marketplace by investing in technologies that generate more efficient methods of production and new products and services for consumers. As such, competition and intellectual property rights laws are complementary especially in developing countries (Table 3). They are necessary for optimal level of research and development and technology diffusion. Further, while patents tend to increase prices for patented goods and increase profits of Trans-National Corporations in foreign countries, they also promote local research and development and increase FDI, strengthen innovation and facilitate trade by reducing counterfeit goods.

Table 3: Areas of overlap between intellectual property and competition policy\textsuperscript{91}

<table>
<thead>
<tr>
<th>Licences of intellectual property rights</th>
<th>Technology transfer agreements</th>
<th>Other agreements relating to Intellectual property rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Typical terms in intellectual property rights licences:</td>
<td>Market share capitalization (horizontal/vertical agreements, technology markets)</td>
<td>Technology pools</td>
</tr>
<tr>
<td>Territorial exclusivity</td>
<td>Hard-core restrictions</td>
<td>Copyright pools</td>
</tr>
<tr>
<td>Royalties</td>
<td></td>
<td>Settlements of litigation</td>
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<tr>
<td>Duration</td>
<td></td>
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<tr>
<td>Field of use restriction</td>
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<tr>
<td>Best endeavours and non-competition clauses</td>
<td></td>
<td></td>
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<tr>
<td>No-challenge clauses</td>
<td></td>
<td></td>
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<tr>
<td>Improvements</td>
<td></td>
<td></td>
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<tr>
<td>Tying and bundling</td>
<td></td>
<td></td>
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<tr>
<td>Price, terms and conditions</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: UNCTAD, 2008

There are some intellectual property-related competition issues that may arise from parallel imports, restrictive practices and mergers. With regard to parallel imports, countries have to make a choice of whether to allow or prohibit goods produced under patent/trademark/copyright and imported into another country without authorization of the local intellectual property rights owner. If parallel imports are allowed, the Competition Authority has an opportunity to weigh the possible public benefits against any adverse effects on competition in a particular case.

On restrictive practices, intellectual property is often licensed to other firms (licensees) in other markets, which are more competent commercially (local ownership). The concern is when licensing agreements include conditions that may extend the market power of a dominant firm. A possibility of abuse may arise. The practices considered as restrictive or anti-competitive include vertical agreements such as tying clauses and refusal to license and horizontal agreements such as extension of the duration of patent, grant-backs, joint research and development and horizontal mergers.

\textsuperscript{90} Id.
\textsuperscript{91} WIPO presentation.
On mergers, nearly all mergers or acquisitions will involve intellectual property acquisition/transfer of some kind. Acquisition of intellectual property rights alone may be caught by merger control (in some jurisdictions). The relevance of intellectual property to competition issues will vary from case to case. Advanced competition agencies exercise control of large-scale mergers and acquisitions to maintain a degree of competition and preserve incentive to innovation. The combined enterprise may dominate the market, having achieved patent control. Owing to low entry barriers in high-tech sectors, mergers between leading companies do obtain permission if they can show low entry barriers and efficiency gains. Cooperation between authorities in the review of mergers that fall within their respective jurisdictions has been common. For example, during the examination of the global mergers of Coca-Cola/Cadbury Schweppes and British American Tobacco/Rothmans of Pall Mall, the competition authorities of Zimbabwe and Zambia collaborated.

It is instructive to review the status of competition in the SADC region to isolate its potential impacts on industrial developments. The following section discusses the prevailing situation in selected SADC member States.

C. Status of competition policy in the SADC region

The SADC Protocol on Trade, Article 25, stipulates that “member States shall implement measures within the Community that prohibit unfair business practices and promote competition”. In 2009, SADC developed a Declaration on Regional Cooperation in Competition and Consumer Policies to provide for cooperation between member States in the area of competition law enforcement. With more integration, specialization is eroded and the existence of an effective competition regime is imperative. Increased trade not only within the region but also between the region and other countries or regional blocs means that measures have to be taken to promote competition and reduce the incidence of cartel activity. The Preamble to the Declaration states that the Agreement was designed based on the recognition that while competition laws generally apply domestically, markets usually extend beyond national boundaries. This is especially true in the pharmaceuticals industry. For example, in the region, South Africa has the best capacity in terms of producing anti-retroviral medication. Already, pharmaceutical companies in the country have waged battles with global firms and States to increase access to medicines, particularly for poor people. However, within the SADC context, the production of cheap generic medicines could affect the manner in which South Africa engages in trade with its regional partners. Hence, there is need for States to cooperate in enforcing competition laws.

There are still a number of challenges to be overcome. The harmonization of competition policies is an arduous task and SADC itself does not have the necessary manpower to ensure that regional resolutions are implemented accordingly. Furthermore, disparities in national enforcement regimes and the top-down approach generally employed by Governments in implementing regional resolutions make it more difficult to achieve coherence. Nevertheless, the private sector, through the Association of SADC Chambers of Commerce and Industry, is lobbying SADC to embark on public-private partnerships in the development of industrial, business and competition policies amongst other measures.

Lessons on harmonized competition policy can be garnered from the European Union, where the European Competition Network was established to ensure that European Union States implement competition regulations in tandem with their local competition regulations. Nevertheless, it should be noted that the bulk of competition authorities in SADC were formed at roughly the

92 . Id.
93 Amplification of Article 25 of the SADC Protocol, which calls for member States to implement measures that prohibit unfair business practices and promote competition. Evidently, the promotion of trade and fair competition ranks strongly in the minds of SADC legislators, hence, any policies designed for one sphere should take cognizance of the other.
same time as Europe began its harmonization drive. Thus, the process will necessarily take longer in the region since the bulk of these institutions are looking to build their own capacity at the domestic level before venturing to concentrate on regional cooperation. Nevertheless, States could incrementally cooperate by, for instance, agreeing on extra-territorial application of domestic competition laws where applicable.

As can be seen in table 4, the 15 SADC member States are at different levels of development and implementation of competition laws and policies.94

<table>
<thead>
<tr>
<th>Countries with operational competition regimes</th>
<th>Countries that have passed laws that have not yet gone into effect</th>
<th>Countries actively preparing competition laws</th>
<th>Countries in early stages of preparation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botswana, Mauritius, Namibia, Seychelles, Swaziland, Malawi, South Africa, The United Republic of Tanzania, Zambia, Zimbabwe</td>
<td>Madagascar</td>
<td>Lesotho, Mozambique</td>
<td>The Democratic Republic of the Congo, Angola</td>
</tr>
<tr>
<td>Current focus on strengthening enforcement capacity</td>
<td>In need of technical assistance to operationalize the competition agencies</td>
<td>Draft Bills are now in place</td>
<td>Current activities include raising awareness and highlighting the importance of formulating competition laws and policies</td>
</tr>
</tbody>
</table>

With respect to competition laws, 10 SADC member States (Botswana, Malawi, Mauritius, Namibia, Seychelles, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe) have operational competition agencies. The remaining countries are at various stages of development in the establishment of competition agencies with substantial progress having been made in Lesotho and Mozambique. On consumer protection laws, nine countries in SADC (Angola, Botswana, Malawi, Mauritius, Namibia, Seychelles, South Africa, Swaziland and Zambia) have consumer laws. Lesotho recently approved a consumer policy and Zimbabwe is in the process of developing a consumer law.

There are varying levels of development and implementation of competition laws in the region. In addition, there is also the dimension of the different national competition law models adopted.95 It is generally agreed that South Africa has the best structure. SADC adopted a cooperation model as opposed to establishing a supranational competition authority.96 The adopted cooperation model requires all member States to adopt and enforce competition law in tandem with the implementation of the integration agenda. The Declaration provides for effective cooperation and the establishment of a competition and consumer law and a Policy Committee Forum. The main purpose of the Committee is to implement the formalized system of the cooperation.

Generally, competition laws respect national laws protecting intellectual property. However, there is very little exchange between intellectual property offices and competition authorities in matters involving intellectual property. This is mainly because they are separate entities without legal

94 Josef p. 57.
95 Id. at p. 58.
96 Id. at p. 61.
requirements to cooperate. A number of intellectual property cases relating to abuse of dominance especially in franchising agreements have emerged in the region – intellectual property cases treated under Article 18 of the regulations. Below are brief summaries of the current laws and policies in place in SADC member States. These summaries also discuss how the competition laws affect intellectual property rights.

_Angola:_ Angola does not have a competition policy or law. Sectors of the economy are regulated in separate legislation such as the Law on Commercial Activity No. 1/07 (from 14 May 2007), Law on Industrial Activities No. 5/04 (from 7 September 2004), Law on Petroleum Activities No. 10/04 (from 12 November 2004), the Basic Law on Electricity No. 14-A/96 (from 31 May 1996), the Basic Telecommunication Law No. 08/01, the Basic Postal Law No. 06/87 (from 9 March 1987) and the Law on Financial Institutions No. 13/05.

_Botswana:_ The Competition Act passed by the Botswana Parliament late in 2009 created a Competition Commission and a Competition Authority. The legislation provides the Commission and the Authority with the ability to undertake the usual range of activities found in most countries that have enacted similar legislation. The Authority may undertake investigations of vertical and horizontal agreements (Articles 25, 26 and 27), as well as of the abuse of dominant position (Article 30). Botswana’s Competition Commission serves as the Board for the Competition Authority, which does investigation and recommends remedies, and makes decisions that can be appealed to the Commission. The Commission acts as a tribunal to adjudicate cases brought to it by the Competition Authority or by appellants.97

_Democratic Republic of the Congo:_ The Democratic Republic of the Congo currently has no competition law and policy in place. It relies on the regional regimes of SADC and COMESA.

_Lesotho:_ Lesotho has no competition law or overall competition regulator. Instead, under the industrial and trading licences system, a business can apply for protection from competition for up to 10 years.98 Lesotho regulates economic entities in terms of provisions contained in its Industrial Property Order.

_Madagascar:_ Competition in Madagascar is regulated by Competition Law No. 2005-020 of 17 October 2005 and its implementing Decree No. 2008-771 of 28 July 2008. The Competition Act has provisions relating to the protection of intellectual property rights specifically, Chapter 1, Article 5, which reads, “the provisions of this Act do not derogate from the protections granted or recognized by specific statutes, including the texts relating to intellectual property.”

_Malawi:_ The Competition and Fair Trading Act (Chapter 48:09) does not apply to “those elements of any agreement, which relate exclusively to the use, license or assignment of rights under, or existing by virtue of, any copyright, patent or trademark and any act done to give effect to a provision of an agreement referred to above.”99 Thus, the Malawi Competition Act acknowledges intellectual property rights. Competition in Malawi is regulated by the Competition and Fair Trading Commission.

_Mauritius:_ The Mauritius Competition Act 2007 covers intellectual property. The definition of “asset” under Section 2 includes “all the intangible assets of the enterprise, including its goodwill, intellectual property rights and know-how”. Section 3(4) provides that “Any agreement insofar as it contains provisions relating to the use, license or assignment of rights under or existing by virtue of laws relating to copyright, industrial design, patents, trademarks or service marks” is excluded from the application of the Act. Similar to most Competition legislation, the Mauritius Competition Act does not interfere with intellectual property rights.

97 Professor Roman Grynberg and Masedi Motswapong, Competition and Trade Policy: Botswana.
98 U.S. Department of State 2012.
99 Competition and Fair Trading Act Section 3(d) and (e).
Mozambique: The Mozambique Competition Policy (Resolution No. 37/2007, 12.11) was approved in 2007. As in other countries, this policy was adopted to modernize and improve competition in the country. Subsequently, the Mozambique Competition Act, which addresses most economic activities, was enacted in July 2013. This Act establishes an independent competition regulatory authority (‘CRA’). The Mozambique Competition Act addresses anti-competitive practices and merger control. The Act is yet to be implemented.

Namibia: The Competition Policy was introduced in 2003 by the Competition Act 2 of 2003. The Act provides for exemptions as they relate to intellectual property rights. Article 30 allows the Commission to “grant an exemption in relation to any agreement or practice relating to the exercise of any right or interest acquired or protected in terms of any law relating to copyright, patents, designs, trademarks, plant varieties or any other intellectual property rights.” The relevant regulatory bodies are the Namibian Competition Commission and the High Court of Namibia.

Seychelles: The Fair Competition Act was enacted in 2009. The Act established the Fair Trading Commission. The Act provides for intellectual property rights as one of the exceptions to abuse of dominance under Section 7(4)(c) as follows: “An enterprise is not to be treated as abusing a dominant position…..(c) by reason that the enterprise enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trademark except where the Commission is satisfied that the exercise of those rights has the effect of lessening competition substantially in a market; and impedes the transfer and dissemination of technology.

South Africa: The current competition law was enacted in October 1998 and came into force in 1999. It forms an important part of reforms to both address the historical economic structure in South Africa and encourage broad-based economic growth. It established a Competition Commission with the primary responsibility of determining and investigating cases under the Act, and a Competition Tribunal to rule on most cases. A Competition Appeal Court was also to be established. These institutions were set up in 1999, and the Act came into force on 1 September 1999. The Act deals with two main areas: prohibited practices and mergers.100

Swaziland: The Competition Act of 2007 does not apply to those elements of any agreement, which relate exclusively to the use, license or assignment of rights under, or existing by virtue of, any copyright, patent or trademark.101

United Republic of Tanzania: The Competition and Consumer Protection Law/Policy is administered under the Fair Competition Commission of Tanzania. The Fair Competition Commission is an independent government body established under the Fair Competition Act, 2003 (No. 8) to promote and protect effective competition in trade and commerce and to protect consumers from unfair and misleading market conduct. The Fair Competition Act, which came into force through Government Notice No. 150 of May 2004, contains both competition and consumer protection provisions. This connotes a dual mandate for the Fair Competition Commission (integrated model of institutional set up). The drafting of the Competition and Consumer Protection Law in the United Republic of Tanzania took into consideration best international practices. The Act derives its principles from the UNCTAD Model Law.

Zambia: The Competition and Consumer Protection Act No. 24 of 2010 does not apply to “an agreement or conduct insofar as it relates to intellectual property rights including the protection, licensing or assignment of rights under, or existing by virtue of, a law relating to copyright, design rights, patents or trademarks.”102 However, Section 2(1) of the same Act defines “assets” to include intellectual property rights and know-how.

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100 Report: South African Competition Policy, Global Institute for Dialogue.
101 The Competition Act of 2007 [Section 3 (2)(c)].
102 The Competition and Consumer Protection Act No. 24 of 2010 [Section 3 (3) (a)].
Zimbabwe: The Competition Act (Chapter 14:28) shall not be construed so as to limit any right acquired under the following intellectual property-related statutes: the Plant Breeders Rights Act (Chapter 18:16); or the Copyright Act (Chapter 26:01); or the Industrial Designs Act (Chapter 26:02); or the Patents Act (Chapter 26:03); or the Trade Marks Act (Chapter 26:04) except to the extent that such a right is used for the purpose of enhancing or maintaining prices or any other consideration in a manner contemplated in the definition of “restrictive practice” in Section 2 of the Act.

Generally, most competition legislation in the SADC region does not interfere with intellectual property rights. Provisions that state that the competition laws do not apply to intellectual property rights are crucial and consistent with international standards. A regional framework provides for the mechanism for technical cooperation among national competition and consumer agencies, the strengthening of information exchange, consultations and joint operation in the enforcements of competitive standards and the thwarting of anti-competitive practices at the bilateral and regional levels. Competition and consumer authorities must cooperate in order to successfully identify and prosecute cross-border anti-competitive practices. Some of the anti-competitive practices and unfair trade practices cited as common in the SADC region include:

i. The inability of firms to access supply chains in new/foreign markets.

ii. Bid-rigging and cartels.

iii. The selection of a single distribution channel by a dominant firm.

iv. Deceitful, misleading representations and product safety standards.

v. Mergers and acquisitions involving multinational companies operating in more than one SADC country e.g. British American Tobacco/Rothmans of Pall Mall, Coca-Cola/Cadbury Schweppes, Total/Mobil etc. There have also been a lot of mergers involving big and dominant South African firms.

vi. Different levels of development within SADC countries.

The SADC secretariat has already embarked on a process of harmonizing the national laws— the first step will be to develop a manual for the competition authorities and the second stage will be to prepare a harmonization framework.

Specifically, cartels have been uncovered, and in some cases, prosecuted and fined in the fertilizer, steel, pharmaceutical, milling and airline industries. Most of the firms involved have subsidiaries in many SADC countries.103 In addition, allegations of abuse of dominance by big firms operating in SADC countries have been common. Market allocation arrangements by multinational companies operating in the motor vehicle, cement and other industries have also been identified. Consumer protection problems include: expired products, substandard goods and counterfeit products flooding the region. 104

The SADC secretariat is in the processing of commencing programmes towards the harmonization of national laws. A manual for competition authorities or guide book/reference book is available to member States for case investigation and analysis. Preparation of a harmonization framework is

103 Review of the experience gained in the implementation of the United Nations Set, including voluntary peer reviews written by the Southern African Development Community, the Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, Geneva, 8-12 November 2010.

104 Id.
also a work in progress. Also within the context of the Declaration on Regional Cooperation in Competition and Consumer Policies signed by SADC Heads of State and Government in 2009, table 5 shows some activities in support of competition law and policy development and implementation that have been undertaken during the last two years.

Table 5: SADC secretariat programmes on strengthening competition policy

<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 2013</td>
<td>Regional training workshop on competition policy for commissioners.</td>
</tr>
<tr>
<td>September 2013</td>
<td>Regional training workshop on competition policy for judges.</td>
</tr>
<tr>
<td>November 2012</td>
<td>Technical assistance in the form of short-term experts to help Lesotho develop its consumer protection policy.</td>
</tr>
<tr>
<td></td>
<td>Fifteen SADC-specific best practice guidance documents on key competition and consumer issues; covering, for example, case analytical methods, merger enforcement guidelines, consumer perspectives, sanctions, penalties and remedies have been developed. The main purpose of the guidance documents is to facilitate common enforcement practices.</td>
</tr>
<tr>
<td></td>
<td>Online competition cases resource database was established. Its main purpose is to enhance information sharing and cooperation during investigations; promote collaboration and cooperation on cross-border cases; serve as a central repository of information on both on-going and resolved cases, especially cases of mutual interest to member States; and provide easy access to case information and best practice in a user-friendly fashion with search capability. Currently, the database has over 50 competition cases from different SADC jurisdictions and other relevant documents on competition such as the SADC best practices guidance documents. It is hoped that restrictions on the use of this database will be lifted soon for all stakeholders to have access to the information and knowledge stored in it.</td>
</tr>
</tbody>
</table>

These initiatives are part of the overall strategy by the SADC secretariat to strengthen competition and competition policy in the region.

D. Intellectual property rights and competition policy

Competition and intellectual property laws and policies are complementary in nature and, therefore, harmonization and collaboration in their enforcement is a key element in fostering economic development of developing and developed countries. Challenges in the interface between intellectual property rights and competition laws and policies include:

- Low levels of competition culture and awareness.
- Existence of laws that are in contradiction with competition laws i.e. price control laws
- Existence of intellectual property rights that are not exploited; have the owners been paid not to produce?
- Protection period; could they be excessive? Should they be uniform across jurisdictions?

105 Id.
106 Id.
• Information asymmetry; it is difficult to ascertain whether high prices/charges amount to recoupment or abuse of dominance.

• No cooperation between intellectual property offices and competition authorities

• Lack of enforcement:
  • Small market results in limited products on the market
  • Primary and secondary markets both dominant
  • Secondary market of spare parts becomes an issue of competition e.g. cars, ATMs, computer operation systems
  • Import dependency – small manufacturing. Exhaustion of intellectual property rights?

The opportunities for reconciling competition and the protection of intellectual property rights arise from policy harmonization. Thus, before engaging in the question of whether regional competition policy would benefit the countries of the SADC region, each member State must work towards implementing the relevant domestic policy and achieving a functional agency with adequate capacity and capabilities. This will help accelerate the harmonization process. There is need for a regional competition authority. COMESA already has a competition authority in place. Article 55(3) of the COMESA treaty provides that “the Council shall make regulations to regulate competition within member States”. The Council made and adopted the COMESA Competition Regulations in December 2004. The COMESA Competition Commission became operational on 14 January 2013; its mandate is to implement the competition regulations. The regulations apply to “all economic activities whether conducted by private or public persons within, or having an effect within the Common Market” albeit with limited exceptions. In addition, the regulations trump the domestic competition laws of member States, an aspect that is yet to be domesticated into national laws by member States. In relation to mergers, it was intended that a single filing would substitute filings with the national authorities in the member States. In relation to mergers, it was intended that a single filing would substitute filings with the national authorities in the member States. This contention is yet to be clarified by the Commission as the regulations do not expressly state this.

The EAC Competition Policy and Law was adopted by the Council in 2004. The objective of the EAC Competition Policy and Law is to maintain and promote competition and provide for consumer welfare. In 2006, the Heads of State accented the EAC Competition Act 2006. The Act seeks to promote and protect fair competition in the Community; to provide for consumer welfare, and to establish the East African Community Competition Authority. The Policy and Act can only be operational if the law is harmonized in all EAC partner States. Rwanda, the United Republic of Tanzania, Kenya and Burundi have adopted the law but none of them has implemented it. Uganda has not adopted the law yet.

COMESA and EAC have viable competition frameworks, however, the challenge is in inducing member States to adopt the laws and implement them. SADC has pegged the following as challenges to cooperation and consultations: absence of competition laws in some countries, high costs of investigations, different priorities, voluntary nature of cooperation, lack of harmonization of laws and confidentiality of information. For the agreed cooperation model to be effective, it requires active participation of every competition agency particularly on cases with cross-border effects. These challenges are similar, if not identical, to those faced in pushing the intellectual property agenda on the continent. The three regional economic groupings have agreed to work together and implement joint programmes in competition policy, trade, customs and economic liberalization, among
other areas. The draft tripartite agreement proposed the establishment of a Tripartite Competition Forum. The proposed African Competition Forum is also another related development.\textsuperscript{107}

\section*{E. Summary}

The chapter has reviewed the interface between intellectual property rights and competition policy and shown that these two policy strategies are complementary and aim to improve consumer welfare. Competition and intellectual property laws and policies are complementary in nature and, therefore, harmonization and collaboration in their enforcement is a key element in fostering economic development. Both intellectual property and competition policies encourage firms to compete in the marketplace by investing in technologies that generate more efficient methods of production and new products and services for consumers. Low levels of awareness and culture, information asymmetry, lack of cooperation between intellectual property rights offices and competition authorities and lack of enforcement are some of the factors limiting the smooth co-existence between intellectual property rights and competition.

The chapter showed that competition legislation in the SADC region does not interfere with intellectual property rights and that countries are at different stages in the development of competition policies. For harmonization, there is need to: strengthen the regional framework that provides for the mechanism for technical cooperation among national competition and consumer agencies, strengthen information exchange, consultations and joint operation in the enforcements of competitive standards and the thwarting of anti-competitive practices at the bilateral and regional levels. SADC should engage the COMESA Competition Authority and collaborate with it to improve existing structures. Ideally, competition and consumer authorities must cooperate in order to successfully identify and prosecute cross-border anti-competitive practices.

\textsuperscript{107} Id.
V. Summary of findings, conclusions and recommendations

The study has shown that intellectual property has become a critical component of commerce and economic growth worldwide. Strong intellectual property protection systems positively affect international trade and support creativity and innovation. The enforcement of these rights both within the region and outside affects the region’s growth and jobs. When ideas, brands and products are pirated and counterfeited, economies are adversely affected and inventors lose out. In addition, counterfeit products, especially medical drugs, pose a risk to consumer safety and health. Consequently, strong harmonized intellectual property rights standards are necessary to confront infringements in the region. Rights holders need access to effective ways of protecting their rights internationally. They need a solid and predictable intellectual property rights legal framework. The findings and recommendations of the study are consolidated in table 6.

The report has alluded to the fact that regardless of what product an enterprise makes or what service it provides, it is likely that it is regularly using and creating intellectual property. As such, businesses should be well versed in protecting, managing and enforcing intellectual property, so as to get the best possible commercial results from its ownership. Almost every business has a trade name or one or more trademarks and should consider protecting them. Most businesses will have valuable confidential business information, from customers’ lists to sales tactics they may wish to protect. Other things to consider include: creative original designs, publications and dissemination and invented or improved products or services. Intellectual property can play a role in almost every aspect of business development and competitive strategy: from product development to product design, from service delivery to marketing, and from raising financial resources to exporting or expanding business abroad through licensing or franchising.

Intellectual property can enhance the market value of businesses when legally protected. This is why there is demand for intellectual property-protected products and/or services in the marketplace. Furthermore, intellectual property can become a valuable business asset. The strategic utilization of intellectual property assets can, therefore, substantially enhance competitiveness. In addition, intellectual property rights can be a company’s most valuable intangible business asset in addition to physical assets. Intangible assets such as human capital and know-how, ideas, brands, designs and other intangible fruits of a company’s creative and innovative capacity are important. The study observes that, progressively and mostly as a result of the information technologies revolution and the growth of the service economy, intangible assets are becoming more valuable than physical assets. Some of the findings are discussed below.

Regional and international frameworks on IP: The study has shown a high level of harmonization of regional, continental and international frameworks to facilitate intellectual property rights cooperation led by WIPO. Regional and international agreements and protocols are focused on harmonization of intellectual property issues. In addition, there is a system of multinational organizations that provides services that encourage harmonization. Regional organizations further harmonize intellectual property rights among the countries they serve. However, while there has been considerable harmonization of intellectual property rights systems among countries, there remains wide variation among nations within the WIPO frameworks.

Status of IP policies in SADC: A majority of SADC members States are lagging behind global trends in intellectual property rights policies, legislation, administration and enforcement. Patent laws in most SADC member States are administered across several ministries including the Ministries of Trade, Commerce and Industry or their equivalents and the Ministries of Law and Constitutional Affairs or their equivalents. A few countries have set up dedicated industrial property offices or organizations, e.g. the Zimbabwe Intellectual Property Office, the Registrar of Companies and Intellectual Property, the Patent and Companies Registration Office in Zambia and the Copyright Society of Malawi.
With respect to policy, the study showed that a majority of intellectual property rights legislation in the region is outdated and not compliant with the TRIPS agreement. Many of these laws were introduced before the coming into force of the TRIPS. In addition, each national policy and strategy appears to have been developed in isolation, without due regard to the commonalities that exist in the region, resulting in poor coordination of policy within and across national boundaries. Another compelling issue regarding intellectual property rights in the region is that they cover only a few areas such as patents, copyrights and trademarks and do not extend to all the categories of intellectual property rights covered by the TRIPS Agreement. Even in cases where relatively recent regulations are in place, they are, in most cases, a little more than a framework with detailed rules yet to be developed for their full implementation. Thus, with the exception of South Africa, intellectual property rights systems in SADC generally show mediocre performance due to outdated legislation. In addition, most member States are not TRIPS compliant. Furthermore, only two SADC member States (Zimbabwe and Botswana) have domesticated the ARIPO framework.

The study has also shown the need for SADC to broaden the spectrum of intellectual property protection to include traditional knowledge, traditional and cultural expressions as well as make use of the intellectual property legal framework to ensure that obligations under the Nagoya Protocol pertaining to the use of genetic resources are respected. To fully benefit from these systems, the value of traditional knowledge, traditional and cultural expressions and genetic resources needs to be determined through audits so that systems to respect, recognize and protect them can be developed.

**Coordination and harmonization on IP:** SADC member States are party to a number of international treaties, conventions and bilateral and multilateral agreements, which address intellectual property issues within the broader context of trade. The harmonization of intellectual property issues in Africa has been spearheaded by ARIPO, OAPI and, recently, PAIPO. Efforts by regional organizations may help remove cultural and political differences hindering harmonization of intellectual property administration on the continent. The continent could then have a common organization in intellectual property that protects the rights and diverse cultural heritage peculiar to the African continent. 108

At regional level, the existing coordination arrangement stipulates that member States should follow WTO frameworks with respect to the protection of intellectual property as provided for under the WTO Agreement on TRIPS, which prescribes minimum standards and periods for which protection should be granted to different intellectual property rights and countries are required not to discriminate among foreign nationals – and between foreign nationals and their own nationals – in the acquisition and maintenance of intellectual property rights.

The study has observed three main issues presented in relation to public health and access to medicine as affected by intellectual property rights: many member States are non-TRIPS compliant, TRIPS flexibilities are not sufficiently utilized within the region and lack of domestication of related protocols and compliance. The SADC secretariat can urge member States to become TRIPS compliant and to use all TRIPS flexibilities. The use of TRIPS flexibilities aligns with SADC aspirations on public health and access to medicine. Member States have opportunities for alignment and harmonization of intellectual property policy frameworks given that most of them are still developing such architecture. As a region, SADC could benefit from adapting the EAC and COMESA frameworks and develop a guiding template for member States.

The lack of coordination and the existence of a weak intellectual property framework at national level affect the role of intellectual property rights in member States. Lack of coordination negatively impacts on intellectual property towards the national development agenda. The weakness of intellectual property authorities in member States has reduced them to mere registration centres and they do not take the lead in intellectual property matters.

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108 Id
Competition and intellectual property rights: With respect to competition policy and intellectual property, the study observed that these two are complementary; both encourage firms to compete in the marketplace by investing in technologies that generate more efficient methods of production and new products and services for consumers. Harmonization and collaboration in their enforcement is a key element in fostering economic development of developing and developed countries. The levels of competition and awareness in the region are low. Furthermore, there is also widespread existence of laws that are in contradiction with competition law, for example, price control law with no relationship with intellectual property. Member States are at different levels in the development of competition policies. The current programmes by the SADC secretariat on competition policy should be expanded and accelerated.

Intellectual property challenges: The broad challenges that hinder effective use of intellectual property in SADC member States include: poor intellectual property infrastructure, lack of awareness, non-homogenous regimes, lack of support for research and development, lack of political will, outdated legislation, shortage of skilled manpower and limited financial support by Governments. These factors account for the rather slow uptake on intellectual property and related matters in the region and also impact of the ease of policy alignment and harmonization. The regional intellectual property framework lacks mechanisms to monitor initiatives. The lack of a dedicated division dealing with intellectual property issues within the SADC secretariat compromises the pursuit of integration in this key area.

The study clearly indicates that the effective use of intellectual property in SADC member States is hindered by, among others, poor infrastructure, lack of awareness, non-homogenous intellectual property regimes, lack of support for research and development, lack of political will, outdated legislation, poor administration and shortage of skilled manpower and limited financial support by Governments.

Table 6: Summary of key findings and recommendations

<table>
<thead>
<tr>
<th>Key findings</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTTELLECTUAL PROPERTY LEGISLATION</td>
<td></td>
</tr>
<tr>
<td>Outdated laws</td>
<td>Identify gaps and implement amendments</td>
</tr>
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<td></td>
<td>Issue directives to the effect that laws be amended</td>
</tr>
<tr>
<td></td>
<td>Provide technical support for these amendments</td>
</tr>
<tr>
<td>Lack of intellectual property policy framework</td>
<td>Facilitate the development and approval of the draft policy framework</td>
</tr>
<tr>
<td></td>
<td>Support the development of the intellectual property policy framework by providing a template for member States</td>
</tr>
<tr>
<td></td>
<td>Support the initiative through guidance in best practices</td>
</tr>
<tr>
<td>Non-homogeneous</td>
<td>Approximate their laws to regional compliance</td>
</tr>
<tr>
<td></td>
<td>Facilitate coordination of member States in the harmonization process</td>
</tr>
<tr>
<td></td>
<td>Support the initiative through guidance in best practices</td>
</tr>
<tr>
<td>Weak enforcement regimes</td>
<td>Introduce intellectual property enforcement regimes (implementation frameworks)</td>
</tr>
<tr>
<td></td>
<td>Support the establishment of national intellectual property regimes as well as the regional framework</td>
</tr>
<tr>
<td></td>
<td>Support the initiative through guidance in best practices</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Key findings</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Intellectual property laws in line with competition</strong></td>
<td>Member States to establish special legal and regulatory frameworks to handle</td>
</tr>
<tr>
<td></td>
<td>intellectual property / competition matters</td>
</tr>
<tr>
<td></td>
<td>Support member States to establish special legal and regulatory frameworks to handle intellectual property / competition matters</td>
</tr>
<tr>
<td></td>
<td>Technical assistance in policy alignment/harmonization</td>
</tr>
</tbody>
</table>

#### INTELLECTUAL PROPERTY INFRASTRUCTURE

<table>
<thead>
<tr>
<th>Weak or non-existent intellectual property infrastructure</th>
<th>Develop the intellectual property infrastructure to support national economic development</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Develop infrastructure for regional projects</td>
</tr>
<tr>
<td></td>
<td>Support the development of innovation infrastructure and coordinate the exchange of experiences and ideas</td>
</tr>
<tr>
<td></td>
<td>Provide technical support for these developments at national and regional levels</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Weak or non-existent innovation infrastructure</th>
<th>Member States submit their request as per national filing demands, to their cooperating partners</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Member States should correlate data for intellectual property automation</td>
</tr>
<tr>
<td></td>
<td>Support the development of a centralized database at regional level in the designated office</td>
</tr>
<tr>
<td></td>
<td>Provide technical support for these developments at national and regional levels</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gaps in intellectual property automation</th>
<th>Member States submit their request as per national filing demands, to their cooperating partners</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Member States should correlate data for intellectual property automation</td>
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<td></td>
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</tr>
<tr>
<td></td>
<td>Provide technical support for these developments at national and regional levels</td>
</tr>
</tbody>
</table>

#### INTELLECTUAL PROPERTY AUTHORITIES

<table>
<thead>
<tr>
<th>Ill-equipped</th>
<th>Specify requirements based on need</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Recommend minimum requirements across the board</td>
</tr>
<tr>
<td></td>
<td>Provide technical support for these developments at national and regional levels</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Understaffed</th>
<th>Specify requirements based on need</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Recommend minimum requirements across the board</td>
</tr>
<tr>
<td></td>
<td>Provide technical support for these developments at national and regional levels</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Limited competencies</th>
<th>Upgrade skills and knowledge to meet the new challenges relating to economic development leveraging on intellectual property</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Support the development initiatives</td>
</tr>
<tr>
<td></td>
<td>Provide technical support for these developments at national and regional levels</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Diversity of functions</th>
<th>Streamlined to deal with intellectual property-related activities only i.e. other activities such as registration of births, deaths, and political parties should be discarded from intellectual property offices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Support the development initiatives</td>
</tr>
<tr>
<td></td>
<td>Provide technical support for these developments at national and regional levels</td>
</tr>
<tr>
<td>Key findings</td>
<td>Member State</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Disparities in location of intellectual property authorities</td>
<td>Semi-autonomous or para-statal institutions (establishment of intellectual property rights ministries, see SADC protocol on ICT as a case study, recommendation of the Council of Ministries in ARIPO)</td>
</tr>
<tr>
<td>Non-homogeneous setup of intellectual property offices in SADC member States</td>
<td>Cohesion between the industrial property offices and copyright offices at national level</td>
</tr>
<tr>
<td>Different titles exist of heads of intellectual property offices</td>
<td>A common title to be adopted</td>
</tr>
</tbody>
</table>

**INTERNATIONAL RELATIONS**

<p>| Membership to international treaties                                            | Identify pertinent treaties and conventions for membership                                                                                                                                               | None                                                                                                                                                                                                 | Support the initiative through guidance on the merits of being party to certain treaties |
| Membership to regional treaties                                                | Member States should subscribe to regional treaties on intellectual property                                                                                                                             | Encourage members to be party to all regional treaties within their proximity                                                                                                                                                               |                                                                                        |
| Domestication of regional and international treaties                           | Member States should ensure that assertion or ratification is followed by domestication                                                                                                                   | Encourage domestication                                                                                                                                                                                                                       | Support the initiative through guidance in best practices, norm setting and standards   |
| Technical support                                                              | Technical support is demand driven and member States should request for support as per need                                                                                                              | Support the outsourcing of the relevant technical assistance                                                                                                                                                                             | Provide support in improving technical mechanisms                                           |
| Participation in WIPO Standing Committees                                       | Member States encouraged to participate in these meetings on norm setting and standards                                                                                                                   | Coordinate the set norms and standards internationally for suitability at regional level                                                                                                                                             |                                                                                        |</p>
<table>
<thead>
<tr>
<th>Key findings</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Role of ambassadors in Geneva from SADC member States</strong></td>
<td>Member States should notify their ambassadors on developments in intellectual property in their respective member States.</td>
</tr>
<tr>
<td><strong>COMPETITION POLICY</strong></td>
<td>Bridge the gap between intellectual property and competition policies within member States.</td>
</tr>
<tr>
<td><strong>Poor interface between intellectual property and competition policies</strong></td>
<td>Support the coordination and training of competition authorities and their interface.</td>
</tr>
<tr>
<td><strong>Lack of expertise on competition law</strong></td>
<td>Member States should develop competencies for competition law.</td>
</tr>
<tr>
<td><strong>Poorly developed anti-competition authorities</strong></td>
<td>Continue to coordinate training and development of national competition authorities.</td>
</tr>
<tr>
<td><strong>TRIPS FLEXIBILITIES</strong></td>
<td>Support the development of national infrastructures and provide the coordination mechanism.</td>
</tr>
<tr>
<td><strong>Lack of implementation in general</strong></td>
<td>Support the implementation of the policies on essential drugs and medicines.</td>
</tr>
<tr>
<td><strong>Poor implementation in relation to access to medicines in public health institutions</strong></td>
<td>Provide technical support for these developments at national and regional levels.</td>
</tr>
</tbody>
</table>

**Recommendations**

- **Member State**: Provide guidance in best practices, norm setting and standards.
- **SADC**: Continue to coordinate training and development of national competition authorities.
- **Cooperating partners**: Provide technical support for these developments at national and regional levels.
<table>
<thead>
<tr>
<th>Key findings</th>
<th>Member State</th>
<th>SADC</th>
<th>Cooperating partners</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HARMONIZATION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fee structures</td>
<td>Varied</td>
<td>Varied</td>
<td></td>
</tr>
<tr>
<td>Harmonization recommended</td>
<td>Varied</td>
<td>Harmonization recom-</td>
<td></td>
</tr>
<tr>
<td>mended</td>
<td></td>
<td>mended</td>
<td></td>
</tr>
<tr>
<td>Operationalization of international treaties and protocols</td>
<td>Implement obligations under the treaties and protocols where the member States are party</td>
<td>Support the implementation of these treaties and protocols</td>
<td>Provide technical support for these developments at national and regional levels</td>
</tr>
<tr>
<td>Poor coordination at regional level</td>
<td>None</td>
<td>Prepare a coordination framework</td>
<td>Support the initiative through guidance in best practices, norm setting and standards</td>
</tr>
<tr>
<td><strong>INTELLECTUAL PROPERTY COMMERCIALIZATION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inadequacies in licensing arrangements</td>
<td>Strengthening the licensing infrastructure at national level</td>
<td>Support the training in licensing arrangements</td>
<td>Provide technical support for these developments at national and regional levels</td>
</tr>
<tr>
<td>Absence or poor intellectual property valuation</td>
<td>Recognition of intellectual property as a business asset</td>
<td>Make a directive to its member States recognizing intellectual property as collateral</td>
<td>Support the initiative through guidance in best practices, norm setting and standards</td>
</tr>
<tr>
<td>Poor support for R&amp;D</td>
<td>Member States should implement the African Union decisions to provide at least 1% of national budget for R&amp;D</td>
<td>Support the implementation of the decisions of the African Union in its member States</td>
<td>None</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Key findings</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Weak usage of intellectual property for business development</strong></td>
<td><strong>Member State</strong></td>
</tr>
<tr>
<td></td>
<td><strong>SADC</strong></td>
</tr>
<tr>
<td></td>
<td>Member States to encourage the development of intellectual property departments in selected industries and translation of university research in R&amp;D into industrial production</td>
</tr>
<tr>
<td></td>
<td>Deliberate policies to link R&amp;D to industry highly recommended</td>
</tr>
</tbody>
</table>

**AWARENESS & CAPACITY BUILDING**

<table>
<thead>
<tr>
<th>Lack of intellectual property awareness in general</th>
<th>Step up the awareness of intellectual property for national economic development</th>
<th>Support the awareness activities in the region</th>
<th>Complement the efforts made at national and regional level in awareness creation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Shortages of intellectual property experts</strong></td>
<td>Introduce intellectual property training at national universities and develop specialized academies on intellectual property</td>
<td>Support the teaching of intellectual property at the regional level</td>
<td>Provide technical support for these developments at national and regional levels</td>
</tr>
<tr>
<td></td>
<td>Technical expertise to be availed to intellectual property offices and in industrial sectors of importance including ICT</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Intellectual property publications**

<table>
<thead>
<tr>
<th><strong>Timely and consistent periodical publication</strong></th>
<th><strong>Timely and consistent periodical publication</strong></th>
<th><strong>None</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Journals and annual reports to be readily available</td>
<td>Journals and annual reports to be readily available</td>
<td></td>
</tr>
</tbody>
</table>

**Lack of technology information centres (TICS)**

<table>
<thead>
<tr>
<th>Establish TICs</th>
<th>Support the development of TICs</th>
<th>Involvement of the international community in the development of TICs</th>
</tr>
</thead>
</table>

**Poor knowledge of attributes of copyright in economic development**

<table>
<thead>
<tr>
<th>Studies to be conducted in all SADC member States on the economic contribution of copyright industries</th>
<th>Support the initiatives</th>
<th>Provide technical support for these developments at national and regional levels</th>
</tr>
</thead>
</table>
CONTINENTAL INTELLECTUAL PROPERTY FRAMEWORK

<table>
<thead>
<tr>
<th>Key findings</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Need to support the existing regional organizations on intellectual property</td>
<td>Member States should subscribe to the ARIPO protocols</td>
</tr>
<tr>
<td>Need for further studies on PAIPO initiatives</td>
<td>Member States should be informed about the implications of such an initiative</td>
</tr>
</tbody>
</table>

Table 7 presents the Action Plan on intellectual property issues in the SADC region. The implementation of the recommendations of the study will improve the intellectual property landscape within the SADC region and pave way for sustained economic development leveraging on knowledge and ideas. The recommended actions in the critical areas are: the development of intellectual property policies and strategies, legislation, harmonization of intellectual property laws, enforcement and computerization, development of expertise in the fields of examination, auditing, strengthening the interface between intellectual property rights and competition laws, development of infrastructure and investing in region-wide studies on copyright. In all these actions, the member States have a key role to play, together with the SADC secretariat.

Table 7: Intellectual property rights action plan for SADC member States

<table>
<thead>
<tr>
<th>Intellectual Property Areas</th>
<th>Objective</th>
<th>Regional Activities</th>
<th>National Activities</th>
<th>Deliverables</th>
<th>Lead Agency(ies)</th>
<th>Indicative Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>LEGISLATION</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Outdated and non-TRIPS compliant</td>
<td>Modernization</td>
<td>Collaborate Initiatives</td>
<td>Identify gaps and implement amendments</td>
<td>Modernized and TRIPS compliant laws</td>
<td>Member States, SADC, WIPO, ECA, ARIPO</td>
<td>Project Based</td>
</tr>
<tr>
<td>Intellectual property policy development</td>
<td>Develop an Intellectual Property Policy and maximize its utilization</td>
<td>Facilitate policy development through development of templates</td>
<td>Draft intellectual property policies</td>
<td>National intellectual property policies</td>
<td>Member States, SADC, WIPO, ECA, ARIPO</td>
<td>Project Based</td>
</tr>
<tr>
<td>Intellectual Property Areas</td>
<td>Objective</td>
<td>Regional Activities</td>
<td>National Activities</td>
<td>Deliverables</td>
<td>Lead Agency(ies)</td>
<td>Indicative Timeframe</td>
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</tr>
<tr>
<td>Intellectual property rights interface</td>
<td>Develop collaborative mechanisms</td>
<td>Develop a regional framework for competition authorities</td>
<td>Develop a national framework</td>
<td>Eradicate disparities between intellectual property rights and competition laws</td>
<td>Member States, SADC, WTO, WIPO, ECA, COMESA</td>
<td>Project Based</td>
</tr>
<tr>
<td>INTELLECTUAL PROPERTY INFRASTRUCTURE</td>
<td>Framework</td>
<td>Develop and strengthen competition policies</td>
<td>Collaborate developments</td>
<td>Strengthen existing and develop where none exists</td>
<td>Modern competition practices</td>
<td>Member States, WTO, WIPO, ECA, SADC, COMESA</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>Develop innovative structures in SADC member States</td>
<td>Support the development of national innovation infrastructure.</td>
<td>Develop national innovation infrastructure.</td>
<td>Harness and nurture innovation</td>
<td>Member States, WIPO, ECA, SADC, ARIP</td>
<td>Project Based</td>
</tr>
<tr>
<td>INTELLECTUAL PROPERTY AUTHORITIES</td>
<td>Intellectual property authorities</td>
<td>Restructure and ensure relevance to economic development</td>
<td>Strengthen existing regional frameworks (i.e. ARIP)</td>
<td>Delink from Government and render them semi-autonomous</td>
<td>Modern and versatile intellectual property offices</td>
<td>Member States, WTO, WIPO, ECA, SADC</td>
</tr>
<tr>
<td>Enforcement</td>
<td>Develop enforcement regimes at national and regional levels</td>
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<td>Establish appropriate national enforcement mechanisms</td>
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<td>Achieve membership to regional and international treaties</td>
<td>Coordinate membership drive</td>
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<td>IP assets as collateral</td>
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<td>Establish regional</td>
<td>Establish financial insurance for innovation</td>
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<td>AWARENESS AND CAPACITY BUILDING</td>
<td>Training intellectual property experts</td>
<td>Develop a critical mass of expertise to support intellectual property-based development</td>
<td>Support the development of intellectual property academies at a regional level</td>
<td>Establish the teaching of intellectual property in universities and tertiary institutions</td>
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<td>Training a pool of examiners</td>
<td>Develop capacity in patent drafting</td>
<td>Complement the existing pool of examiners at ARIPO</td>
<td>Maintain a limited number of technical expertise in key technical areas and ICT</td>
<td>Capacity to do search and examination at a regional level and capacity to do limited search and examination at a national level, and employ ICT in intellectual property management</td>
<td>Cooperating partners i.e. PCT search and examination authorities</td>
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<td>Awareness</td>
<td>Create awareness on the importance of intellectual property for development and create political will</td>
<td>Coordination of awareness activities</td>
<td>Conduct awareness activities</td>
<td>Develop an intellectual property culture within the region</td>
<td>Cooperating partners i.e. AU, ECA, SADC, national intellectual property authorities and ARIPO</td>
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<td>Collective management</td>
<td>Awareness on the contribution of cultural industries to economic development</td>
<td>Harmonization and coordination of copyright and development of collective management societies</td>
<td>Strengthen and develop collective management societies and modernization of copyright laws</td>
<td>A harmonized copyright system within the region with established institutional frameworks</td>
<td>Cooperating partners i.e. CISC, WIPO, UNESCO, IFRRO, copyright authorities, ARIPO, national intellectual property offices</td>
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<td>Digitalization</td>
<td>Digitalization of copyright related rights management</td>
<td>Establish regional copyright networks</td>
<td>Establish national digital repositories</td>
<td>A searchable digitalized copyright management system</td>
<td>Cooperating partners i.e. CISC, WIPO, UNESCO, IFRRO, copyright authorities, SEACONE, ARIPO, national intellectual property offices</td>
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<td>Intellectual property coordination arrangements at continental level</td>
<td>Develop a policy framework at continental level</td>
<td>Harmonization of OAPI and ARIPO, and the development of additional regional intellectual property authorities</td>
<td>Support the restructuring of national intellectual property offices</td>
<td>Coordinated continental intellectual property arrangements</td>
<td>Cooperating partners i.e. ECA, AU, WIPO</td>
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The key issue moving forward in the harmonization of intellectual property policies in SADC is the creation of a regional policy template and framework. The template should adapt lessons from within the tripartite as well as other relevant international experiences, especially those in line with WTO and WIPO. The creation of innovation structures at national level as shown in Figure 1 will enhance intellectual property utilization in SADC member States and further strengthen the environment for the protection of ideas and processes.
Figure 1: Intellectual property innovation structures
# Annex 1: Intellectual Property Laws and Related Legislations in the SADC Region

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Annex 2: SADC States Membership of ARIPO and Associated Protocols

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Annex 3: SADC Member States in Other Regional Economic Communities (RECs)

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Annex 4: SADC States Membership of WIPO Treaties and Conventions and WTO Agreement.

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H  Hague Agreement
IPC Strasbourg Agreement
LI Lisbon Agreement
LO Locarno Agreement
MI Madrid Agreement (Indications of Source)
MM Madrid Agreement (Marks)
MP Madrid Protocol
N Nice Agreement
NOS Nairobi Treaty
P Paris Convention
PCT Patent Cooperation Treaty
PH Phonograms Convention
PLT Patent Law Treaty
RO Rome Convention
S Brussels Convention
SG Singapore Treaty
TLT Trademark Law Treaty
U UPOV Convention
VC Vienna Agreement
W WIPO Convention
WAS Washington Treaty
WCT WIPO Copyright Treaty
WPPT WIPO Performances and Phonograms Treaty
WTO Agreement establishing the World Trade Organization (WTO)
Annex 5: Relevant SADC Protocols Reviewed for the Study

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<td>Article 6 on Domestic Regulation \textit{In advocacy of domestication of regulations on intellectual property commercialization}</td>
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<td>Article 7 on Mutual Recognition \textit{Promotes intergovernmental cooperation as provided for in the Lusaka Agreement establishing ARIPO}</td>
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<td>Article 8 on Transparency \textit{Supports the notifications systems provided for under WTO for implementation by members}</td>
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<td>Article 10 on General Exceptions \textit{Supports the concept of trade secrets, which is one of the pillars of intellectual property}</td>
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<td>Article 15 on National Treatment \textit{Supports the basic principles in trade as well as in intellectual property as provided under TRIPS, the Berne and Paris conventions}</td>
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<td>Article 16 on Progressive Trade Liberalization \textit{Supports liberalization of trade—a cornerstone of the TRIPS Agreement}</td>
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<td>Article 19 on Business Practices \textit{Advocates interface between intellectual property rights and anti-competition policies as a missing link in SADC member States}</td>
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<td>PROTOCOL</td>
<td>ARTICLES AND INTELLECTUAL PROPERTY: THE RELATED SUBJECTS</td>
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| EDUCATION AND TRAINING         | Article 2 on Principles and Objectives  
Promotes intellectual property education and the development of a directory of intellectual property experts to support intellectual property development                                                                                                           |
|                                | Article 3 on Objectives  
Advocates for policies and strategies to support intellectual property development                                                                                                                                                                    |
|                                | Article 5 on Cooperation in Basic Education: Primary and Secondary Levels  
Supports the inclusion of a development oriented curricula of which IP is one of them                                                                                                                                                                        |
|                                | Article 6 on Cooperation in Intermediate Education and Training: Certificate and Diploma Levels  
Supports the inclusion of development-oriented curricula of which intellectual property is one                                                                                                                                                     |
|                                | Article 7 on Cooperation in Higher Education and Training  
Promotes coordination arrangements on intellectual property education, which is critical in exchanging experiences                                                                                                                                 |
|                                | Article 8 on Cooperation in Research and Development  
Concerted efforts in intellectual property research and development with a view to rationalize R&D                                                                                                                                               |
|                                | Article 11 on Establishment of the Subsector on Education and Training, Organs and Technical Committees  
Establishes coordination arrangements for intellectual property training in the area of science and technology                                                                                                                                         |
| SCIENCE, TECHNOLOGY AND INNOVATIONS | Article 2 on Objectives  
Supports the development of intellectual property in general among members                                                                                                                                                                                   |
|                                | Article 3 on Fundamental Principles  
Supports the adoption of best practices in the application of science and technology including innovation                                                                                                                                               |
|                                | Article 4 on Areas of Cooperation  
Supports the demystification of intellectual property and policy development, skills retention and mobilization of expertise                                                                                                                                 |
|                                | Article 5 on Institutional Mechanisms  
Establishes institutional mechanisms for implementation of development-oriented projects including intellectual property                                                                                                                                 |
|                                | Article 7 on Exchange of Information  
Supports the development of intellectual property databases and other information dissemination networks                                                                                                                                              |
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<td>Supports the development of geographical indications</td>
</tr>
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<td>Article 3 on Principles</td>
<td>Supports the protection of biological resources and biodiversity among its members</td>
</tr>
<tr>
<td>Article 5 on Travel Facilitation</td>
<td>Promotes free movement of goods and services and indirectly supports a harmonised regional trademark system</td>
</tr>
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</table>
Selected references

Intellectual Property and Intellectual Property-Related Legislation

ANGOLA

Decree on Videograms and Phonograms (2005).

BOTSWANA

Industrial Property Act (Date of Commencement) Order 2012 (2012).
First Schedule Relating to Industrial Property Rights Application Forms and Second Schedule Relating to Fees (2010).
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Law No. 2005-020 on Competition (2005); Law No. 94-036 on Customs (1994).
Inter-Ministerial Order No. 12226/2006 laying down measures to strengthen the fight against Counterfeiting of Literary and Artistic Works (2006).
Decree No. 84-390 of 13 November 1984 on Regulation of Copyright Royalties (1984).

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MAURITIUS

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MOZAMBIQUE

Regulation on the Criteria for Granting the Right to Use the Brand 'Orgulho Moçambicano Made In Mozambique' Mark (2007).

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The Brands Act (Chapter 19:03) (1962).
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