

ALIGNING AFRICA'S EVOLVING COPYRIGHT LANDSCAPE WITH AGENDA 2063: LESSONS FROM NIGERIA, UGANDA, SOUTH AFRICA, AND KENYA

CHEBET KOROS*

Researcher, Centre for Intellectual Property and Information Technology (CIPIT), Strathmore University

ABSTRACT

African nations collectively face significant imbalances in intellectual property (IP) flows, with most royalties and license fees departing for the Global North. Recent copyright legislative reforms in Nigeria, Uganda, South Africa, and Kenya seek to address these inequities, modernise legal frameworks, and ensure that creators and local industries reap the rewards of their innovations. While Nigeria's Copyright Act of 2022, Uganda's ongoing copyright amendments, South Africa's Copyright Amendment Bill, and Kenya's incremental reforms each illustrate a commitment to fostering economic growth and cultural preservation, they also highlight persistent challenges, ranging from limited enforcement mechanisms to inadequate public awareness and institutional capacity.

From the standpoint of the AU Agenda 2063, these reforms align with Africa's broader vision of socio-economic transformation and emphasise the need to balance the rights of creators with the public interest. Equally, the African Continental Free Trade Area presents new opportunities for cross-border trade in creative goods and services, but also underscores the importance of harmonised IP standards to facilitate regional integration. Taken together, these national copyright reforms offer insights into how African governments can safeguard cultural heritage, spur creativity, and enhance business competitiveness; thereby advancing Africa's economic, social, and technological aspirations under Agenda 2063 and the AfCFTA framework.

1. INTRODUCTION

Intellectual Property (IP) law in Africa is deeply rooted in its colonial past,¹ with most countries largely adopting IP laws from their former colonial powers through legal transplants.² These laws, were not designed with the specific contexts, goals, or interests of African states in mind.³ Despite shared colonial

* LLB (Catholic University of Eastern Africa), LLM (Queen Mary University of London). This paper received valuable input from Cynthia Nzuki, and Calvin Mulindwa, both researchers at the Centre for Intellectual Property and Information Technology Law (CIPIT), Strathmore University.

1 CB Ncube *Intellectual Property Law in Africa: Harmonising Administration and Policy* 2 ed (2023) 3.

2 Ibid.

3 Ncube (n1) 4; T Kongolo *African Contributions in Shaping the Worldwide Intellectual Property System* (2013) 1; SF Joireman 'Inherited legal systems and effective rule of law: Africa and the colonial legacy' (2001) 39(4) *Journal of Modern African Studies* 576.

experiences,⁴ the ‘diversity of circumstance’⁵ in the history of African IP laws, has led to a fragmented ‘spaghetti bowl’⁶ legal landscape. This has prompted some regional economic communities⁷ to pursue harmonisation of laws rather than unification.⁸ However, there is a need for flexibility in these frameworks.⁹

Since independence, African countries have either revised¹⁰ or enacted new IP laws¹¹ to align with international treaties. However, these reforms, particularly those complying with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), are often criticised as transplants of Western legal frameworks¹² and even labelled drivers of ‘economic neo-colonialism’.¹³ The root of this tension lies in the divergent IP priorities between Africa and the West. While most Western countries, as major IP producers, prioritise protection and commercialisation, many African states emphasise fair access through limitations and exceptions that serve the public interest.¹⁴ Furthermore, United Nations (UN) agency assistance in IP law development, which can introduce detrimental ideas, necessitates caution regarding its scope, goals and content.¹⁵

While high IP protection standards benefit industrialised countries that export IP-protected goods,¹⁶ they are less beneficial for many African countries that typically do not produce or export significant amounts of industrial IP-protected goods.¹⁷ However, African nations do produce substantial cultural

4 Ncube (n1) 1.

5 Ncube (n1) 3; this refers to the differing historical, political, and economic circumstances.

6 JN Bhagwati ‘US Trade Policy: The infatuation with FTAs’ Columbia University, Department of Economics Discussion Papers (2011) 726, available at: <https://doi.org/10.7916/D8CN7BFM> (accessed 20 September 2024); Bhagwati coined the term ‘spaghetti bowl’ to describe the tangled and overlapping network of free trade agreements, initially linked to issues like rules of origin, the concept has since broadened to include other trade areas such as intellectual property; JA Ogbodo ‘Beyond the ‘spaghetti bowl’: assessing the role of the AfCFTA protocol on intellectual property in Africa’s complex regulatory environment’ (2024) *Journal of Intellectual Property Law and Practice*, jpael100; Ogbodo uses the analogy to depict the multiple, overlapping IP frameworks in Africa and to explain how the AfCFTA IP Protocol fits within this intricate landscape.

7 This refers to ARIPO, EAC, COMESA, ECOWAS and SADC.

8 Ncube (n1) 2, cites R Ratchlitz ‘Effective private law harmonization: A comparative analysis of the EU Draft regulation on common European sales law and the OHADA Uniform Acts’ (2014) *Journal of Comparative Law in Africa* 50; She explains that legal harmonisation aligns national laws while allowing some divergence, whereas unification imposes identical standards with no room for variation.

9 Ncube (n1) 3.

10 Ncube (n1) 4; See T Kongolo *African Contributions in Shaping the Worldwide Intellectual Property System* (2013a) 1, 9.

11 Ibid.

12 Ibid.

13 Ibid.

14 JJ Osei-Tutu ‘IP in the African Union: Opportunities for new discourse?’ (2021) *Florida International University Legal Studies Research Paper No. 21-06 2–4*.

15 Ncube (n1) 6; See BJ Ndulo ‘The evolution of global development paradigms and their influence on African economic growth’ in BJ Ndulo, SA O’Connell, RH Bates, P Collier & CC Soludo (eds) *The Political Economy of Economic Growth in Africa, 1960–2000* (2007) 333.

16 Osei-Tutu (n14) 3.

17 Osei-Tutu (n14) 3–4.

works,¹⁸ suggesting that copyright could be advantageous, particularly if these cultural works are exported.¹⁹ Recent national copyright law reforms in Nigeria, Uganda, South Africa, and Kenya reflect renewed efforts to redress these structural inequities. The emerging copyright reform in Africa comes at a time when the continent is pursuing two major integration projects: the African Union's Agenda 2063: The Africa We Want (Agenda 2063) and the African Continental Free Trade Area (AfCFTA). Agenda 2063, adopted by the African Union (AU) Heads of State and Government in 2013, serves as Africa's 50-year strategic framework.²⁰ It is a people-driven political and policy commitment, rooted in Pan-African ideals, aiming for 'an integrated, prosperous and peaceful Africa, driven and managed by its citizens'.²¹ While not a legally binding treaty, its normative influence guides subsequent policy, and ongoing copyright reform, with its aspirations for a continent underpinned by science, technology, and innovation²² and a strong cultural identity²³ placing IP at the heart of its vision for socio-economic transformation.

The AfCFTA, a flagship project of Agenda 2063, is the engine designed to deliver this vision. The AfCFTA aims to create the world's largest single market.²⁴ Recognising that fragmented IP laws would undermine intra-African trade, the AfCFTA process included negotiations on the Protocol to the Agreement Establishing the AfCFTA on Intellectual Property Rights (the 'IP Protocol').²⁵ This Protocol, adopted in February 2023 by the AU Assembly,²⁶ is the foundational legal mechanism intended to harmonise continental IP standards, thereby directly supporting the AfCFTA's economic goals.²⁷

The emerging copyright landscape necessitates an urgent assessment of the alignment between national legislative evolution and these continental

18 See B Boateng 'The hand of the ancestors: time, cultural production, and intellectual property law' (2013) 47 *Law & society rev.* 943, 943–951. See also P Kuruk 'Protecting folklore under modern intellectual property regimes: A reappraisal of the tensions between individual and communal rights in Africa and the United States' (1999) 48 *AM. U. L. REV.* 769, 776–788; S Pager 'Accentuating the positive: Building capacity for creative industries into the development agenda for global intellectual property law' (2012) *Am. Uni. Int'l L. Rev.* 223 263–270 (discussing copyright laws, infringement and Nigeria's Nollywood).

19 Osei-Tutu (n14) 4.

20 Agenda 2063: The Africa We Want, AFRICAN UNION, Background Note 1, 2, available at: <https://au.int/en/agenda2063/overview>.

21 Quoted from the 50th Anniversary Solemn Declaration by the African Heads of State and Government.

22 Agenda 2063, Aspiration 1.

23 Agenda 2063, Aspiration 5.

24 K Africa 'Assessing five years of the African Continental Free Trade Area (AfCFTA)' (2025) 3, available at: https://www.southcentre.int/wp-content/uploads/2025/01/RP215_Assessing-Five-Years-of-the-AfCFTA_EN.pdf.

25 The Agreement Establishing the African Continental Free Trade Area, Preamble, available at: https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf.

26 Decision on the Annual Report of the Union and its Organs Including the Specific Thematic Issues by the Heads of States, Champions, Assembly/AU/Dec.854 (XXXVI) para 14: It was adopted by the 36th Ordinary Session of the Assembly of Heads of State and Government.

27 Agreement Establishing the African Continental Free Trade Area Protocol to the Agreement Establishing the African Continental Free Trade Area on Intellectual Property Rights, Preamble.

blueprints. Thus, this paper explores the evolving copyright landscape in Nigeria, Uganda, South Africa, and Kenya and critically assesses their alignment with the African Union's Agenda 2063 and the AfCFTA IP Protocol. It provides an overview of recent and ongoing copyright reforms and legal developments in these countries, which were chosen due to the significant copyright reform processes underway since the negotiation and adoption of the IP Protocol. For contextual framing, the paper first outlines the convergence between the copyright system and Agenda 2063. It then examines the AfCFTA, and its relevance to copyright, focusing on the IP Protocol. The analysis then zooms in on s 11 of the IP Protocol, critically assessing how the selected national reforms align with only these specific provisions. Finally, the paper draws comparative insights, identifying key lessons from each country's reform process and highlighting areas for further improvement.

2. CONCEPTUAL AND POLICY FRAMEWORK

This section establishes the conceptual and policy framework for the subsequent analysis by demonstrating the direct and crucial convergence between the 50-year developmental Agenda 2063 and the principles that must govern continental copyright policy. Specifically, the paper details how Agenda 2063's core aspirations, particularly those focusing on cultural identity, inclusive growth, and global competitiveness, translate into actionable objectives for IP reform, setting the non-binding yet authoritative context against which national legislative changes and the legally binding AfCFTA IP Protocol must be measured.

2.1 Agenda 2063 and copyright policy convergence

Agenda 2063, a people-driven framework, translates Pan-African ideals and aspirations into actionable objectives for Africa's transformation and technological progress. Its objective to '[h]arness the continental endowments embodied in its people, history, cultures and natural resources, geo-political position to effect equitable and people-centred growth and development' directly applies to copyright policy. This involves protecting and leveraging Africa's rich cultural heritage, traditional knowledge, and creative works, which form the foundation of IP rights.²⁸ Furthermore, its goals of 'policy space for individual, sectoral and collective actions to realize the continental vision' and 'internal coherence and coordination to continental, regional and national frameworks' support harmonised copyright laws across African Union (AU) member states, enabling a unified approach to IP protection that strengthens the continent's creative economy while preserving its cultural assets.²⁹

African cultures, heritage, and values face multiple threats. Colonialism and the slave trade devalued African identities, languages, and traditions,

²⁸ Agenda 2063, Background Note 1, 2.

²⁹ Agenda 2063, Background Note 1, 2.

while global cultural influences continue to erode indigenous values.³⁰ Africa remains underrepresented in global heritage protection, risking cultural sites.³¹ Indigenous languages are marginalised by education systems,³² and poor management of cultural diversity fuels conflict.³³

Among Agenda 2063's seven aspirations, Aspiration 5 is most relevant to copyright, focusing on strengthening Africa's cultural identity and heritage through robust copyright protection to preserve, promote, and monetise African cultural works and traditional knowledge.³⁴ Aspiration 1, emphasising inclusive growth and sustainable development, aligns with copyright reform by enabling creators to monetise works and build sustainable creative industries.³⁵ Aspiration 7's focus on global competitiveness positions Africa in the knowledge economy through strong IP protection. Further, Aspirations 2 and 6 also support harmonised IP frameworks and empowering creators, while Aspirations 3 and 4 provide foundational governance for effective copyright systems.³⁶

Aspiration 5 envisions an African cultural renaissance by 2063 through preserving and promoting the continent's cultural heritage, creative arts, and enterprises.³⁷ This involves fostering Pan-Africanism, developing a vibrant creative industry for economic growth and safeguarding cultural, linguistic, and heritage assets.³⁸

Agenda 2063's success hinges on 'unity of purpose; transparency; placing citizens' first; sound governance; willingness and capability to assess performance and correct mistakes timely'.³⁹ In line with these principles, the strategy calls for implementing cultural action plans, ratifying international conventions, protecting creators' rights, supporting cultural businesses, strengthening practitioner capacity, and curbing illicit trade in cultural assets through regional cooperation and self-reliance.⁴⁰ Consequently, this vision closely aligns with the need for copyright reform by emphasising the protection of creative works, enabling fair monetisation, supporting cultural industries, and safeguarding intangible heritage.

Moreover, the preamble to the Agreement Establishing the AfCFTA references the AU Agenda 2063's aspirations, human rights importance, and member states' flexibility to 'achieve legitimate policy objectives in areas

30 Agenda 2063 Framework Document 68–71.

31 Ibid.

32 Ibid.

33 Ibid.

34 Agenda 2063, Background Note 1, 7: Agenda 2063 is built on the AU Vision: the 50th Anniversary Solemn Declaration, the seven aspirations, national plans as well as regional and continental frameworks from which specific goals, priority areas and strategies have been developed to facilitate their achievement.

35 Agenda 2063, Background Note 1, 6.

36 Agenda 2063, Background Note 1, 7.

37 Agenda 2063 Framework Document 129, Agenda 2063 Framework Document, 'Results Matrix National Level: Goals, priority areas, targets and indicative strategies' 158.

38 Ibid.

39 Agenda 2063, Background Note 1, 4.

40 Ibid.

including public health, safety, environment... and cultural diversity’.⁴¹ It also allows the AU ‘to advance a continental approach to a balanced IP rights system that responds to the aspirations contained in Agenda 2063’.⁴² Notably, protocols will also be an integral part of the Agreement and a single undertaking upon adoption.⁴³ Accordingly, the subsequent section explores the AfCFTA IP Protocol and its provisions for copyright and related rights.

2.2 The AfCFTA IP Protocol

After the AfCFTA was signed, the AU Executive Council acknowledged the commencement of the negotiations on intellectual property (IP) rights.⁴⁴ During the negotiation of the IP Protocol, IP scholars discussed the principles and priorities that should inform it.⁴⁵ They argue that Africa’s IP landscape is fragmented, requiring the AfCFTA IP Protocol to address the coexistence of the two subregional IP regimes, the overlapping treatment of IP issues within regional economic communities, and the lack of alignment with the continent’s broader development objectives.⁴⁶ Therefore, the IP Protocol is expected to preserve national policy space from trade-related constraints, strengthen domestic IP law and policy development, and promote coherent regional cooperation.⁴⁷

The stated objective of the IP Protocol is to harmonise IP rules and principles to boost intra-African trade and ‘promote intellectual property policy coherence’ to align national IP regimes for broader economic integration.⁴⁸ Specifically, it aims to foster innovation and creativity, support science, industrialisation, digital trade, and technology transfer.⁴⁹ Additionally, the Protocol seeks to advance African negotiating positions, support creative and cultural industries, enhance access to knowledge, and address state parties’ public health priorities.⁵⁰

Under the Protocol, IP rights protection and enforcement are guided by principles that promote intra-African trade, ensure IP policy coherence with

41 The Agreement Establishing the African Continental Free Trade Area, Preamble, available at: https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf.

42 U.N. Econ. Commission For Africa Et Al. *Assessing Regional Integration in Africa, ARIA IX: Next Steps for the Continental Free Trade Area*, at iv (2019), available at: https://www.uneca.org/sites/default/files/PublicationFiles/aria9_report_en_4sept_fin.pdf; The AfCFTA Agreement, arts 4, 6–8.

43 The AfCFTA Agreement, art 8.

44 Decision on the Draft Agreement Establishing the African Continental Free Trade Area (AfCFTA). Doc. TI/AfCFTA/AMOT/5/FINAL/Report. Doc. Ext/STC/Legal/MIN/Report (II), clause 9, available at: <https://africanlii.org/akn/aa-au/statement/statement/au-ec/2018/1/eng@2018-03-19/source.pdf>.

45 CBNcube & T Schonwetter, J de Beer & C Oguamanam ‘A principled approach to intellectual property rights and innovation in the African Continental Free Trade Agreement’ in D Luke & J Macleod *Inclusive Trade in Africa: The African Continental Free Trade Area in Comparative Perspective* (2019), available at: https://www.academia.edu/43907806/A_principled_approach_to_intellectual_property_rights_and_innovation_in_the_African_Continental_Free_Trade_Agreement.

46 Ncube et al (n45) 179–180.

47 Ncube et al (n45) 181.

48 AfCFTA IP Protocol, Preamble, art 2(1).

49 AfCFTA IP Protocol, art 2(2)(a)–(d).

50 AfCFTA IP Protocol, art 2(2)(f)–(i).

socio-economic objectives, balance public and private interests, and advance public interest in crucial sectors like health, education, and agriculture.⁵¹ These principles also promote access to medicines, essential healthcare tools and clean energy, support digital trade and transformation, foster environmental sustainability, and prevent IP misuse that could hinder trade or technology transfer.⁵²

Article 11 provides the obligation for state parties to provide for copyright protection of creative works and the rights of performers, sound recording producers, and broadcasting organisations.⁵³ Additionally, state parties must establish frameworks that strike a balance between safeguarding creators' rights and facilitating public access and use of works.⁵⁴ It further requires the development of copyright frameworks to account for rapid technological advancements,⁵⁵ and promote fair and adequate remuneration for authors and performers, fostering sustainable creative industries and incentivising artistic and intellectual output.⁵⁶ Further, the AfCFTA's regional integration objective is underscored by the provision requiring copyright frameworks to facilitate the cross-border flow of educational and cultural materials.⁵⁷

The IP Protocol offers flexibility for tailoring the provisions to national development needs and interests through copyright exceptions and limitations consistent with treaties and developmental interests.⁵⁸ In particular, it supports access to knowledge efforts through exceptions for educational and research purposes.⁵⁹ It addresses the dual objectives of cultural preservation and individual learning by requiring state parties to provide exceptions for cultural preservation.⁶⁰ Additionally, it mandates exceptions for reproducing a reasonable portion of any published work, for research or private study.⁶¹

The Protocol also reflects a commitment to inclusivity and international human rights by requiring state parties to comply with their international obligations relating to access to published works for visually impaired

51 AfCFTA IP Protocol, art 4(a)–(d).

52 AfCFTA IP Protocol, art 4(e)–(h).

53 Protocol to the Agreement Establishing the African Continental Free Trade Area on Intellectual Property Rights, art 11(1), available at: https://africanlii.org/akn/aa-au/act/protocol/2023/free_trade_area_on_intellectual_property_rights/eng@2023-02-19/source (accessed on 15 October 2025).

54 AfCFTA IP Protocol, art 11(2): This balance is crucial for achieving broader societal goals like education, research, scientific inquiry, and the preservation of cultural materials, all contributing to public welfare and sustainable development.

55 AfCFTA IP Protocol, art 11(2)(a): It refers to technological developments that have fundamentally altered traditional models of production, dissemination, and use of copyrighted works.

56 AfCFTA IP Protocol, art 11(2)(b).

57 AfCFTA IP Protocol, art 11(2)(c): This provision would thereby promote knowledge exchange, cultural understanding, and regional trade in creative works.

58 AfCFTA IP Protocol, art 11(3).

59 AfCFTA IP Protocol, art 11(4): The definition of 'educational purposes' is broadened to explicitly include distance, online, and emergency remote teaching and learning, reflecting modern pedagogical practices.

60 AfCFTA IP Protocol, art 11(5).

61 Ibid.

persons.⁶² Finally, the Protocol is a living document, stating that state parties shall comply with additional obligations set out in a future annex on copyright and related rights.⁶³ This allows for future copyright provisions on technological advancements such as artificial intelligence.

Overall, the IP Protocol creates new opportunities for IP discourse tailored to African countries' needs,⁶⁴ logically reflecting African views on innovation, progress, and development.⁶⁵ Its inclusion in the AfCFTA offers the opportunity for human development-oriented IP that expressly mentions and reinforces respect for human rights.⁶⁶

Recognising that IP laws and policies impact human rights and development across Africa,⁶⁷ the AU, through the AfCFTA IP Protocol, has a significant opportunity to create human-centred IP policies for Africa.⁶⁸ The balance between protection and public interest has been a crucial discussion point in the IP Protocol's adoption.⁶⁹ Instead of adopting a protectionist IP model, the framework can expressly build in human development and flourishing objectives.⁷⁰ Furthermore, as trade agreements express an understanding of IP's societal role, these regional agreements can contribute to norm-setting for international IP.⁷¹

2.3 Public interest and copyright balance

The preceding discussion established that both Agenda 2063 and the AfCFTA IP Protocol demand a copyright system that is robust yet fundamentally balanced. While the international IP framework, such as the TRIPS Agreement permits flexibilities, the African context requires a tailored application that actively counters the legacy of colonial-era, protectionist laws.⁷² The TRIPS Agreement's legitimacy has, however, been increasingly contested due to the imposition of high protection and enforcement standards that overlook the diverse needs, interests, and developmental priorities of less developed member states.⁷³ Consequently, balance is interpreted here as moving away from a 'one-size-fits-all' model toward one that prioritises the use of limitations and exceptions (L&Es) to ensure equitable access to education and culture, thereby serving human development.⁷⁴ Assessing whether national reforms

62 AfCFTA IP Protocol, art 11(6).

63 AfCFTA IP Protocol, art 11(7).

64 Osei-Tutu (n14) 15.

65 Ibid.

66 Ibid.

67 Osei-Tutu (n14) 19.

68 Ibid.

69 Osei-Tutu (n14) 16.

70 See JJ Osei-Tutu 'Human development as a core objective of global intellectual property law' (2016) 105 *KY L.J.* 1.

71 Osei-Tutu (n14) 16.

72 Ncube (n1) 3.

73 PK Yu 'The objectives and principles of the TRIPS Agreement' (2010) 46 *Houston Law Review* 106, available at: https://www.iilsindia.com/study-material/973884_1624199671.pdf; SK Sell *Private Power, Public Law: The Globalization of Intellectual Property Rights* (2013) 173.

74 Yu (n73) 1.

in Nigeria, Uganda, South Africa, and Kenya embed this public interest mandate is therefore the crucial test of their alignment with the continental developmental vision.

Public interest, in IP terms, is distinct from but interconnected with public policy,⁷⁵ as public policy's objective should be to advance public interest.⁷⁶ While the international IP framework establishes a public interest standard, its interpretation and implementation vary significantly across states.⁷⁷

Article 7 of the TRIPS Agreement highlights the need to balance IP rights protection with access to technological innovation and knowledge for public welfare.⁷⁸ It underscores that IP protection should not be an end in itself but a means to promote innovation, technology transfer, and the mutual benefit of creators and users, thereby advancing social and economic welfare.⁷⁹ However, it has been criticised as imbalanced for developing countries, as technology transfer and dissemination terms often favour right holders from developed nations.⁸⁰ Article 7's 'pro-development position is reinforced by Article 8' and provides general guidance on using limitations and exceptions (L&Es) by TRIPS members.⁸¹ Article 8(1) of the TRIPS Agreement creates policy space for the purpose of protecting public health and sectors vital for socio-economic and technological development.⁸² It affirms members' discretion to adopt measures safeguarding public interests, so long as these align with

75 Ncube (n1) 6: 'Public policy is a statement of a government's chosen approach to specific matters which gives guidance to relevant persons, including government itself, on how certain goals are to be set and achieved.'; AJ Belohlavek 'Public policy and public interest in international law and EU law' in A Belohlavek & N Rozehnalova (eds) *CYIL – Czech Yearbook of International Law: Public Policy and Ordre Public* (Vol. III) (2012) 118. Also see T Dye *Understanding Public Policy* (1972) 2; BW Hogwood & L Gunn *Policy Analysis for the Real World* (1984) 23–24; and R Wilson 'Policy analysis as policy advice' in M Moran, M Rein & RE Goodin (eds) *The Oxford Handbook of Public Policy* (2006) 1.

76 Ncube (n1) 6; See LS Ho *Public Policy and the Public Interest* (2012) 1, 19; KB Smith 'Economic techniques' in M Moran, M Rein & RE Goodin (eds) *The Oxford Handbook of Public Policy* (2006) 730.

77 Ncube (n1) 8.

78 The provision states: 'The protection and enforcement of intellectual property rights 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 to social and economic welfare, and to a balance of rights and obligations.'

79 T Romero 'Articles 7 and 8 as the basis for interpretation of the TRIPS Agreement' South Centre Policy Brief (1 June 2020) 79 2, available at: <https://ssrn.com/abstract=3632941>.

80 Ncube (n1) 8; T Voon & AD Mitchell 'TRIPS' in D Bethlehem, D McRae, R Neufeld & I Van Damme (eds) *The Oxford Handbook on International Trade Law* (2009) 205, available at: <https://ssrn.com/abstract=2663897>.

81 Ncube (n1) 9; see EB Rodrigues Jr *The General Exception Clauses of the TRIPS Agreement: Promoting Sustainable Development* (2012) 45.

82 TRIPS Agreement, art 8(1): 'Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.'

TRIPS provisions.⁸³ These core provisions have been viewed as ‘aspirational’⁸⁴ and central to how TRIPS should be interpreted⁸⁵ as they express the goal of IP law to promote public interest,⁸⁶ and protect rights while enabling states to tailor IP regimes to their developmental needs.⁸⁷

Further, while compulsory licences under TRIPS have been less popular for copyright use,⁸⁸ L&Es are more frequently employed to achieve public interest,⁸⁹ with scholars emphasising their availability for all forms of IP.⁹⁰

During copyright reform, public interest is accounted for when the interests of the copyright creators, users and society are all considered.⁹¹ Most African states envision IP laws serving the public interest, tailored to their specific conditions rather than a ‘one-size-fits-all’ approach.⁹² Given their diverse national contexts and need for tailored approaches, African states require flexible IP systems adapted to their circumstances.⁹³ The vision is for IP to be a tool that complements African states’ development goals, rather than hindering their economic growth.⁹⁴

This paper, therefore, examines the copyright reform efforts in Nigeria, Uganda, South Africa and Kenya to assess their alignment with Agenda 2063’s aspiration for cultural promotion and the AfCFTA’s IP Protocol provisions on copyright. This analysis aims to identify lessons for other African countries on integrating the Protocol into their copyright frameworks to achieve the ‘Africa we want’.

3. NATIONAL COPYRIGHT REFORMS

Africa’s current IP framework is marked by divergences and inconsistencies with broader development priorities.⁹⁵ The AfCFTA IP Protocol offers a unique opportunity to establish coherence across these systems by promoting alignment between national and regional regimes, safeguarding policy space, and supporting the development of context-appropriate legislative frameworks.⁹⁶ In doing so, it can lay the groundwork for a unified and development-oriented

83 Romero (n79) 2.

84 Ncube (n1) 10; See M Chon ‘Intellectual property from below: Copyright and capability for education’ (2007) 40 *U.C. DAVIS. L. REV.* 803, 810 (discussing distributive justice as it relates to the global trading system); RC Dreyfuss ‘TRIPS-round II: Should users strike back?’ (2004) 71(1) *University of Chicago Law Review* 22.

85 Ncube (n1) 10; see D Gervais *The TRIPS Agreement: Drafting History and Analysis* 2 ed (2003) 120, 122; A Kapczynski ‘Harmonization and its discontents: A case study of TRIPS implementation in India’s pharmaceutical sector’ (2009) 97(6) *California Law Review* 1571–1649.

86 Ibid.

87 Romero (n79) 2.

88 J Victor ‘Reconceptualizing compulsory copyright licenses’ (2020) 72 *Stanford Law Review* 915–994; Ncube (n1) 9.

89 Ibid.

90 See S Halabi ‘International IP shelters’ (2016) 90 *TUL. L. REV.* 903.

91 Ncube (n1) 11.

92 Ncube (n1) 12.

93 Ncube (n1) 14; B Kilic *Boosting Pharmaceutical Innovation in the Post-TRIPS Era* (2015) 209.

94 Ncube (n1) 12–13; WIPO Doc CDIP/5/9 Rev, 26 April 2010.

95 Ncube et al (n45) 179–181.

96 Ibid.

approach to knowledge governance in Africa.⁹⁷ Thus, this paper argues that copyright reform in alignment with the AfCFTA IP Protocol is a crucial step toward harmonising Africa's fragmented IP landscape. To articulate this argument, this section assesses the legal implications and conceptual alignment of Nigeria, Uganda, Kenya and South Africa's copyright reform efforts with Agenda 2063 through art 11 of the AfCFTA IP Protocol.

3.1 Nigeria

Nigeria's Copyright Act of 2022⁹⁸ significantly modernises its legal framework, marking the first major overhaul in over three decades. This legislative action directly addresses the complexities of the digital era, focusing on the dual objectives of enhancing copyright protection against threats like digital piracy and fostering a balanced ecosystem for creators and public interest.⁹⁹

The Nigeria Copyright Act 2022 (hereinafter 'the 2022 Act') significantly aligns with the objectives of art 11 of the IP Protocol, reflecting a commitment to preserving African culture, heritage, and economic development. The following assessment analyses specific reforms in the 2022 Copyright Act and their alignment with art 11 of the AfCFTA IP Protocol.

3.1.1 *General protection for copyright and related rights*

Aligning with the IP Protocol, the 2022 Act strengthens the substantive copyright protection afforded to creators by enhancing moral right protection through introducing the author's right to object to false attribution.¹⁰⁰ Notably, it sets a time limit on moral rights, consistent with the copyright duration.¹⁰¹

Copyright protection is further amplified by increasing penalties for anti-piracy device offenses and introducing a *mens rea* element. For possessing or importing anti-piracy devices, the 2022 Act mandates a minimum fine of ₦1,000,000 or five years imprisonment, or both,¹⁰² with counterfeiting of these devices now incurring a minimum ₦500,000 fine or three years imprisonment.¹⁰³ Critically, this legislative refinement enhances enforcement capability by introducing a demonstrable standard of criminal intent, evidenced by the included exemption for individuals who can prove a lack of knowledge regarding the device's anti-piracy function.¹⁰⁴

97 Ibid.

98 Copyright Act No 8 of 2022 (Nigeria), available at: <https://placng.org/i/wp-content/uploads/2023/04/Copyright-Act-2022.pdf> (accessed on 19 July 2025).

99 A Praise 'Implications of the Copyright Act 2022 on generative AI and fair dealing' (2024), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5010517 (accessed on 28 May 2025).

100 Section 14(2) of the Copyright Act 2022 (Nigeria). This right of false attribution was not included previously in s 12 of the Copyright Act 1988 (Nigeria).

101 Section 14(4) of the Copyright Act 2022 (Nigeria). Previously, the Act had no time limit and allowed moral rights to subsist in perpetuity: s 12(2) of the Copyright Act 1988 (Nigeria).

102 Section 49(3) of the Copyright Act 2022 Nigeria. This was a substantial increase from the 1988 Act's maximum of ₦500,000 or five years imprisonment per s 21(3) of Copyright Act 1988.

103 Section 49(4) of the Copyright Act 2022 (Nigeria). This is compared to the 1988 Act's ₦50,000 fine or up to five years imprisonment per s 21(4) of the Copyright Act 1988 (Nigeria).

104 Section 49(4) of the Copyright Act 2022 (Nigeria).

3.1.2 *Balanced frameworks for public welfare and sustainable development*

The 2022 Act empowers the Nigerian Copyright Commission (NCC) to create and enforce anti-piracy identifiers, crucial for distinguishing genuine works and tracking authenticity.¹⁰⁵ It significantly increases the penalty for selling, renting, hiring, or offering copyrighted work without an anti-piracy device.¹⁰⁶ This technical enforcement is paired with enhanced regulatory oversight through the Copyright (Collective Management Organisations) Regulations 2025.¹⁰⁷ The 2025 Regulations seek to enhance fairness to rights holders, transparency, accountability and oversight, thus strengthening its framework for fair and adequate remuneration for authors and performers.¹⁰⁸ Additionally, they enhance operational accountability by mandating annual reports, licensing revenues and distribution records submission to the NCC.¹⁰⁹ Expanded information rights for members significantly improve CMO governance transparency, requiring comprehensive, accessible, and up-to-date information disclosure.¹¹⁰ Beyond transparency, the 2025 regulations introduce a robust compliance and sanctions regime,¹¹¹ empowering the NCC to decisively address CMO non-compliance.¹¹² This reform escalates enforcement with graduated sanctions, including written cautions, monetary fines, suspension, or disqualification from office,¹¹³ and allows for temporary or permanent disqualification for repeated misconduct.¹¹⁴ These collective measures regarding financial transparency and rigorous enforcement are critical for ensuring equitable revenue collection and

105 Section 49(1) of the Copyright Act 2022 (Nigeria).

106 The 2022 Act increases the penalty from the 1988 Act's ₦100,000 fine or up to twelve months imprisonment to a minimum ₦500,000 fine or a minimum three years imprisonment per s 21 of the Copyright Act 1988 (Nigeria).

107 Copyright (Collective Management Organisations) Regulations 2025 (Nigeria), available at: <https://www.copyright.gov.ng> (accessed on 28 May 2025).

108 Copyright (Collective Management Organisations) Regulations 2007 (Nigeria), SI No 37 of 2007, available at: <https://www.wipo.int/wipolex/en/text/15354> (accessed on 28 May 2025).

109 Regulation 23, Copyright (Collective Management Organisations) Regulations 2025 (Nigeria), available at: <https://www.copyright.gov.ng> (accessed on 28 May 2025). The annual reports and audited accounts were required for member access per s 6, Copyright (Collective Management Organisations) Regulations 2007 (Nigeria), SI No 37 of 2007. The 2007 regulations gave information rights to members of Collective Management Organisations to obtain annual statements of accounts; list of governing boards of the organisation; an annual report of the governing board report of auditors, and information on remuneration paid to directors and employees of the organisation.

110 A CMO must disclose key details such as eligibility criteria and procedures for membership, the scope of rights transferred, rules governing membership termination, procedures upon the death or dissolution of a member, governance structures, meeting procedures, and deduction policies per reg 7(1); s 23, Copyright (Collective Management Organisations) Regulations 2025 (Nigeria).

111 Regulation 8(6), Copyright (Collective Management Organisations) Regulations 2007 (Nigeria), SI No 37 of 2007, available at: <https://www.wipo.int/wipolex/en/text/15354> (accessed on 28 May 2025).

112 The NCC may issue a formal notice detailing the nature of the violation, the specific regulatory provisions involved, and a deadline by which the breach must be remedied, supported with evidence of compliance per reg 30(1), Copyright (Collective Management Organisations) Regulations 2025 (Nigeria), available at: <https://www.copyright.gov.ng> (accessed on 28 May 2025).

113 Regulation 30(1), Copyright (Collective Management Organisations) Regulations 2025 (Nigeria), available at: <https://www.copyright.gov.ng> (accessed on 28 May 2025).

114 Regulation 32, Copyright (Collective Management Organisations) Regulations 2025 (Nigeria).

distribution to rights holders, aligning with the IP Protocol's objective of fair and adequate remuneration.¹¹⁵

3.1.3 *Exceptions and limitations consistent with treaties and developmental interests*

The 2022 Act, adds new general exceptions to copyright that are applicable in the digital age, such as the right to reproduce or adapt a computer program for archival purposes, system repair and lawful use.¹¹⁶ These new exceptions for software adaptation align with Agenda 2063's aspiration for a well-developed ICT framework and digital economy.¹¹⁷

Notably, the 2022 Act provides an expansive and open-ended fair-dealing clause.¹¹⁸ The inclusion of 'such as' opens up the previously closed list of research, private study, criticism, parody, news reporting and educational activities.¹¹⁹ Furthermore, the 2022 Act enshrines a contract override clause, which is crucial in the digital age where restrictive licensing agreements and digital rights can undermine lawful public interest uses.¹²⁰ This contract override clause aligns with Agenda 2063's Aspiration 3, which calls for an Africa rooted in democratic values, human rights and strong institutions. The law also permits the use of copyrighted software, including making backup copies, reverse engineering for interoperability, and usage for non-commercial educational or research purposes.¹²¹ This flexibility is essential for innovation and public access in a digitally interconnected world, directly corresponding with the Protocol's emphasis on technological adaptability.¹²²

The 2022 Act also permits the use of copyrighted materials for education, libraries, archives, and museums for preservation, replacement, or educational dissemination.¹²³ It extends these exceptions to libraries and archives to digitise and preserve works that are at risk of being lost due to obsolescence, thereby safeguarding Africa's intellectual heritage for future generations.¹²⁴

Additionally, the 2022 Act enhances access for persons with disabilities by domesticating the Marrakesh Treaty. It permits the reproduction and distribution of works in accessible formats for persons who are blind or otherwise print-disabled, either directly or through authorised entities. This reflects a strong

115 AfCFTA IP Protocol, art 11(2)(b).

116 Section 20 of the Copyright Act 2022 (Nigeria). These exceptions permit software reproduction for essential computer use, creating backups, or activating a computer for maintenance or repair. Crucially, repair-related copies must be used solely for repair and immediately destroyed afterward. Additionally, access to non-essential program parts for temporary copies must be strictly limited.

117 African Union Commission, Agenda 2063: The Africa We Want (Popular Version) (African Union Commission 2015), available at: https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf (accessed on 28 May 2025).

118 Section 20 of the Copyright Act 2022 (Nigeria).

119 Ibid.

120 Section 20(3) of the Copyright Act 2022 (Nigeria).

121 Section 20(2) of the Copyright Act 2022 (Nigeria).

122 AfCFTA IP Protocol, art 11(2)(a).

123 Sections 21–25 of the Copyright Act 2022 (Nigeria).

124 Section 25 of the Copyright Act 2022 (Nigeria).

commitment to inclusion and aligns closely with the AfCFTA Protocol's directive on compliance with the Marrakesh Treaty as well as promoting access to knowledge and technology for vulnerable communities.¹²⁵

3.1.4 Reflections

Despite significant reforms aligning with the AfCFTA IP Protocol, reflecting copyright reform lessons for other African countries, the 2022 Copyright Act does not address emerging technological advancements like artificial intelligence. It is silent on copyright ownership of autonomously generated AI works.¹²⁶ Further, while the 2022 Act provides for fair dealing exceptions for non-commercial research, it is ambiguous whether this exception extends to machine learning research practices like text and data mining.¹²⁷ The CMO Regulations 2025 face criticism for potentially excluding non-members of CMOs from key procedural rights, even as they enhance the protection of CMO members.¹²⁸ Critics argue that despite introducing beneficial transparency, accountability, and dispute resolution standards, the Regulations fail to safeguard non-members whose works are exploited.¹²⁹ These non-members, often creators whose rights are monetised without their formal affiliation, are procedurally disadvantaged,¹³⁰ lacking guaranteed access to royalty records, unable to verify entitlements, and barred from using the CMO's internal complaint mechanisms.¹³¹ Despite contributing economically, they remain procedurally invisible.¹³²

Nonetheless, the reform provisions discussed earlier demonstrate Nigeria's comprehensive alignment with art 11 of the IP Protocol. The Copyright Act of 2022 not only promotes greater access to copyrighted works for educational, scientific, and public interest purposes but also ensures that authors and performers are adequately protected and compensated.

3.2 Uganda

In response to the evolving global landscape, Uganda is in the process of amending its Copyright and Neighbouring Rights Act.¹³³ The Copyright

125 AfCFTA IP Protocol, art 11(6).

126 P Adegoke 'Implications of the Copyright Act 2022 on generative AI and fair dealing' (2023) 5, available at: https://www.researchgate.net/publication/387851529_Implications_of_the_Copyright_Act_2022_on_Generative_AI_and_Fair_Dealing (accessed on 29 May 2025).

127 P Adegoke 'Implications of the Copyright Act 2022 on generative AI and fair dealing' (2023) 7.

128 S Lari-Williams 'Nigeria's Copyright Collective Management Regulations: Justice for members only?' *The IPKat* (20 May 2025), available at: <https://ipkitten.blogspot.com/2025/05/nigerias-copyright-collective.html> (accessed on 29 May 2025).

129 Ibid.

130 Ibid.

131 Ibid.

132 Ibid.

133 Copyright and Neighbouring Rights Act 19 of 2006 (Chapter 222) (Uganda), available at: <https://resolver.laws.africa/resolve/akn/ug/act/2006/19/eng@2023-12-31> (accessed on 29 May 2025). See also Parliament of Uganda, *Hansard*, 13 May 2025, 6 (First Reading of the Copyright and Neighbouring Rights (Amendment) Bill, 2025).

and Neighbouring Rights (Amendment) Bill 2025 (hereafter the Copyright Amendment Bill) proposes reforms with the goal of domesticating copyright treaties, providing protection of copyright in their use digitally, regulating the exploitation of contracts and streamlining the registration of collecting societies.¹³⁴ This is to be achieved by addressing digital infringement, improving remuneration mechanisms, enhancing accessibility for persons with disabilities, domesticating international standards and promoting a fairer, more inclusive creative economy.¹³⁵

The Copyright Amendment Bill is intended to modernise Uganda's copyright law to keep up with the realities of the digital age, the growing use of technology, and the country's obligations under international treaties. The reforms aim to better protect creators in digital spaces, ensure that artists are paid, and make cultural works more accessible to people with disabilities. This modernisation effort is therefore positioned as a proactive commitment to fulfilling Uganda's international legal obligations while actively fostering a fairer, technologically adaptive, and inclusive creative economy. The following assessment analyses the specific reforms proposed in the Bill and their operational alignment with the provisions of art 11 of the AfCFTA IP Protocol.

3.2.1 *Balanced frameworks for public welfare and sustainable development*

The Bill aims to update the Act with contemporary copyright terminology to enhance clarity in the definition of works eligible for protection.¹³⁶ To enhance copyright protection in the digital realm, the Bill introduces a new provision to empower the Registrar of Copyright or a rightsholder to issue take-down notices of infringing content hosted on online platforms.¹³⁷

In line with the Protocol's emphasis on balanced copyright protection and fair remuneration for creators, the amendment bill introduces several progressive reforms to safeguard authors from exploitation and strengthen their economic rights.¹³⁸ The Bill seeks to remedy the unfair exploitation of rightsholders in the creative industry and, in so doing, aligns with the provision of fair and adequate remuneration for authors and performers.¹³⁹ It does so by first providing new provisions for commercialisation transactions, requiring the registration of assignments, licenses, and transfers within 60 days of execution,

134 Copyright Amendment Bill 2025, Memorandum, s 1

135 Copyright Amendment Bill 2025, Memorandum, s 3. Uganda has strengthened its commitment to international copyright standards by ratifying key treaties including the Berne Convention, the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT), and the Beijing Treaty on Audiovisual Performances.

136 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 2. See also A Rukundo 'Fair use in the digital age: An analysis of the adequacy of the Copyright and Neighbouring Rights Act in relation to digital content', available at: <https://www.idosr.org/wp-content/uploads/2024/08/IDOSR-JCIAH-10150-58-2024.pdf> (accessed on 13 October 2025). The author critiques the shortcomings of the 2006 Copyright and Neighbouring Rights Act against online infringement on platforms such as YouTube and TikTok and Instagram.

137 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 17.

138 AfCFTA IP Protocol, art 11(2)(b).

139 Ibid.

and prescribing penalties for non-compliance.¹⁴⁰ Secondly, it provides for reversion rights with the aim of protecting authors of copyrighted works from inadvertently transferring their rights through fraudulent assignments.¹⁴¹ However, implementing this provision must be done fairly to avoid harming legitimate assignees; otherwise there is a risk of transforming assignments into mere licenses.

Thirdly, the Bill aligns with the AfCFTA IP Protocol's aim to ensure equitable remuneration for the use of copyrighted works, by providing compensation to the authors of orphan works if they are later discovered.¹⁴² This is through a government-managed licensing framework for orphan works.¹⁴³ Fourthly, it seeks to enhance the remuneration rights of performers of audiovisual fixations, such as film actors, by ensuring they are compensated for every commercial use, including broadcasting and public performances, and thereby also domesticating the provisions of the Beijing Treaty on Audiovisual Performances, 2012.¹⁴⁴

Fifthly, the Bill addresses remuneration gaps in the exploitation of caller ring-back tones by introducing a mandatory right of remuneration and fixed rates for their use aimed at fair compensation to the authors or performers (60%), telecom operators (31.5%) and aggregators (8.5%).¹⁴⁵ Lastly, it aims to enhance the regulation and oversight of collecting societies by streamlining their registration process and expanding their mandate to collect and distribute royalties to both their members and other rights holders, thereby promoting fair payment for content creators.¹⁴⁶ Additionally, it seeks to promote transparency, accountability and good governance within collecting societies by providing for the requirement of an annual general meeting.¹⁴⁷ These efforts all align with the AfCFTA IP Protocol's vision of a copyright framework that promotes fair and adequate remuneration for authors and performers. Uganda's Bill offers valuable lessons on how to implement this provision within national law.

140 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 5.

141 Copyright and Neighbouring Rights (Amendment) Bill 2025, memorandum, clause 6: The provision for reversion rights limit copyright assignments to 20 years before they revert to the author with the aim of ensuring fairer economic benefits. Section 13A(1) states that, 'Subject to the contract of assignment, licence or transfer, the assignment, licence or transfer of economic rights in a copyright shall be valid for a period not exceeding twenty years from the date of the assignment, licence or transfer.'

142 Copyright and Neighbouring Rights (Amendment) Bill 2025, memorandum, s 4.

143 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 8.

144 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 9.

145 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 11.

146 Copyright and Neighbouring Rights (Amendment) Bill 2025, clauses 20 and 21.

147 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 25.

3.2.2 *Exceptions and limitations: Alignment with treaties, developmental interests, and specific provisions for education, research, and cultural heritage*¹⁴⁸

The Bill seeks to prohibit the circumvention of technological protection measures (TPM) and penalise any person who evades digital locks or circulates circumvention tools.¹⁴⁹ By doing so, it intends to enhance the protection of rights and copyrighted works in the digital environment, as well as to domesticate the provisions of the World Intellectual Property Organization Copyright Treaty (1996) and the World Intellectual Property Organization Performances and Phonograms Treaty (1996).¹⁵⁰ In line with the IP Protocol, the Bill provides an exception to the TPM provision for software, services, and devices used to access copyrighted works for security, education, research and innovation, or for use by a visually impaired person.¹⁵¹

3.2.2.1 Exceptions for cultural heritage preservation and research/private study¹⁵²

The Bill proposes to add translations, adaptations and transformations of folklore as original works eligible for copyright protection, thereby reflecting Uganda's commitment to protecting and preserving indigenous cultural expressions aligning with Agenda 2063's goal of having an African renaissance and the AfCFTA IP Protocol.¹⁵³

It also introduces a provision for limited reprographic copying, capping such use at 5% of a published literary or musical work within a single instance or over a three-month period.¹⁵⁴ The proposed reforms reflect a balanced approach to copyright, both facilitating access for learning and inclusion, while safeguarding the interests of rights holders.

3.2.2.2 Compliance with international obligations for visually impaired access¹⁵⁵

The Bill aims to domesticate the Marrakesh Treaty by expanding the fair use provision to allow for the transcription of works into accessible formats and their use in online learning, thereby improving access for individuals with disabilities and educational institutions.¹⁵⁶ Specifically, it introduces language that moves beyond braille and sign language by allowing the making of

148 AfCFTA IP Protocol, art 11(3).

149 Copyright and Neighbouring Rights (Amendment) Bill 2025, memorandum, s 4.

150 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 6.

151 Ibid.

152 AfCFTA IP Protocol, art 11(5).

153 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 3.

154 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 8.

155 AfCFTA IP Protocol, art 11(6).

156 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 7.

any other accessible format copies for cross-border exchange or use by the beneficiary persons, provided such use is non-commercial.¹⁵⁷

These amendments reflect Uganda's proactive approach to adapting to technological advancements, aiming for equitable remuneration, extended protection, and enhanced regulatory measures. In December 2024, the Copyright and Neighbouring Rights (Amendment) Bill 2024 was approved by the Cabinet.¹⁵⁸ The Minister of Justice and Constitutional Affairs presented the Bill for its First Reading in Parliament on 13 May 2025 and was subsequently referred to the Legal and Parliamentary Affairs Committee for further review ahead of parliamentary debate and potential assent.¹⁵⁹

3.2.3 Reflections

Despite these positive proposals, the Copyright Amendment Bill has been criticised for prioritising the music and audiovisual sectors while neglecting text and image-based works sector.¹⁶⁰ Critics argue that the imbalance undermines the principle of non-discrimination in copyright law, thereby denying equal protection to authors and publishers in literary and visual arts.¹⁶¹

Another major challenge faced by Ugandan creators is the limited capacity of local collecting societies. While the collecting societies play a critical role in negotiating and collecting royalties on behalf of creators, their effectiveness is often undermined by inadequate legal frameworks and a lack of public awareness about copyright issues.¹⁶² This limitation exacerbates the unequal bargaining power between local creators and international entities, potentially leading to the exploitation of Ugandan content without adequate compensation.¹⁶³ Although the Copyright Amendment Bill seeks to regulate collecting societies, the Uganda Registration Services Bureau (URSB) should also plan for sensitisation within the creative industry.

Furthermore, the incorporation of international copyright treaties without sufficient consideration of the local context can potentially disadvantage Ugandan creators. This aspect ought to be thoroughly considered to ensure the reform's true alignment with the AfCFTA.

157 Ibid.

158 Uganda Registration Services Bureau 'Statement on the Copyright and Neighbouring Rights (Amendment) Bill, 2024', 18/12/2024, available at: <https://x.com/URSBHQ/status/1869377181027385460> (accessed on 21 July 2025).

159 USRB Communications 'Justice Minister leads reading of copyright Amendment Bill 2025 for the first time', available at: <https://ursb.go.ug/2025/05/28/justice-minister-leads-reading-of-copyright-amendment-bill-2025-for-the-first-time/> (accessed on 21 July 2025).

160 International Federation of Reproduction Rights Organisations 'Letter to Uganda's Ministry of Justice on the Copyright and Neighbouring Rights (Amendment) Bill, 2024' (15 October 2024), available at: <https://iforro.org> (accessed on 29 May 2025).

161 Ibid.

162 L Emmanuel, IE Egho-Promise, KJ Alhassan & AM Bagwa 'Copyright Content User Licensing Model for Collective Management Organizations in Uganda' (2023) 9(3) *Journal of Behavioural Informatics Digital Humanities & Developmental Research* 20, 22–24.

163 Ibid.

Nevertheless, if enacted, the Copyright Amendment Bill presents significant opportunities for enhanced remuneration for authors and performers by strengthening copyright protection, which aligns with art 11(b)(2) of the IP Protocol.

3.3 South Africa

South Africa has been engaged in significant reform of its copyright law, aiming to update the Copyright Act of 1978 to align with constitutional rights and existing and prospective international treaty obligations.¹⁶⁴ This reform effort has taken shape through the Copyright Amendment Bill [B13F-2017] (CAB)¹⁶⁵ and the associated Performers' Protection Amendment Bill [B24F-2016].¹⁶⁶ The reform is driven by dissatisfaction within various sectors, particularly concerning the lack of access to the copyright system for local performers and composers.¹⁶⁷ The Bill further seeks to modernise copyright law for the digital era, enhance access to and use of copyrighted works, including for education and research, promote payment of royalties, and facilitate South Africa's accession to international treaties.¹⁶⁸

3.3.1 *Legislative process and presidential referral*

The CAB has had a protracted legislative history, with draft amendments published as early as 2015.¹⁶⁹ After multiple revisions and public participation processes, the Bill was passed by the National Assembly in December 2018 and by both Houses of Parliament in March 2019.¹⁷⁰ However, in June 2020, the President withheld his assent to the Bill and referred it back to Parliament,

164 KD Beiter et al 'Copyright reform in South Africa: Two joint academic opinions on the Copyright Amendment Bill [B13B-2017]' 2022 (25) *PER / PELJ* 1, available at: <https://www.saflii.org/za/journals/PER/2022/66.pdf> (accessed on 17 July 2025); J Holland 'Copyright law and freedom of expression in South Africa' (2017) 8(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, available at: <https://www.ajol.info/index.php/nauij/article/view/156734> (accessed on 17 July 2025): South Africa is already a party to the Berne Convention and the TRIPS Agreement. It has also signed, but not yet ratified, the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT), and the Marrakesh Treaty.

165 Republic of South Africa Copyright Amendment Bill [B13F-2017], available at: https://www.thedtic.gov.za/wp-content/uploads/B13F-CopyRight-2017-ag_bill13F-copyright-2017-ag.pdf (accessed on 17 July 2025).

166 Republic of South Africa Performers' Protection Amendment Bill [B24F-2016] (2016), available at: https://www.thedtic.gov.za/wp-content/uploads/B24F-2016-performers-ag_bill24F-2016-performers-ag.pdf (accessed on 17 July 2025).

167 Republic of South Africa Copyright Amendment Bill [B13F-2017], *Government Gazette* No 40121, 5 July 2016, available at: https://www.thedtic.gov.za/wp-content/uploads/B13F-CopyRight-2017-ag_bill13F-copyright-2017-ag.pdf and https://www.gov.za/sites/default/files/gcis_document/201705/b13-2017copyright170516.pdf (accessed on 17 July 2025)

168 Ibid.

169 Beiter (n164).

170 Ibid.

citing reservations about its constitutionality.¹⁷¹ In May 2020, Blind SA, an organisation advocating for people with visual and print disabilities, initiated a lawsuit against the President for ‘unreasonably delaying’ the Bill, arguing the delay violated their constitutional right of access to information.¹⁷²

In June 2020, the President referred the CAB back to Parliament pursuant to s 79 of the SA Constitution.¹⁷³ The President outlined core reservations, including that; (i) the Bill was incorrectly categorized under s 75;¹⁷⁴ (ii) royalty provisions might arbitrarily regulate constitutional property due to potential retrospectivity; (iii) there was inadequate public participation on the proposed ‘fair use’ clause; (iv) copyright exceptions for libraries and education risked arbitrary deprivation of constitutional property; and (v) the provisions might generally be incompatible with South Africa’s international copyright obligations.¹⁷⁵

Following the President’s referral, Parliament was required to consider the listed concerns. Public consultations took place, including written submissions and public hearings, in August 2021.¹⁷⁶ During the legislative delay, Blind SA initiated fresh litigation, arguing that the existing 1978 Act’s lack of an accessible format shifting provision constituted unfair discrimination against people with visual and print disabilities.¹⁷⁷ The Pretoria High Court agreed, declaring the current Copyright Act unconstitutional in September 2021.¹⁷⁸

In 2022, the Constitutional Court confirmed the unconstitutionality of the 1978 Act in the case *Blind SA I*.¹⁷⁹ As an immediate, interim remedy, the Court ‘read-in’ s 19D (the accessible format shifting provision for persons with disabilities) from the CAB into the current Copyright Act, demonstrating that some CAB provisions were constitutionally required.¹⁸⁰ The declaration of invalidity was suspended for two years to allow Parliament time to enact remedial legislation.¹⁸¹ Parliament responded to the President’s reservations

171 Republic of South Africa Copyright Amendment Bill [B13-2017], *Government Gazette* No 40121, 5 July 2016, available at: https://www.gov.za/sites/default/files/gcis_document/201705/b13-2017copyright170516.pdf (accessed on 17 July 2025). Under s 79(1) of the Constitution, the President must assent to and sign a Bill unless he has reservations about its constitutionality, in which case he refers it back to the National Assembly for reconsideration.

172 Beiter (n164).

173 Beiter (n164).

174 Ibid. The s 75 process is for ‘Ordinary Bills not affecting provinces’. It is the process used for other copyright and intellectual property amendments. The President states that he has reservations that the s 76 process should have been followed because copyright amendments affect areas like trade and culture, which are subject to joint national and provincial authority.

175 Ibid.

176 Ibid.

177 Beiter (n164).

178 Ibid.

179 S Samtani ‘South African apex court recognises the ‘constitutional imperatives of equality and dignity for persons with disabilities’ in landmark copyright judgment’ *InfoJustice* (8 May 2025), available at: <https://infojustice.org/archives/46309> (accessed 13 October 2025).

180 Ibid.

181 S Samtani ‘The South African Copyright Amendment Bill at the Constitutional Court: Notes from the Presidential Referral of the Bill (Part I)’ *InfoJustice* (27 May 2025), available at: <https://infojustice.org/archives/46418> (accessed on 13 October 2025).

and integrated the changes necessary to address the *Blind SA I* judgment.¹⁸² The newly revised Bill (CAB [B13F-2017]) was subsequently passed by Parliament in February 2024.¹⁸³

After Parliament passed the revised Bill in February 2024, the President did not assent to it by the time the interim remedy granted in *Blind SA I* lapsed in September 2024.¹⁸⁴ Instead, the President exercised his power under s 79(4)(b) of the Constitution and referred the Bill to the Constitutional Court for a determination on the constitutionality of two remaining concerns in October 2024.¹⁸⁵

The President's 2024 referral asserted that, notwithstanding Parliament's previous actions; (i) the fair and equitable remuneration provisions (proposed ss 6A, 7A, and 8A) continued to operate retrospectively, risking arbitrary deprivation of property; and (ii) the new exceptions and limitations (including fair use, educational, and library exceptions in proposed ss 12A–D and 19B–C) risked arbitrary deprivation of property and conflicted with South Africa's international obligations.¹⁸⁶ In response to the resulting legal vacuum caused by the lapse of the *Blind SA I* remedy, the Constitutional Court issued an interim order in December 2024, re-reading the temporary remedy.¹⁸⁷

The current status¹⁸⁸ of the South African copyright reform process is defined by the Presidential Referral of the Copyright Amendment Bill (CAB) to the Constitutional Court.¹⁸⁹ Before addressing the substantive issues, the Court must first determine the validity of the referral.¹⁹⁰ If the referral is deemed valid, the Court will proceed with an objective constitutionality inquiry focused primarily on the constitutional property clause to determine if these provisions constitute an arbitrary deprivation of property or conflict with South Africa's international obligations, such as the Berne Convention's three-step test.¹⁹¹ This proceeding is a crucial turning point because if the Constitutional Court ultimately finds that the President's reservations are without merit, the Constitution requires the Court to direct the President to assent to and sign the Bill into law, but if the reservations are deemed valid, the Court may declare the relevant provisions or the entire Bill unconstitutional.¹⁹²

182 Ibid.

183 Ibid.

184 Samtani (n179).

185 M Forere 'The compliance of the fair use clause in the South African Copyright Amendment Bill with the three-step test and the Constitution of South Africa' (2025) 20(7) *Journal of Intellectual Property Law & Practice* 447–457, available at: <https://doi.org/10.1093/jiplp/jpaf031> (accessed on 13 October 2025).

186 Samtani (n181).

187 Samtani (n179).

188 As of October 2025, the time of writing this article.

189 S Samtani 'The South African Copyright Amendment Bill at the Constitutional Court: Notes from the Presidential Referral of the Bill (Part II)' *InfoJustice* (27 May 2025), available at: <https://infojustice.org/archives/46420> (accessed on 13 October 2025).

190 Ibid.

191 Ibid.

192 Ibid.

3.3.2 *Alignment with Agenda 2063 and the AfCFTA IP Protocol*

South Africa's ongoing significant overhaul and reform of its copyright law,¹⁹³ while fundamentally a domestic legal process, can be most meaningfully understood and critically assessed through the lens of its alignment with broader continental development frameworks, specifically the African Union's Agenda 2063¹⁹⁴ and the African Continental Free Trade Area (AfCFTA) Protocol on Intellectual Property Rights (IP Protocol).¹⁹⁵ This perspective allows for an evaluation of how South Africa's copyright reform can serve as a powerful policy lever for achieving the continent's shared aspirations for inclusive growth, cultural preservation, digital transformation, and enhanced access to knowledge.

The objectives and direction of South Africa's copyright reform, as provided for under the Memorandum on the Objects of the Copyright Amendment Bill¹⁹⁶ inherently align with many core aspirations of Agenda 2063, even though the Bill itself does not explicitly reference these continental policy frameworks. Agenda 2063 envisions 'a prosperous Africa based on inclusive growth and sustainable development',¹⁹⁷ where poverty is eradicated, and shared prosperity is built through social and economic transformation.¹⁹⁸ This vision is evident in the CAB.

3.3.3 *Fair and adequate remuneration for authors and performers*

The focus on limitations and exceptions, particularly fair use, has eclipsed the core discussion of the CAB.¹⁹⁹ This narrow view is often championed by South African creators and performers whom the Bill is designed to protect from historical impoverishment.²⁰⁰ The CAB's essential provisions establish rights and mechanisms to guarantee fair remuneration, directly addressing long-standing power imbalances in the creative industry.²⁰¹ If implemented, the CAB will reposition South African copyright law to adequately balance creator welfare and the public's need for access to information, effectively ending the era of creators living in poverty.²⁰²

The CAB's focus on promoting fair royalty payments and ensuring equitable remuneration for local performers and composers directly supports

193 Beiter (n164).

194 Agenda 2063.

195 AfCFTA IP Protocol.

196 Republic of South Africa Copyright Amendment Bill [B13F-2017], *Government Gazette* No 40121, 5 July 2016, available at: https://www.thedtic.gov.za/wp-content/uploads/B13F-CopyRight-2017-ag_bill13F-copyright-2017-ag.pdf (accessed on 17 July 2025).

197 Agenda 2063, Aspiration 1.

198 Agenda 2063, Aspiration 1.

199 D Oriakhogba & E Erhagbe 'The Copyright Amendment Bill: A new vista for fair remuneration for South African creators and performers?' (2024) *GRUR International* 73, available at: https://www.researchgate.net/publication/381734876_The_Copyright_Amendment_Bill_A_New_Vista_for_Fair_Remuneration_for_South_African_Creators_and_Performers.

200 Ibid.

201 Ibid.

202 Ibid.

this aspiration.²⁰³ The Copyright Amendment Bill advances fair royalty payments and equitable remuneration through concrete provisions such as the introduction of resale royalty rights for visual artists,²⁰⁴ a reversion right limiting copyright assignments to 25 years,²⁰⁵ and strengthened regulation of collecting management organisations under new Chapter 1A to ensure transparency and fair distribution of royalties.²⁰⁶ Complementing this, the Performers' Protection Amendment Bill grants performers economic and moral rights, requires written consent for exploitation, and introduces a 25-year reversion period for transferred rights in sound recordings to guarantee continuing benefit.²⁰⁷ Collectively, these reforms embed equitable remuneration within the statutory framework, reducing contractual exploitation and reinforcing creators' long-term participation in the value of their works.

By addressing historical imbalances in contractual relationships between creators and distributors, the Bill seeks to improve the earnings and livelihoods of creative professionals, thereby contributing to a more equitable and vibrant cultural economy across the continent.²⁰⁸ This emphasis on empowering creators, particularly those who have historically lacked access to the copyright system, resonates deeply with Agenda 2063's vision of development being 'people-driven, relying on the potential of African people, especially its women and youth'.²⁰⁹ The AfCFTA IP Protocol further reinforces this by committing to an 'inclusive, balanced, and development-oriented Protocol on Intellectual Property Rights that centres African interests and prioritizes African-driven innovation and creativity'.²¹⁰ Keenly, CAB directly addresses many of the foundational principles and specific directives articulated in art 11 of the AfCFTA IP Protocol, which is dedicated to Copyright and Related Rights.²¹¹

3.3.4 *Exceptions and limitations*

3.3.4.1 Education, research, cultural heritage preservation and private study purposes

Furthermore, the CAB directly supports human capital development and seeks to enhance access to copyrighted works for education and research, which

203 Beiter (n164).

204 South Africa Copyright Amendment Bill [B13F-2017], ss 7B–7E.

205 Ibid, s 22(3).

206 Ibid, s 25.

207 South Africa Performers' Protection Amendment Bill [B24F-2016], ss 3–5.

208 Beiter (n164).

209 Agenda 2063, Aspiration 6.

210 AfCFTA IP Protocol, Preamble.

211 AfCFTA IP Protocol, art 11. This article outlines the commitment of state parties to provide protection for copyright and related rights, emphasizing the need for balanced frameworks that promote protection, access, and use of works for public welfare and sustainable development. It specifically mandates consideration for rapid technological developments, fair remuneration for creators, facilitation of cross-border flows of educational and cultural materials, and provision for exceptions related to education, research, cultural preservation, and accessibility for persons with disabilities

is vital for building a knowledge-based economy and ensuring that no child misses school due to poverty or discrimination.²¹² The IP Protocol echoes this by stating one of its specific objectives is to ‘contribute to the promotion of science, industrialisation, services, investment, digital trade, technology, and technology transfer, and regional value chains’,²¹³ and ‘contribute to access to knowledge’²¹⁴ and to promote the ‘public interest in sectors of vital importance to socio-economic and technological development including but not limited to education’. The CAB directly fulfils art 11’s objective²¹⁵ through its exception for educational uses²¹⁶ and for library uses,²¹⁷ which are crucial for providing remote access to materials, a need that was highlighted by the pandemic.

3.3.4.2 Exceptions and limitations consistent with treaties and developmental interests

The CAB proposes a more open-ended fair dealing approach, listing examples of purposes using phrases like ‘such as’ or ‘including’, indicating the list is non-exhaustive.²¹⁸ This open-endedness is controversial, with critics arguing it delegates legislative power to the courts.²¹⁹ The Bill’s criteria for assessing fairness differ from those established in case law for fair dealing, particularly concerning commercial considerations and the potential ‘substitution effect’.²²⁰ While proponents argue that this flexibility is needed to future-proof the law for technological changes,²²¹ opponents are concerned that the open-ended nature and fairness criteria could significantly threaten the copyright industries.²²² Moreover, fair use is seen as interfering with the exclusive rights of copyright owners, thus constituting a ‘deprivation’ under art 25(1) of the Constitution.²²³

3.3.4.3 Compliance with international obligations for visually impaired access

In *Blind SA v Minister of Trade* (CCT 320/21),²²⁴ the Constitutional Court declared that key provisions of the Copyright Act were constitutionally invalid

212 Agenda 2063, Aspiration 1(10) aims for ‘well educated and skilled citizens, underpinned by science, technology and innovation for a knowledge society’.

213 AfCFTA IP Protocol, art 2.

214 AfCFTA IP Protocol, art 2.

215 AfCFTA IP Protocol, art 11. Its objective is to ‘facilitate the protection, access to, and use of works for education, research, scientific inquiry, and the preservation of cultural materials for the advancement of public welfare and sustainable development’.

216 CAB, s 12D.

217 CAB, s 19C.

218 Forere (n185).

219 Ibid.

220 Forere (n185): relates to whether the use replaces the original work in the market.

221 Beiter (n164).

222 Forere (n185).

223 Forere (n185): Such deprivation would not be *arbitrary*, as it serves a legitimate public purpose of balancing creators’ exclusive rights with access to knowledge and expression.

224 *Blind SA v Ministry of Trade, Industry and Competition and Others* (14996/21) [2021] ZAGPPHC 871; 2021 BIP 14 (GP) (7 December 2021), available at: <https://www.saflii.org/za/cases/ZAGPPHC/2021/871.html> (accessed on 13 October 2025).

to the extent they prevented persons with print and visual disabilities from accessing works in accessible formats, and ‘read in’ a format-shifting exception to remedy the defect.²²⁵ That judgment effectively made the proposed exception for format adaptation law, on the basis that failing to permit it unreasonably discriminates and undermines dignity and freedom of information.²²⁶ Thus, any discussion of fair-use or other exceptions must reckon with the fact that the Court has now required a constitutionally compliant limitation regime in copyright law, including permitted format-shifting, so long as it is proportionate and non-arbitrary.²²⁷

Notably, the CAB addresses accessible format shifting for persons with disabilities.²²⁸ This provision, which was read into the Act as an interim remedy due to the existing Copyright Act’s unconstitutionality on the basis of unfair discrimination, aligns perfectly with Agenda 2063’s people-centred development vision that seeks an inclusive continent where ‘no child, woman or man will be left behind or excluded’.²²⁹ This provision also directly aligns with the AfCFTA IP Protocol art 11’s commitment that state parties ‘agree to comply with their international obligations relating to the provision of access to published works for visually impaired persons’,²³⁰ further emphasising the AfCFTA IP Protocol’s principles to promote ‘the public interest in sectors of vital importance to socio-economic and technological development including but not limited to education, public health, agriculture, food security, and nutrition’.²³¹

3.3.5 *Adaptation to technological developments*

From a digital transformation and global influence perspective, the CAB’s objective to modernise copyright law for the digital era²³² reflects Agenda 2063’s recognition of the ‘modern information revolution’ and the need for Africa to leverage technological advancements.²³³ The Bill’s strategic alignment with key international intellectual property treaties, such as the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT), and the Marrakesh Treaty, aims to facilitate South Africa’s

225 CB Neube & S Samtani ‘Copyright, disability rights, and the Constitution: Blind SA v Minister for Trade, Industry and Competition’ (2023) 13(1) *Constitutional Court Review*, available at: <https://doi.org/10.2989/CCR.2023.0016> (accessed on 13 October 2025).

226 Ibid.

227 S Samtani ‘South African apex court recognises the “constitutional imperatives of equality and dignity for persons with disabilities” in landmark copyright judgment’ *InfoJustice* (8 May 2025), available at: <https://infojustice.org/archives/46309> (accessed on 13 October 2025).

228 Republic of South Africa Copyright Amendment Bill [B13-2017], s 19D, *Government Gazette* No 40121, 5 July 2016, available at: https://www.gov.za/sites/default/files/gcis_document/201705/b13-2017copyright170516.pdf (accessed on 17 July 2025).

229 Agenda 2063, Aspiration 6(47).

230 AfCFTA IP Protocol, art 11(6).

231 AfCFTA IP Protocol, art 4.

232 Republic of South Africa Copyright Amendment Bill [B13-2017], *Government Gazette* No 40121, 5 July 2016, available at: https://www.gov.za/sites/default/files/gcis_document/201705/b13-2017copyright170516.pdf (accessed on 17 July 2025).

233 Agenda 2063.

accession to these instruments.²³⁴ This positioning is crucial for South Africa, and by extension, the continent, as it enhances credibility and strengthens the collective African voice in international forums, directly contributing to Agenda 2063's Aspiration 7 for 'Africa as a strong, united, resilient and influential global player and partner'.²³⁵

3.3.6 Reflections

However, the path to reform has been fraught with challenges and controversies,²³⁶ which highlight the complexities of balancing competing interests while striving for continental objectives. A central contention is the proposed 'fair use' clause, which has been criticised for its open-ended nature,²³⁷ potentially leading to arbitrary deprivation of constitutional property without compensation and an alleged improper delegation of legislative authority to the courts.²³⁸ While proponents argue this flexibility is necessary to adapt to future technological changes, opponents fear it could destabilise copyright industries.²³⁹ This controversy presents a critical tension, while Agenda 2063 and the AfCFTA IP Protocol seek to foster innovation and creativity for inclusive growth, a copyright regime perceived as undermining creators' rights could paradoxically inhibit the very cultural and creative industries vital for economic transformation.

Similarly, the President asserted that the new exceptions, specifically proposed ss 12A–D, 19B, and 19C (covering fair use, education, libraries, etc.), ran the risk of arbitrarily depriving copyright owners of their property, potentially violating s 25(1) of the Constitution.²⁴⁰ The core of this concern rests on the assertion that these exceptions are overbroad and would conflict with the normal exploitation of the work and cause unreasonable prejudice to the rights holder.²⁴¹ This argument relies heavily on the premise that these limitations breach the international law standard known as the three-step test, derived from the Berne Convention and the TRIPS Agreement.²⁴² Critics of the referral argued that the President focused too narrowly on international copyright law while neglecting other interlocking obligations, specifically international human rights obligations, which these exceptions might be constitutionally mandated to fulfil.²⁴³

234 Beiter (n164).

235 Agenda 2063, Aspiration 7.

236 Beiter (n164).

237 Forere (n185).

238 Forere (n185).

239 Beiter (n164).

240 S Samtani 'The South African Copyright Amendment Bill at the Constitutional Court: Notes from the Presidential Referral of the Bill (Part I)' *InfoJustice* (27 May 2025), available at: <https://infojustice.org/archives/46418> (accessed on 13 October 2025).

241 S Samtani 'The South African Copyright Amendment Bill at the Constitutional Court: Notes from the Presidential Referral of the Bill (Part II)' *InfoJustice* (27 May 2025), available at: <https://infojustice.org/archives/46420> (accessed on 13 October 2025).

242 Ibid.

243 Ibid.

Article 11.2 of the AfCFTA IP protocol explicitly requires state parties to encourage and facilitate the protection, access to, and use of works for education, research, scientific inquiry, and the preservation of cultural materials for the advancement of public welfare and sustainable development.²⁴⁴ Proponents argued that the challenged exceptions (like the education and library provisions in ss 12D and 19C) give effect to South Africa's constitutional rights, including equality, non-discrimination, and education, which is particularly important given the country's deep inequalities.²⁴⁵ It is asserted that these educational and library exceptions are constitutionally required to discharge South Africa's human rights obligations.²⁴⁶ The approach adopted in the Bill, which seeks to align domestic law with constitutional imperatives, international human rights obligations, and international copyright obligations, was deemed 'robust and legally sustainable' by some observers.²⁴⁷ Furthermore, these frameworks are intended to account for rapid technological developments that have transformed traditional models of production and dissemination.²⁴⁸

In conclusion, South Africa's copyright reform process represents a directed effort to update its legal framework in line with constitutional imperatives, human rights obligations, and evolving digital realities. Despite persistent constitutional and policy debates, particularly around fair use and remuneration, the reform underscores a broader commitment to equity, access to knowledge, and sustainable creative growth. Ultimately, the outcome of the Constitutional Court's review will not only determine the future of South Africa's copyright regime but also signal the continent's direction in harmonising intellectual property with the developmental goals of Agenda 2063 and the AfCFTA IP Protocol.

3.4 Kenya

Kenya's copyright regime has undergone several transformations over the past two decades, reflecting a growing recognition of the centrality of creative works to the national economy, identity, and international obligations. From the enactment of the foundational Copyright Act in 2001 to the current Copyright Act of 2022,²⁴⁹ and ongoing discussions of an overhaul Copyright and Related Rights amendment in 2025, the reform journey demonstrates an intent to modernise the legal framework in alignment with the country's digital, economic, and social evolution.

244 AfCFTA IP Protocol, art 11.2.

245 S Samtani 'The South African Copyright Amendment Bill at the Constitutional Court: Notes from the Presidential Referral of the Bill (Part II)' *InfoJustice* (27 May 2025), available at: <https://infojustice.org/archives/46420> (accessed on 13 October 2025).

246 Ibid.

247 S Samtani 'South African apex court recognises the "constitutional imperatives of equality and dignity for persons with disabilities" in landmark copyright judgment' *InfoJustice* (8 May 2025), available at: <https://infojustice.org/archives/46309> (accessed on 13 October 2025).

248 AfCFTA IP Protocol, art 11.2(a).

249 Copyright Act 12 of 2001, as amended in 2022 (Cap. 130) (Kenya), available at: <https://new.kenyalaw.org/akn/ke/act/2001/12/eng@2022-12-31> (accessed on 17 July 2025).

The Copyright Act of 2001,²⁵⁰ established comprehensive legal protection for literary, artistic, musical, and audio-visual works in Kenya while creating the Kenya Copyright Board (KECOBO) as the primary regulatory authority.²⁵¹ The legislation delineated eligible works for copyright protection, introduced exclusive²⁵² and moral rights for authors,²⁵³ and provided frameworks for collective management organisation licensing²⁵⁴ and enforcement mechanisms.²⁵⁵

Over the years, amendments to the Act responded to emerging legal and technological needs, which included rectifications in 2003, enhancements to administrative structures and performers' rights in 2007 and 2012, and the introduction of mechanisms like compulsory licensing and clearer duration terms in 2014.²⁵⁶ In 2017, the Statute Law (Miscellaneous Amendments) Act (2017) deleted s 30A, removing the right to equitable remuneration for the use of sound recordings and audio-visual works, and designated the Copyright Tribunal as the competent authority for determining royalty levels.²⁵⁷

The 2019 Amendment Act expanded the definition of eligible works,²⁵⁸ formalised the National Rights Registry (NRR),²⁵⁹ and enhanced digital rights enforcement mechanisms like takedown procedures and ISP liability protections.²⁶⁰ It also introduced the Artist Resale Right (ARR),²⁶¹ mandated revenue sharing for ring back tunes,²⁶² and established stronger transparency measures for CMOs.²⁶³ These were further refined in 2022, including provisions for accessibility for persons with disabilities.²⁶⁴

250 Cap. 130.

251 Cap. 130, s 3.

252 Cap. 130, s 26.

253 Cap. 130, s 32.

254 Cap. 130, Part VII.

255 Cap. 130, s 35.

256 Cap. 130, see the History of the Amendments to the Copyright Act here: <https://new.kenyalaw.org/akn/ke/act/2001/12/eng/@2022-12-31>. The Statute Law (Miscellaneous Amendments) Act, 2014, introduced s 33A for Compulsory Licences for Withheld Works, allowing a competent authority (later Board) to grant a license for works not made available in the Kenyan market if the copyright owner refused to publish or imposed unreasonable terms, with the license granted to the applicant who best served public interest.

257 Cap. 130.

258 Cap. 130, s 22.

259 Cap. 130, s 22B. The NRR portal is the central repository collating details pertaining to ownership of various copyright works and is used by copyright holders to register and view or download copyright certificates. See: <https://nrr.copyright.go.ke/>. The National Rights Registry (NRR) serves as a reference point for determining eligibility for statutory damages. Additionally in cases where a copyright work is used as security, the interest may be registered in the Registry for the duration of the undischarged security, this elevates the importance of registration without contravening the international principle, set under the Berne Convention, that copyright protection does not depend on formalities.

260 Cap. 130, ss 35A, 35B, 35C.

261 Cap. 130, s 26D.

262 Cap. 130, s 30C.

263 Cap. 130 Part VII.

264 Cap. 130, s 26C.

Kenya's recent copyright reforms, exemplified by the Copyright Act 2001, as amended in 2022,²⁶⁵ represent a significant legislative undertaking aimed at modernising its intellectual property framework.

3.4.1 *Fair and adequate remuneration for authors and performers*

Kenya's copyright reforms contribute directly to the Agenda 2063 aspirations²⁶⁶ by empowering creators and innovators. Measures such as the introduction of the Artist Resale Right (ARR) in the 2019 Amendment Act,²⁶⁷ which grants visual artists and their heirs a 5% royalty on successive commercial re-sales of their artwork, aim to provide equitable compensation and potentially elevate their living standards, thereby incentivising artistic creation.²⁶⁸ This directly feeds into Agenda 2063's goal of fostering a knowledge society and ensuring a high standard of living for African people, as well as the IP Protocol.

3.4.2 *Adaptation to technological developments*

Furthermore, the reforms' focus on regulating digital content and revenue streams, such as the mandatory revenue sharing for ring back tones, ensuring at least 52% for the artist or copyright owner,²⁶⁹ aligns with the Agenda's emphasis on developing robust ICT and digital economies.²⁷⁰ By providing clearer legal frameworks for digital content, Kenya supports the growth of a digitally-enabled creative sector, which is vital for the continent's structural transformation and job creation as envisioned in Agenda 2063.²⁷¹

3.4.3 *Balanced frameworks for public welfare and sustainable development*

The AfCFTA IP Protocol provides guidelines to state parties to create a balance between public and private interests, promote the public interest in vital sectors like education and public health, and facilitate access to knowledge.²⁷² Keenly, art 11.2 of the IP Protocol provides for balanced copyright and related rights frameworks that encourage and facilitate the protection, access to, and use of works for education, research, scientific inquiry, and the preservation of cultural materials for the advancement of public welfare and sustainable development.²⁷³ Kenya's reforms, with the anticipation of an overhauled copyright and related rights law, reflect aspects of these guiding principles, particularly in their efforts to establish a more balanced framework.

265 Cap. 130, s 30C.

266 The aspiration for a prosperous continent based on inclusive growth and sustainable development, with well-educated and skilled citizens underpinned by science, technology, and innovation for a knowledge society.

267 Cap. 130.

268 Cap. 130.

269 Cap. 130, s 30C.

270 Agenda 2063.

271 Agenda 2063.

272 AfCFTA IP Protocol, Preamble.

273 AfCFTA IP Protocol, art 11.2.

3.4.4 *General protection for copyright and related rights*

Regarding protection, the reforms have clarified copyright duration and eligible works, expanded exclusive rights, and introduced specific provisions for Technological Protection Measures (TPMs) to prevent unauthorised circumvention.²⁷⁴ The establishment of the National Rights Registry (NRR), through voluntary registration for copyright, serves as *prima facie* evidence of ownership and a basis for statutory damages, providing clearer signals for enforcement.²⁷⁵ These measures strengthen the legal framework, offering more robust protection for creators in the digital landscape.

3.4.5 *Exceptions and limitations consistent with treaties and developmental interests*

However, the more significant alignment with art 11 lies in Kenya's exceptions and limitations (L&Es), which directly facilitate access and use for public interest purposes. The reforms explicitly permit making a single copy for private use.²⁷⁶ This acknowledgement of consumer behaviour in the digital age aligns with art 11(2)(a).²⁷⁷ The anticipated copyright reforms could potentially open the closed list of exceptions, like Nigeria, South Africa and Uganda's approaches, to future-proof the law for emerging technological advancements. However, this remains a recommendation rather than an established reform direction.

3.4.6 *Compliance with international obligations for visually impaired access*

Moreover, the Kenyan reforms have significantly broadened provisions for visually impaired persons and other persons with disabilities through the domestication of the Marrakesh Treaty, allowing beneficiaries or authorised entities to make, import, distribute, or share accessible format copies.²⁷⁸ Critically, these provisions also permit the circumvention of Technological Protection Measures (TPMs) for such purposes under specific conditions. This directly fulfils art 11.6 of the AfCFTA Protocol.²⁷⁹

3.4.7 *Specific exceptions for educational and research purposes*

Similarly, the detailed exceptions for libraries, archives, and educational institutions permit acts such as lending, copying for research or private study,

²⁷⁴ Cap. 130.

²⁷⁵ Cap. 130, s22A, s22B.

²⁷⁶ Cap. 130, Second Schedule.

²⁷⁷ AfCFTA IP Protocol, art 11(2)(a), requires frameworks to 'take into account rapid technological developments that have disrupted and transformed traditional models of production, dissemination, and use of copyrighted works'.

²⁷⁸ Cap. 130, s 26C.

²⁷⁹ AfCFTA IP Protocol, art 11(6), obliges state parties to 'comply with their international obligations relating to the provision of access to published works for visually impaired persons'.

and reproduction for archiving or preservation.²⁸⁰ These L&Es are a direct embodiment of the AfCFTA IP Protocol's call to facilitate 'cross-border flows of educational and cultural materials'²⁸¹ and to provide 'exceptions and limitations for educational and research purposes in national contexts, online cross-border contexts, and multi-country research collaborations.'²⁸² By ensuring that copyright protection does not unduly impede access for education and research, Kenya supports the continent's aspirations for a knowledge-based economy and human capital development.

Furthermore, the refined provisions for online intermediary liability in the 2019 Amendment Act,²⁸³ including conditions for ISP non-liability and a detailed notice and takedown regime,²⁸⁴ aim to create a more structured and predictable legal landscape for online content. Even with the vagueness of certain terms or the potential for automated systems to lead to censorship, the intent is to address the challenges of online piracy and provide tools for rights holders in the digital environment, thereby fostering a more secure ecosystem for digital innovation and trade.

3.4.8 *Reflections*

Despite these commendable strides, certain aspects of the reforms warrant critical consideration. The model designating the Kenya Revenue Authority (KRA) or a KECOBO-designated entity to collect royalties on behalf of CMOs,²⁸⁵ while intended to streamline collection, has the potential for multiple deductions and raises questions on the appropriateness of a government agency handling private property collection.

Similarly, although copyright accrues automatically, the NRR's reliance by CMOs for royalty disbursement²⁸⁶ implicitly makes registration necessary for artists to receive royalties, raising concerns about the *de facto* reintroduction of formalities and potential limitations on rights holders' agency. The absence of a formal national IP policy and strategy, despite ongoing efforts, also suggests that a comprehensive, overarching framework is still in development.²⁸⁷ However, these are challenges in implementation and refinement rather than a misalignment of fundamental principles.

Kenya's copyright law is currently undergoing significant review through a comprehensive reform process that aims to modernise the existing legal framework. While the specific legislative text remains under development and has not yet been formally introduced to parliament, policy discussions and

280 Cap. 130, Second Schedule.

281 AfCFTA IP Protocol.

282 AfCFTA IP Protocol.

283 Cap. 130, s 35A, s 35B and s 35C.

284 Cap. 130, s 35A, s 35B and s 35C.

285 Cap. 130, s 30B.

286 Cap. 130, s 22.

287 Government of Kenya 'Institutional framework for intellectual property rights: National Intellectual Property Policy and Strategy' (October 2024) 1, available at: https://drive.google.com/file/d/1rW94yyW9jmm_RmIkMDfUZbOA-AsC70Jz/view?usp=sharing (accessed on 21 July 2025).

stakeholder consultations have indicated several key reform directions that would fundamentally restructure Kenya's copyright regime.

The anticipated reform framework represents a departure from incremental amendments toward comprehensive re-enactment of copyright legislation. At its core, the proposed changes seek to strengthen protection of both copyright and related rights while promoting greater clarity, efficiency, and fairness in rights management and enforcement. The reform objectives encompass modernising the legal regime to address digital and technological developments, enhancing system transparency, improving rights-holder compensation mechanisms, and aligning Kenya's copyright framework with evolving international standards.

Key reform areas under consideration include the introduction of statutory damages to streamline litigation processes, enhanced performers' and producers' rights with clearer remuneration structures, strengthened moral rights protections, and expanded exceptions for educational and archival purposes. Additional focus areas reportedly include robust enforcement mechanisms against digital piracy, elevated jurisdiction for specialised copyright tribunals, and enhanced transparency requirements for collective management organisations under strengthened regulatory oversight, collectively aiming to balance stronger copyright protection with equitable access and fair compensation for creators.

In conclusion, Kenya's copyright reforms go beyond mere adjustments, directly addressing the complexities of the digital economy and seeking alignment with broader continental aspirations. Crucially, these reforms demonstrate a profound alignment with the African Union's Agenda 2063²⁸⁸ and the specific principles enshrined in the African Continental Free Trade Area (AfCFTA) Protocol on Intellectual Property Rights,²⁸⁹ particularly the call for balanced copyright frameworks advocated by art 11, thereby fostering digital economy growth and enhancing regulatory certainty.²⁹⁰

4. RECOMMENDATIONS AND CONCLUSION

The research finds that copyright reform trajectories in Nigeria, Uganda, South Africa, and Kenya, despite their varying legislative stages, demonstrate an element of alignment with the provisions for copyright under s 11 of the AfCFTA IP Protocol. While the countries can still enhance their copyright frameworks, their alignment prioritises establishing balanced copyright systems that simultaneously support creator protection and remuneration, public access and developmental interests. Alignment with the AfCFTA IP Protocol entails harmonising copyright law with development objectives, incorporating flexible provisions for education and culture, and adapting national frameworks to digital and accessibility standards. The reviewed national provisions offer insights for legislative reform to achieve such alignment.

288 Agenda 2063.

289 AfCFTA IP Protocol.

290 AfCFTA IP Protocol, art 11.

4.1 Lessons for copyright reform and AfCFTA IP Protocol implementation

The analysis of these four national reforms yields three critical policy lessons for other African states seeking to integrate the AfCFTA IP Protocol. First, it is to prioritise flexible copyright exceptions. Across all four nations, a discernible shift towards prioritising user rights and adapting to digital realities is evident. The reforms under the Nigeria Copyright Act 2022 establish a balanced and forward-looking copyright regime, offering stronger protection and accountability for rights holders while enhancing lawful access to copyrighted works for education, research, and innovation.²⁹¹ Further, this 2022 Copyright Act, provides an open-ended 'fair dealing' clause that explicitly cannot be overridden by contractual terms, reflecting a progressive stance on public interest uses in the digital age.²⁹² Similarly, South Africa's CAB, despite its controversies,²⁹³ aims for an open-ended fair use approach to future-proof the law against technological changes, while Uganda's Bill introduces limited reprographic copying for private study and research purposes.²⁹⁴ This approach, offering flexible exceptions and limitations, is essential for facilitating access to knowledge in the digital era, aligning with art 11(3), (4) and (5) of the IP Protocol.

Secondly, it is to institutionalise transparency in collective management governance to promote fair and adequate remuneration for authors and performers. Robust transparency improvements are crucial for ensuring fair and adequate remuneration for creators, a core provision of the IP Protocol. Nigeria's 2025 CMO Regulations²⁹⁵ offer a template by mandating comprehensive reporting on licensing revenues and distribution records to the Nigerian Copyright Commission (NCC), alongside robust compliance and sanction regimes.²⁹⁶ Uganda's Bill enhances this by streamlining CMO registration and expanding their mandate to collect for all rights holders, requiring annual general meetings to promote accountability.²⁹⁷ Kenya's reforms, particularly in its 2019 Amendment Act, also established stronger transparency measures for CMOs.²⁹⁸ Additionally, South Africa's CAB proposes explicit CMO management through provisions on accreditation, administration and control of collecting societies as well as fair royalty payments and equitable remuneration. This concerted regulatory push is necessary to ensure equitable distribution of royalties, directly supporting the AfCFTA IP Protocol's objective of fair remuneration for authors and performers.

291 Section 20 of the Copyright Act 2022 (Nigeria).

292 Ibid.

293 South Africa CAB, s 12A.

294 Copyright and Neighbouring Rights (Amendment) Bill 2025 Memorandum 4.

295 Copyright (Collective Management Organisations) Regulations 2025 (Nigeria), available at: <https://www.copyright.gov.ng> (accessed on 28 May 2025).

296 Copyright (Collective Management Organisations) Regulations 2025 (Nigeria), r. 23, available at: <https://www.copyright.gov.ng> (accessed on 28 May 2025).

297 Uganda Copyright and Neighbouring Rights (Amendment) Bill 2025, clauses 20 and 21.

298 Cap. 130, s 30B.

Through the proposed mandatory remuneration provisions for the use of musical works as caller ring-back tunes, the Uganda Copyright Amendment Bill seeks to ensure that artists are fairly compensated for the commercial exploitation of their music in this growing sector.²⁹⁹ Furthermore, the proposed reforms concerning collective societies aim to instil confidence among creatives by mandating fair, transparent, and accountable royalty collection and distribution processes. These developments collectively signal Uganda's commitment to harmonise its copyright rules and principles for the protection, promotion and enforcement of IP rights and to support the AfCFTA and Agenda 2063's broader development goals towards intra-African trade. Enhanced education and training on copyright, along with increased public awareness, are essential to overcoming existing implementation challenges. This approach will empower Ugandan creators to navigate the complexities of the global market more effectively. By creating a supportive environment for local creativity and ensuring the protection of creators' rights, Uganda's copyright reform efforts offer insightful lessons to other African countries on their journey to implementing art 11(2) of the AfCFTA IP Protocol.

Thirdly, it is to consider rapid technological developments that have transformed creation, dissemination and use of copyrighted work. Legislation reforms should proactively address evolving digital exploitation models to guarantee fair compensation. The Nigerian Copyright Act 2022 reflects an understanding of the evolving digital economy by introducing exceptions for the reproduction and adaptation of computer programs.³⁰⁰ These provisions recognise the centrality of software in digital infrastructure and innovation, positioning Nigeria's copyright framework to better support technological advancement and knowledge dissemination. Further, Uganda's Bill introduces provisions for TPM circumvention for legitimate purposes.³⁰¹ A notable lesson here is that flexible exceptions and limitations are essential for technological adaptability, aligning with art 11's provision on adaptation to technological developments.

4.2 Shared challenges: AfCFTA IP Protocol limitations to be considered

Despite these progressive legislative trends, the four countries grapple with shared implementation challenges that could impede the full realisation of the AfCFTA IP Protocol's developmental objectives. These challenges, spanning institutional capacity, procedural equity, and the governance of emerging technology, serve as crucial policy lessons on the complexities and necessary preconditions for the successful and equitable integration of the IP Protocol.

Institutional capacity constraints and enforcement limitations are persistent issues. In Nigeria, while the Act enhances anti-piracy measures, the effective implementation hinges on the capacity of the NCC. Uganda faces challenges

299 Uganda Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 11.

300 Section 20(2) of the Copyright Act 2022 (Nigeria).

301 Uganda Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 6.

with the limited capacity of its local collecting societies, which undermines their effectiveness in negotiating and collecting royalties. While Kenya's establishment of the National Rights Registry (NRR) aims to provide clearer signals for enforcement, the actual enforcement mechanisms and the capacity to address online piracy remain critical. South Africa's comprehensive reforms continue to face blockage in their ascent by the President. These pitfalls should be considered in aligning national copyright laws with the IP Protocol.

The domestication of international copyright treaties, while a stated goal for all four countries, presents nuances as critics caution against incorporating international treaties without sufficient consideration of local context, which could disadvantage creators.³⁰² Nigeria has explicitly domesticated key WIPO treaties, including the Marrakesh Treaty. Uganda is also moving to domesticate the Marrakesh Treaty and other WIPO treaties.³⁰³ As earlier highlighted, South Africa's CAB aims to facilitate accession to WIPO treaties, but its legislative process has been protracted due to constitutional concerns, including those related to international obligations.³⁰⁴ These varying speeds and approaches to domestication highlight the complexities of harmonising national laws with international commitments.

Finally, public awareness gaps represent a significant hurdle. In Uganda, a lack of public awareness about copyright issues exacerbates the unequal bargaining power between local creators and international entities.³⁰⁵ While the Ugandan Bill aims to regulate collecting societies, it is recommended that the Uganda Registration Services Bureau (URSB) should plan for sensitisation within the creative industry.³⁰⁶ Similarly, for Nigeria and South Africa, despite legislative advancements, effective copyright protection and remuneration rely heavily on creators' and the public's understanding and engagement with the new frameworks. For instance, the criticism regarding non-members' exclusion from CMO procedural rights in Nigeria,³⁰⁷ highlights a lack of effective channels for creators outside formal structures.

In conclusion, Nigeria, Uganda, South Africa, and Kenya are actively shaping their copyright laws to be more responsive to digital realities, user rights, and transparency; their implementation exposes crucial lessons for continental IP integration. Furthermore, their shared fundamental challenges in institutional capacity, enforcement, nuanced treaty implementation, and public awareness serve as considerations to account for, which will be crucial for the successful and equitable implementation of the AfCFTA IP Protocol across the continent.

302 Ncube (n45) 182.

303 Copyright and Neighbouring Rights (Amendment) Bill 2025, clause 6,

304 Beiter (n164).

305 L Emmanuel, IE Egho-Promise, KJ Alhassan & AM Bagwa 'Copyright Content User Licensing Model for Collective Management Organizations in Uganda' (2023) 9(3) *Journal of Behavioural Informatics Digital Humanities & Developmental Research*.

306 Ibid.

307 S Lari-Williams 'Nigeria's Copyright Collective Management Regulations: Justice for members only?' *The IPKat* (20 May 2025), available at: <https://ipkitten.blogspot.com/2025/05/nigerias-copyright-collective.html> (accessed on 29 May 2025).