

# Prospects and Challenges of the Protection and Enforcement of Registered and Unregistered Trademark Rights Within the OAPI Sub-Region

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## Abstract

This study critically examines the prospects and challenges of protecting and enforcing registered and unregistered trademark rights within the Organisation Africaine de la Propriété Intellectuelle (OAPI) sub-region. Anchored in institutional theory and the economic incentive theory of trademarks, the research explores how legal harmonization through centralized registration interacts with decentralized national enforcement mechanisms to shape practical outcomes. Drawing on doctrinal analysis of the Bangui Agreement, national laws, and international treaties including TRIPS and the Paris Convention, the study assesses the effectiveness of civil, criminal, administrative, and border enforcement mechanisms. Findings reveal that while the OAPI framework provides strong legal protection for registered trademarks, enforcement effectiveness is uneven due to institutional weaknesses, procedural delays, limited judicial expertise, and inadequate protection for unregistered marks, particularly affecting informal and small-scale businesses. The study identifies systemic challenges including fragmented enforcement, high litigation costs, and low stakeholder awareness, which undermine the broader objectives of trademark law. Based on these findings, the research proposes context-specific recommendations to strengthen institutional capacity, harmonize enforcement procedures, expand protection for unregistered trademarks, and enhance awareness among stakeholders. The study contributes to knowledge by offering a nuanced analysis of OAPI's hybrid intellectual property regime, highlighting enforcement gaps, and providing practical insights for policy reform, judicial practice, and regional cooperation, thereby advancing understanding of trademark protection and economic development in African regional IP systems.

**Keywords:** OAPI Sub-Region (Bangui Agreement), registered trademarks, trademark enforcement, trademark protection, unregistered trademarks

## 1. Introduction

The protection and enforcement of trademark rights have evolved significantly as legal systems respond to the demands of commerce, consumer protection, and economic integration. Historically, trademarks emerged as basic indicators of origin in local markets and gradually acquired legal recognition as trade expanded beyond national boundaries and competitive practices intensified.<sup>1</sup> Over time, trademarks have come to be recognized not merely as commercial symbols but as valuable intellectual property assets that safeguard brand identity, promote consumer trust, and prevent unfair competition.<sup>2</sup> Today, trademarks are integral to corporate strategy,

<sup>1</sup> Bently, L., & Sherman, B. (2018). *Intellectual property law (5th ed.)*. Oxford University Press.

<sup>2</sup> World Intellectual Property Organization. (2020). Introduction to intellectual property (WIPO Publication No. 489). WIPO.

facilitating market differentiation, enabling the creation of goodwill, and serving as collateral in financial transactions, which underscores their economic and legal significance in both domestic and regional markets.

In Africa, the need for a coordinated intellectual property framework became particularly evident in the post-colonial period, as newly independent states sought to harmonize commercial regulation and foster regional economic cooperation.<sup>1</sup> This objective culminated in the establishment of the Organization Africaine de la Propriété Intellectuelle (OAPI) in 1977 and the adoption of the Bangui Agreement, which created a centralized and uniform system for the protection of intellectual property rights, including trademarks, across its member states.<sup>2</sup> By providing a single registration mechanism with unitary effect throughout the OAPI sub-region, the system significantly reduces duplication, facilitates cross-border trade, and encourages investment by providing greater legal certainty to rights holders.

The Bangui Agreement marked a significant departure from fragmented national trademark regimes by introducing a unified registration system administered by a single regional office.<sup>3</sup> Subsequent revisions of the Agreement, particularly those of 1999 and 2015, reflect an evolutionary response to globalization, technological advancement, and the need to align regional intellectual property law with international standards, most notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).<sup>4</sup> These revisions expanded the scope of registrable marks to include non-traditional signs such as sounds, colors, and shapes, strengthened substantive rights, and enhanced enforcement mechanisms, including provisions to address counterfeit goods and trademark piracy. Despite these advancements, the practical enforcement of trademark rights remains uneven due to disparities in national judicial capacity, administrative efficiency, and the availability of remedies such as injunctions, damages, or customs interventions.<sup>5</sup>

Within this evolving legal framework, a distinction persists between registered and unregistered trademarks. Registered trademarks enjoy formal recognition, exclusive rights, and presumptive validity under the OAPI regime, offering rights holders a higher degree of legal certainty and enforceability (Bangui Agreement, Annex III). Conversely, unregistered trademarks occupy a more precarious legal position, often requiring proof of prior use, acquired distinctiveness, or evidence of bad faith registration for protection.<sup>6</sup> The predominance of a first-to-file system further complicates the protection of unregistered marks, which may be vulnerable to loss or legal disputes even when they enjoy substantial market recognition. These dynamics underscore the importance of early registration, effective market monitoring, and strategic enforcement to protect intellectual property in the region.

The economic and legal stakes of trademark protection in the OAPI sub-region are considerable. With increasing regional integration, intra-African trade, and the growing presence of multinational enterprises, trademarks function not only as tools of brand identity but also as instruments for attracting foreign investment, promoting innovation, and facilitating technology transfer.

Consequently, understanding the prospects and challenges of both registered and unregistered trademark protection is essential for policymakers, legal practitioners, and commercial actors seeking to navigate the OAPI system effectively.

Against this backdrop, this paper examines the prospects and challenges associated with the protection and enforcement of registered and unregistered trademark rights within the OAPI sub-region. It analyses the historical evolution of the OAPI trademark framework, evaluates the effectiveness of existing enforcement mechanisms, and assesses the extent to which the current regime national implementation. By situating the discussion within its historical, economic, and institutional context, the study contributes to a deeper understanding of trademark governance in Africa and offers insights relevant to intellectual property law, commercial strategy, and policy formulation.

## 2. Conceptual Clarification

<sup>1</sup> Kuruk, P. (2004). African intellectual property law in the context of economic integration. *Arizona Journal of International and Comparative Law*, 21(2), 309–331.

<sup>2</sup> Bangui Agreement relating to the creation of an African Intellectual Property Organization (OAPI), as revised on February 24, 1999 and December 14, 2015.

<sup>3</sup> *Ibid.*

<sup>4</sup> World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

<sup>5</sup> Ncube, C. (2016). Enforcement of intellectual property rights in Africa. *Comparative and International Law Journal of Southern Africa*, 49(2), 299–320.

<sup>6</sup> World Intellectual Property Organization. (2013). Protection of unregistered trademarks. WIPO Standing Committee on the Law of Trademarks.

This section examines the core concepts related to the study for better understanding.

### 2.1 Trademark

A trademark is defined as any visible or audible sign used or intended to be used and capable of distinguishing the goods or services of any natural person or legal person.<sup>1</sup> A trademark or service mark encompasses of signs which could words or combination of words, figurative signs such as drawings, labels, seals logos; audible signs, audiovisual signs and series of signs.<sup>2</sup> Trademarks protect brand identity, help consumers make informed choices, and prevent unfair competition.

### 2.2 Registered Trademarks

A registered trademark refers to a mark that has been officially recorded within the OAPI registry under the Bangui Agreement subregion. The Bangui agreement specifies that ownership of a trademark belongs to the person who first deposited it.<sup>3</sup> This therefore stipulates that ownership of trademark under the OAPI is gotten through registration of the trademark. Registration of a trademark confers on the trademark owner a right of ownership of trademark for the goods or services designated.<sup>4</sup> Trademark registration bestows on the trademark owner the right to use trademark on the designated good or services and the right to prohibit third parties from the use of their trademarks. The unitary nature of registration allows rights holders to secure protection regionally with a single application, reducing administrative burdens.<sup>5</sup>

### 2.3 Unregistered Trademarks

Unregistered trademarks are marks used in commerce that have not been formally registered within the OAPI subregion. Though the Bangui agreement recognizes that ownership of a trademark is accorded to person who first registers it, it however accords limited protection to unregistered trademarks. The Bangui agreement makes it possible for an unregistered trademark owner to claim prior right of use or ownership of trademark within the OAPI organization and this should be done within three months following publication of the record of the first filing.<sup>6</sup> However, unregistered rights are weaker than registered marks because OAPI primarily operates on a first-to-file basis. However, unregistered trademarks are limited in protection than registered trademark rights, this is because the first-to-file principle operates within the OAPI subregion.

### 2.4 Protection of Trademark Rights

Trademark protection refers to legal mechanisms preventing unauthorized use, imitation, or exploitation of a mark. Protection is achieved through registration with OAPI, opposition procedures, and sanctions against infringement, including civil and criminal remedies.<sup>7</sup>

Trademark protection refers to the legal mechanisms or steps taken by the trademark owner to prevent the use of their trademark in a manner which will cause consumer confusion about the source of their goods or services. Protection of trademark can be achieved either through trademark registration, opposition procedures, and bringing legal actions in cases of trademark violations.

### 2.5 Enforcement of Trademark Rights

Enforcement refers to the practical application of legal rights to stop infringement. While registration is centralized in OAPI, enforcement occurs at the national level, requiring remedies like injunctions, damages, or criminal sanctions through local courts.<sup>8</sup> Challenges include limited judicial capacity and procedural delays, which affect the practical effectiveness of legal protection.

### 2.6 Prospects of Protection and Enforcement

Prospects refer to the opportunities and positive developments for enhancing trademark protection. Recent revisions to the Bangui Agreement have modernized the system by enabling multi-class filings, expanding

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<sup>1</sup> Article 2 (1) Annex III of the Bangui agreement

<sup>2</sup> Article 2(1) (a)-(b) of Annex III of the Bangui agreement

<sup>3</sup> Article 4 (1) Ibid.

<sup>4</sup> Article 6 (1) of Annex III of the Bangui agreement

<sup>5</sup> World Trademark Review. (2025). Brand owner's guide to Africa's regional IP agreements.

<sup>6</sup> Article 16 (1) of Annex III of the Bangui agreement

<sup>7</sup> European Union Intellectual Property Helpdesk. (2025). Cameroon IP country fiche.

<sup>8</sup> Mondaq. (2025). Intellectual Property Rights and the OAPI in Cameroon. MPECK & PARTNERS. (2025). TAKI trademark enforcement case.

protectable marks, and empowering customs authorities to seize counterfeit goods.<sup>1</sup>

### 2.7 Challenges of Protection and Enforcement

Challenges are obstacles undermining effective trademark protection in OAPI. Key challenges include inconsistent enforcement across member states, limited digital infrastructure, and the vulnerability of unregistered marks under the first-to-file system.

## 3. Theoretical Framework

This study is anchored on Institutional Theory and Economic Incentive Theory, both of which provide a robust analytical foundation for examining the prospects and challenges of the protection and enforcement of registered and unregistered trademark rights within the OAPI sub-region.

### 3.1 Institutional Theory

Institutional theory, as articulated by Douglass C. North in *Institutions, Institutional Change and Economic Performance* (1990),<sup>2</sup> emphasizes that the effectiveness of legal rules depends on the strength and functionality of institutions responsible for their implementation. According to North, institutions comprise formal rules (laws and regulations), informal constraints (norms and practices), and enforcement mechanisms that collectively shape social and economic interactions.<sup>3</sup>

Applied to trademark protection in the OAPI sub-region, institutional theory explains the gap between formal legal harmonization and practical enforcement outcomes. While the Bangui Agreement provides a centralized and uniform framework for trademark registration, enforcement remains decentralized and dependent on national courts, customs authorities, and law enforcement agencies. Variations in institutional capacity, judicial expertise, and procedural efficiency across member states directly affect the extent to which registered trademark rights are effectively enforced and unregistered trademarks are recognized. This theory therefore provides a valuable lens for understanding enforcement inconsistencies and systemic weaknesses within the OAPI regime.

### 3.2 Economic Incentive Theory (Economic Theory of Trademark)

Economic incentive theory, as advanced by Landes and Posner in their seminal work *Trademark Law: An Economic Perspective* (1987),<sup>4</sup> views trademarks as economic instruments designed to promote market efficiency. According to this theory, trademarks reduce consumer search costs, protect business goodwill, and incentivize firms to maintain consistent product quality. Legal protection of trademarks is therefore justified as a means of encouraging investment and fair competition.

In the context of the OAPI sub-region, economic incentive theory highlights the importance of strong, predictable trademark protection in fostering regional trade, attracting investment, and supporting business development. Registered trademarks provide higher economic value due to their legal certainty and enforceability, while weak enforcement mechanisms and limited protection for unregistered trademarks undermine these incentives. The theory also provides insight into the rationale behind OAPI's first-to-file system, which prioritizes legal certainty but may disadvantage small and informal enterprises that rely on unregistered marks.

### 3.3 Relevance of the Theories to This Study

Together, institutional theory and economic incentive theory provide a comprehensive framework for analyzing trademark protection and enforcement in the OAPI sub-region. Institutional theory explains enforcement challenges arising from structural and administrative limitations, while economic incentive theory clarifies the commercial implications of effective or ineffective trademark protection. The integration of these theories enables a balanced assessment of both legal-institutional performance and economic outcomes, thereby strengthening the analytical foundation of this study.

## 4. Methodology

This study adopts a qualitative doctrinal research methodology to examine the prospects and challenges of the protection and enforcement of registered and unregistered trademark rights within the OAPI sub-region. Doctrinal legal research is particularly suitable for this study because it enables a systematic analysis of legal rules, principles, and institutional frameworks governing trademark protection, while also allowing for critical evaluation of their effectiveness in practice.

<sup>1</sup> European Union Intellectual Property Helpdesk. (2022). Key changes from amendments to the Bangui Agreement.

<sup>2</sup> North, D. C. (1990). *Institutions, institutional change and economic performance*. Cambridge University Press.

<sup>3</sup> *Ibid.*

<sup>4</sup> Landes, W. M., & Posner, R. A. (1987). Trademark law: An economic perspective. *Journal of Law and Economics*, 30(2), 265–309.

The research relies primarily on secondary sources of data, including international treaties, regional instruments, national legislation, judicial decisions, and scholarly literature. Key legal instruments analyzed include the Bangui Agreement establishing OAPI, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Paris Convention for the Protection of Industrial Property, and relevant national intellectual property and enforcement laws of selected OAPI member states. These instruments are examined to identify the scope of trademark rights, enforcement mechanisms, and the extent of protection accorded to registered and unregistered trademarks.

In addition, the study engages in an extensive review of scholarly writings, including textbooks, peer-reviewed journal articles, policy reports, and publications by international organizations such as the World Intellectual Property Organization. These sources provide theoretical perspectives, comparative insights, and empirical observations on intellectual property enforcement in developing and regional contexts, particularly within Africa.

The research employs analytical and evaluative methods to assess the effectiveness of trademark enforcement mechanisms. Civil, criminal, administrative, and border enforcement measures are examined to determine their practical functionality, institutional capacity, and deterrent value. This evaluation is complemented by a comparative approach, drawing selectively on experiences from other regional intellectual property systems and national jurisdictions to contextualize the OAPI framework and highlight best practices and structural deficiencies.

Furthermore, the study is underpinned by a theoretical framework drawn from institutional theory and economic incentive theory, which guides the analysis of how legal institutions, enforcement capacity, and market incentives influence compliance and enforcement outcomes. This theoretical grounding enables a deeper understanding of the relationship between legal norms and real-world enforcement behavior.

Overall, the methodology ensures a coherent and critical examination of trademark protection within the OAPI sub-region, enabling the study to draw well-reasoned conclusions and propose practical, context-specific recommendations aimed at strengthening the effectiveness of trademark enforcement.

## 5. Legal Framework

The legal framework governing the protection and enforcement of registered and unregistered trademark rights within the OAPI sub-region is primarily anchored in regional instruments, international treaties, and national implementing laws of OAPI member states.

This multi-layered framework reflects the hybrid nature of the OAPI system, characterized by centralized registration and decentralized enforcement.

### 5.1 The Bangui Agreement Establishing OAPI

The cornerstone of trademark protection in the OAPI sub-region is the Bangui Agreement Relating to the Creation of an African Intellectual Property Organization, first adopted in 1977 and subsequently revised in 1999 and 2015. The Agreement establishes OAPI as a regional intellectual property organization and provides a uniform legal regime applicable across all member states.<sup>1</sup>

Trademark law is principally governed by Annex III of the Bangui Agreement, which sets out the conditions for trademark registrability, the scope of rights conferred by registration, the procedure for trademark registration, and the duration of protection. Under this framework, a trademark registered with OAPI enjoys unitary protection throughout all member states for an initial period of ten years, renewable indefinitely. Trademark registration grants trademark owners the exclusive right to use the mark<sup>2</sup> and to prevent third parties from using identical or confusingly similar signs in the course of trade.<sup>3</sup>

The OAPI subregion practices the first-to-file principle wherein priority in trademark right is accorded to the first applicant who files for the registration of trademark regardless of a prior use right. Trademark registration enhances legal certainty and administrative efficiency; however, it poses challenges for unregistered trademark owners who must rely on limited exceptions such as bad faith registration, prior use of trademark and well-known trademark status.

### 5.2 Protection of Unregistered Trademarks Under the Bangui Agreement

Unlike registered trademarks, unregistered trademarks do not enjoy automatic statutory protection under the OAPI regime. However, the Bangui Agreement recognizes certain limited forms of protection for unregistered marks, particularly where they qualify as well-known marks in accordance with international standards.

<sup>1</sup> Bangui Agreement Relating to the Creation of an African Intellectual Property Organization (OAPI), as revised in 1999 and 2015.

<sup>2</sup> Article 6 (1) of Annex III of the 2015 Bangui agreement

<sup>3</sup> Article 6 (2) Ibid

Article 6bis of the Paris Convention, which is incorporated into the OAPI legal framework, provides protection for well-known trademarks even in the absence of registration. This allows owners of such marks to oppose or invalidate later registrations that are likely to cause confusion. Nevertheless, the burden of proof lies heavily on the claimant, who must demonstrate the mark's reputation, recognition, and market presence within the relevant territory.

The Bangui agreement legislator makes it possible for prior right users of trademark to claim ownership of their trademark before the OAPI when there is the registration of their trademark by a party who knew or should have known of the existence of their trademark right.<sup>1</sup> The claim of ownership trademark right needs to be done within three (3) following publication of the record of the first filing.<sup>2</sup> This therefore implies that, though the OAPI sub region practices the first-to-file principle it however recognizes the use of unregistered trademarks, though its protection limited.

### *5.3 International Legal Instruments Applicable in the OAPI Sub-Region*

The OAPI subregion is a signatory to several international instruments which ensures the protection of trademark rights, some of these international instruments are; Paris Convention, the TRIPS Agreement, the Vienna Agreement and the protocol relating to the Madrid Agreement concerning international registration of marks. It is this light; this paper seeks to elucidate on some of the international instruments.

#### **a. Paris Convention for the Protection of Industrial Property (1883)**

The Paris convention which was signed in Paris France, on the 20<sup>th</sup> March 1883. It was the first international treaty dealing with industrial property and the convention came as a result of the diplomatic conference in Paris in 1880. The Paris Convention establishes foundational principles such as national treatment, right of priority, and protection against unfair competition. The principle of national treatment requires each member state to grant same level protection it grants to its nationals to foreigners in their country in regards to the protection of trademark rights.<sup>3</sup> The right of priority is a principle which makes it possible for a person who has duly filed for the registration of trademark in a country which is a party to the Paris Union to claim a prior right in trademark in a country which is equally party to the Paris union, provided that it is done within the period of six (6) months.<sup>4</sup> The principle of unfair competition is a principle which requires member states to the Paris Convention to assure to honest practices in commercial or industrial matters to countries of the Paris Union.<sup>5</sup> The OAPI which is a signatory to the Paris Convention has integrated this principles in to the Bangui agreement, these principles outrightly influence the protection of registered and unregistered trademark rights within the OAPI.

#### **b. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994)**

The TRIPS Agreement was adopted at Marrakesh on April 15, 1994 as Annex 1C of the Final act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations.<sup>6</sup> The agreement on Trade- Related Aspects of Intellectual Property (TRIPS) came into effect on 1 January 1995. It was one of the major outcomes from the Uruguay Round of multilateral trade negotiations that led to the establishment of the World Trade Organisation (WTO).<sup>7</sup> The objective of the TRIPS Agreement is stated out in Article 7 of the TRIPS Agreement. The main principles of the TRIPS Agreement are; national treatment, most favoured nation treatment, minimum standard protection.

The TRIPS Agreement sets minimum standards for trademark protection and enforcement, including obligations relating to civil, administrative, and criminal remedies.<sup>8</sup> OAPI's trademark regime is designed to comply with TRIPS standards, particularly in relation to exclusive rights, enforcement procedures, and border measures against counterfeit goods.<sup>9</sup>

<sup>1</sup> Article 16 (1), Annex III of the 2015 Bangui agreement

<sup>2</sup> It is of essence to take note that the claim of ownership in trademark right has been deduced from the period six months to the period of three months. The 1999 Bangui agreement makes mention of six months whereas the 2015 Bangui makes provision of three months.

<sup>3</sup> Article 2 (1) of the Paris Convention

<sup>4</sup> Article 4 (A) Ibid

<sup>5</sup> Article 10 bis (1) – (3) of the Paris convention

<sup>6</sup> Daniel Gervais. (2008). The TRIPS AGREEMENT Drafting History and Analysis.

<sup>7</sup> John Revesz. (May 1999). Trade related Aspects Intellectual Property Rights (Staff Research Paper).

<sup>8</sup> World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

<sup>9</sup> *Ibid.*

### c. The Madrid Protocol

The Madrid protocol relating to the Madrid agreement concerning the international registration of marks was adopted at Madrid on June 27, 1989 and began operational in 1996. The Madrid protocol is a separate treaty that co-exists with the Madrid agreement and the protocol came in to address the short comings of the Madrid agreement.<sup>1</sup> The Madrid protocol is a primary legal instrument governing international trademark registration of trademark by making it possible for trademark owners to secure international registration based on national application or registration.<sup>2</sup>

#### 5.4 Enforcement at the National Level

Although trademark registration is centralized under OAPI, enforcement is carried out at the national level by the courts and administrative authorities of member states. National laws, including penal codes and civil procedure rules, play a critical role in determining the availability and effectiveness of remedies such as injunctions, damages, seizure of infringing goods, and criminal sanctions.

This decentralized enforcement model results in varying levels of effectiveness across member states, depending on factors such as judicial expertise in intellectual property law, procedural efficiency, and institutional capacity. Consequently, the practical enforcement of trademark rights-especially for unregistered trademarks-remains uneven across the OAPI sub-region.

### a. Customs and Border Measures

The enforcement of trademark is decentralized; it is in this light that member states to adopt customs measures aimed at preventing the importation and circulation of counterfeit goods bearing infringing trademarks. Customs authorities may suspend the release of suspected counterfeit goods upon application by the trademark owner or through ex officio action, subject to national implementing laws. There are even regional custom border measures like the CEMAC Custom border which is made up of six countries which are equally members of the OAPI sub region. The CEMAC custom border has introduced a one-stop-border post which simplifies customs procedures by integrating various clearance steps in to a single point of contact.

However, the effectiveness of these measures is contingent on inter-agency coordination, technical capacity, and awareness among customs officials. In practice, limited resources and lack of specialized training often hinder the consistent application of border enforcement mechanisms.

### b. Assessment of the Legal Framework

The OAPI legal framework provides a robust and harmonized foundation for trademark protection through centralized registration and alignment with international standards. Nevertheless, challenges persist in the areas of enforcement, protection of unregistered trademarks, and institutional capacity at the national level. The dominance of the first-to-file system, combined with limited protection of unregistered rights, raises concerns regarding fairness and access to protection for small and informal businesses.

Overall, the legal framework reflects a tension between regional harmonization and national implementation, which continues to shape the prospects and challenges of trademark protection and enforcement in the OAPI sub-region.

## 6. Enforcement Mechanisms

The enforcement of trademark rights within the OAPI sub-region is characterized by a dual structure in which trademark registration is centralized under the OAPI system, while enforcement is largely decentralized and implemented through national legal and administrative institutions. Enforcement mechanisms derive from the Bangui Agreement, international intellectual property instruments, and domestic laws of OAPI member states. These mechanisms are crucial for transforming formal trademark rights into effective and practical protection.

### 6.1 Civil Enforcement Mechanisms

Civil enforcement constitutes the primary avenue through which trademark owners assert their rights against infringement within the OAPI sub-region. Under the Bangui Agreement, holders of registered trademarks are entitled to institute civil proceedings before competent national courts to restrain unauthorized use of their marks (article 49 (1), Annex III of the Bangui Agreement). Civil remedies commonly available include injunctions, monetary damages, and orders for the seizure or destruction of infringing goods.

Civil enforcement is particularly significant for registered trademarks, which benefit from presumptive validity. However, owners of unregistered trademarks face a higher evidentiary burden, often requiring proof of prior use,

<sup>1</sup> Jerome Gilson & Anne Gilson Lalonde. (2003). The Madrid Protocol: A slumbering giant awakens at last.

<sup>2</sup> Article 2 (1) of the Madrid Protocol

reputation, or likelihood of confusion to succeed in civil claims.<sup>1</sup> The effectiveness of civil enforcement varies across member states due to differences in judicial expertise, procedural efficiency, and access to interim relief.<sup>2</sup>

#### *6.2 Criminal Enforcement Mechanisms*

Criminal enforcement plays a complementary role in combating trademark infringement, particularly counterfeiting and large-scale piracy (Article 46 (2) and article 49 (1), Annex III of the Bangui Agreement). Many OAPI member states criminalize trademark counterfeiting under their national penal laws, providing for sanctions such as fines, imprisonment, and confiscation of counterfeit goods.<sup>3</sup>

Criminal enforcement serves a deterrent function and is particularly effective against organized counterfeit networks. However, enforcement is often hindered by limited prosecutorial prioritization of intellectual property crimes, insufficient investigative capacity, and low levels of technical expertise among law enforcement agencies. These challenges reduce the practical impact of criminal sanctions within the region.

#### *6.3 Administrative Enforcement Mechanisms*

Administrative enforcement mechanisms operate alongside judicial remedies and provide preventive and corrective measures against trademark infringement. Within the OAPI system, administrative enforcement includes opposition proceedings against pending trademark applications and invalidation or cancellation actions against improperly registered trademarks (Article 15 Annex III of the Bangui Agreement).

Administrative enforcement is generally less costly and more expeditious than judicial proceedings, making it an important tool for rights holders seeking early intervention. Nevertheless, administrative remedies are limited in scope and typically do not provide compensation for economic losses suffered as a result of infringement.<sup>4</sup>

#### *6.4 Customs and Border Enforcement Measures*

Customs and border measures are essential for preventing the importation and circulation of counterfeit goods within the OAPI sub-region. In accordance with the TRIPS Agreement, OAPI member states are required to provide border measures enabling customs authorities to suspend the release of goods suspected of infringing trademark rights.<sup>5</sup> The CEMAC custom border which some of the OAPI are members regulate the movement of goods and protect internal market of its members.

The Bangui Agreement further empowers member states to adopt customs procedures aimed at intercepting counterfeit goods (Article 66). However, the effectiveness of border enforcement is constrained by limited resources, inadequate training of customs officials, and weak coordination between customs authorities and trademark owners.<sup>6</sup>

#### *6.5 Alternative and Complementary Enforcement Measures*

Beyond formal legal mechanisms, trademark enforcement in the OAPI sub-region is supported by alternative and complementary measures such as cease-and-desist letters, the use of Alternative Dispute Resolutions such as like arbitration, conciliation, negotiations and private monitoring of markets. These measures offer cost-effective and flexible enforcement options, particularly where litigation may be time-consuming or expensive.<sup>7</sup>

Public awareness campaigns and stakeholder education initiatives also contribute to strengthening enforcement by promoting respect for intellectual property rights and discouraging infringement.<sup>8</sup>

#### *6.6 Assessment of Enforcement Mechanisms*

Despite the availability of multiple enforcement mechanisms, the practical enforcement of trademark rights within the OAPI sub-region remains uneven. Structural challenges such as disparities in institutional capacity, limited judicial specialization in intellectual property law, procedural delays, and the weak protection of

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<sup>1</sup> World Intellectual Property Organization. (2013). Protection of unregistered trademarks.

<sup>2</sup> Ncube, C. (2016). Enforcement of intellectual property rights in Africa. *Comparative and International Law Journal of Southern Africa*, 49(2), 299–320.

<sup>3</sup> World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

<sup>4</sup> Organisation Africaine de la Propriété Intellectuelle. (2023). General presentation of the OAPI trademark system.

<sup>5</sup> *Ibid.*

<sup>6</sup> European Union Intellectual Property Helpdesk. (2022). IP enforcement and border measures in Africa.

<sup>7</sup> International Trademark Association. (2021). Trademark enforcement strategies in emerging markets.

<sup>8</sup> World Intellectual Property Organization. (2020). Introduction to intellectual property.

unregistered trademarks continue to undermine enforcement effectiveness.<sup>1</sup> These challenges highlight the need for enhanced institutional coordination, capacity building, and legal reforms to strengthen trademark enforcement across the region.

## 7. Effectiveness of Trademark Protection and Enforcement

The effectiveness of trademark protection and enforcement in the OAPI sub-region reflects a complex interplay between a solid formal legal framework and the practical challenges of implementation. At the formal level, the OAPI system provides a unitary, centralized trademark registration regime under the Bangui Agreement, which confers exclusive rights throughout all member states upon registration. This framework aligns with international intellectual property norms, including the Paris Convention and the TRIPS Agreement, and, in principle, offers rights holders a clear and predictable basis for enforcement.<sup>2</sup>

In practice, however, the effectiveness of enforcement varies significantly. Civil enforcement mechanisms such as actions for injunctions, damages, and seizure of infringing goods exist in national legal systems, but procedural delays, high litigation costs, and limited judicial specialization in intellectual property undermine their practical utility. Empirical research on African intellectual property systems finds that courts often lack the technical expertise required to adjudicate complex trademark disputes swiftly and consistently, resulting in uneven outcomes across jurisdictions.<sup>3</sup> These procedural and capacity constraints deter many rights holders, especially small and medium-sized enterprises, from initiating infringement proceedings. Criminal enforcement, although present in many OAPI member states' penal codes, is similarly underutilized. While the availability of fines, imprisonment, and confiscation measures theoretically enhances deterrence, it is often deprioritized by enforcement agencies due to limited investigative expertise and competing law enforcement priorities.<sup>4</sup> Studies of IP crime enforcement in developing economies indicate that intellectual property offenses are rarely treated with the same urgency as violent or economic crimes, which diminishes the practical deterrent effect of criminal penalties.

Administrative enforcement mechanisms, including opposition and invalidation proceedings before OAPI, provide useful preventive tools and help maintain the integrity of the trademark register. Nevertheless, such administrative actions do not address market-level infringement and cannot compensate rights holders for economic losses suffered due to unauthorized use of marks. This limitation reduces the overall effectiveness of the system in protecting commercial interests on the ground. Border control and customs measures represent another key component of trademark enforcement, particularly in combatting counterfeit goods. OAPI member states, as parties to TRIPS, are obligated to provide border measures that suspend the release of suspected infringing goods. Yet, research on African customs enforcement highlights operational challenges such as inadequate training, limited technological capacity, and insufficient cooperation with rights holders that constrain the effectiveness of these measures.<sup>5</sup> Without robust customs enforcement, infringing and counterfeit products can traverse borders with relative ease, undermining national and regional efforts to uphold trademark rights.

A further constraint on effectiveness is the limited protection afforded to unregistered trademarks within the OAPI system. Because the regime is anchored in a first-to-file principle, unregistered marks often lack enforceable rights unless they can be proven well-known or subject to bad-faith filings, both of which require substantial evidence. This legal gap disproportionately affects informal and small-scale enterprises that may have built significant market recognition through use but lack formal registration.<sup>6</sup> The resulting enforcement gap weakens the legitimacy and reach of the trademark system as a whole.

Overall, while the formal legal architecture of trademark protection in the OAPI sub-region is sound and provides a comprehensive basis for rights, the effectiveness of enforcement remains moderate and inconsistent in practice. Institutional weaknesses, procedural inefficiencies, limited judicial and administrative capacity, and gaps in protection for unregistered marks all contribute to this outcome. Strengthening effectiveness will therefore require systemic reforms that enhance enforcement capacity, streamline procedures, promote judicial expertise, and broaden protection mechanisms so that the legal benefits of trademark rights are realized in

<sup>1</sup> Kuruk, P. (2004). African intellectual property law in the context of economic integration. *Arizona Journal of International and Comparative Law*, 21(2), 309–331.

<sup>2</sup> Organisation Africaine de la Propriété Intellectuelle. (2015). Bangui Agreement Relating to the Creation of an African Intellectual Property Organization (as revised).

<sup>3</sup> *Ibid.*

<sup>4</sup> World Intellectual Property Organization. (2015). Guide on trademark enforcement.

<sup>5</sup> World Intellectual Property Organization. (2020). Introduction to intellectual property.

<sup>6</sup> *Ibid.*

everyday commercial practice.

### **8. Challenges to the Protection and Enforcement of Trademark Rights in the OAPI Sub-Region**

Despite the existence of a harmonized trademark registration regime under OAPI, the effective protection and enforcement of registered and unregistered trademark rights within the sub-region remain constrained by multiple interrelated challenges. These challenges are legal, institutional, structural, and socio-economic in nature, and they significantly undermine the practical value of trademark rights.

#### *8.1 Institutional Weaknesses and Limited Enforcement Capacity*

A central challenge to trademark enforcement within the OAPI sub- region is the limited institutional capacity of national enforcement bodies. While OAPI centralizes trademark registration, enforcement responsibilities are vested in national courts, customs administrations, police, and prosecutorial authorities. Many of these institutions lack adequate resources, specialized training, and technical expertise in intellectual property law, particularly trademark enforcement.<sup>1</sup>

Judicial officers often lack exposure to complex trademark disputes, leading to inconsistent rulings, reluctance to grant interim remedies such as injunctions, and prolonged adjudication. In criminal enforcement, investigative agencies frequently lack the operational tools required to combat organized counterfeiting networks, thereby weakening the deterrent effect of sanctions.<sup>2</sup>

#### *8.2 Decentralized Enforcement and Fragmentation of Outcomes*

The structural dichotomy between centralized registration and decentralized enforcement constitutes a significant challenge within the OAPI system. Although a trademark registered with OAPI enjoys unitary protection across all member states, enforcement outcomes are governed by national procedural laws and judicial practices. This results in fragmented enforcement standards and inconsistent remedies across jurisdictions.<sup>3</sup>

Such fragmentation undermines legal certainty and increases enforcement costs for rights holders operating across multiple member states. The lack of uniform enforcement practices diminishes confidence in the regional trademark system and weakens its integrative function.

#### *8.3 Weak Protection for Unregistered Trademarks*

Another major challenge is the limited legal recognition afforded to unregistered trademarks under the OAPI regime. The first-to-file principle prioritizes formal registration over prior use, disadvantaging businesses-particularly small and informal enterprises that rely on unregistered marks. Protection for unregistered trademarks is largely restricted to well-known marks or cases of bad-faith registration or an action of unfair competition, both of which impose stringent evidentiary requirements.<sup>4</sup>

In practice, proving reputation, goodwill, and consumer recognition is particularly difficult in economies characterized by informal trade and limited documentation. This legal imbalance exacerbates inequality between multinational enterprises and local businesses, undermining inclusive access to trademark protection.

#### *8.4 Procedural Delays and High Cost of Enforcement*

Procedural delays and the high cost of litigation constitute significant barriers to effective trademark enforcement. Civil proceedings in many OAPI member states are slow, and access to interim measures is limited. Delays in granting injunctions allow infringing activities to continue, eroding the economic value of trademark rights.<sup>5</sup>

For small and medium-sized enterprises, enforcement costs including legal representation, court fees, and evidentiary expenses often outweigh the perceived benefits of litigation. This discourages rights holders from pursuing enforcement actions and fosters a culture of non-compliance.

#### *8.5 Limited Effectiveness of Criminal Enforcement*

Although trademark counterfeiting is criminalized in many OAPI member states, criminal enforcement remains

<sup>1</sup> Ncube, C. (2016). Enforcement of intellectual property rights in Africa. *Comparative and International Law Journal of Southern Africa*, 49(2), 299–320.

<sup>2</sup> Kuruk, P. (2004). African intellectual property law in the context of economic integration. *Arizona Journal of International and Comparative Law*, 21(2), 309–331.

<sup>3</sup> *Ibid.*

<sup>4</sup> World Intellectual Property Organization. (2013). Protection of unregistered trademarks.

<sup>5</sup> *Ibid.*

largely ineffective. Intellectual property crimes are frequently treated as low-priority offenses, resulting in weak investigation and prosecution rates.

Law enforcement agencies often lack specialized training in identifying and handling trademark infringement cases, particularly those involving cross-border counterfeiting operations.<sup>1</sup> As a result, criminal enforcement functions more as a symbolic deterrent than as an effective mechanism for combating large-scale infringement.

#### *8.6 Challenges in Customs and Border Enforcement*

Customs and border enforcement mechanisms face considerable operational challenges within the OAPI sub-region. Porous borders, extensive informal trade routes, and limited technological infrastructure hinder the interception of counterfeit goods. Customs officials often lack the technical expertise required to identify infringing trademarks, particularly where counterfeits are sophisticated.<sup>2</sup>

Furthermore, the effectiveness of border measures depends heavily on cooperation from trademark owners, including the recording of trademarks with customs authorities. Low levels of awareness and engagement by rights holders significantly reduce the utility of customs enforcement mechanisms.

#### *8.7 Low Awareness, Informality, and Socio-Cultural Factors*

Low awareness of trademark rights and enforcement mechanisms among businesses and consumers further undermines protection efforts. In many OAPI member states, informal markets dominate commercial activity, and trademark infringement is often socially tolerated or perceived as economically necessary. Cultural perceptions that prioritize affordability over authenticity weaken consumer-driven enforcement and reduce the social stigma associated with counterfeiting, thereby placing additional strain on formal enforcement mechanisms.<sup>3</sup>

#### *8.8 Lack of Data and Transparency*

The absence of comprehensive and reliable data on trademark infringement cases, enforcement outcomes, and counterfeit trade flows presents an additional challenge. Limited transparency impedes evidence-based policy formulation and hinders effective monitoring and evaluation of enforcement strategies.<sup>4</sup> Without accurate data, reforms risk being ad hoc rather than systematic, perpetuating existing weaknesses within the trademark enforcement framework.

#### *8.9 Overall Impact of the Challenges*

Collectively, these challenges create a cycle of weak enforcement, low compliance, and diminished confidence in the trademark system. While the OAPI framework provides a solid normative foundation, its effectiveness is constrained by institutional fragility, legal limitations, and socio-economic realities. Addressing these challenges requires coordinated reforms aimed at strengthening national institutions, expanding protection for unregistered trademarks, enhancing enforcement capacity, and promoting awareness across the sub-region.

### **9. Finding**

This study finds that the OAPI trademark system offers a strong legal and institutional foundation for the protection of registered trademarks through a centralized and unitary registration regime. The Bangui Agreement, particularly Annex III, provides clear substantive rights and aligns broadly with international standards under the Paris Convention, Madrid Protocol and the TRIPS Agreement. This centralized registration mechanism enhances legal certainty, reduces duplication, and promotes regional economic integration by granting uniform trademark protection across all OAPI member states.

However, the study also reveals that the effectiveness of trademark enforcement is significantly constrained by the decentralized nature of enforcement. While rights are granted at the regional level, enforcement depends on national courts, administrative bodies, and law enforcement agencies whose capacity, expertise, and resources vary considerably. This has resulted in uneven enforcement outcomes across member states, undermining the uniformity intended by the OAPI system and creating uncertainty for rights holders.

The findings further indicate that registered trademarks enjoy significantly stronger protection than unregistered trademarks within the OAPI sub-region. The first-to-file principle embedded in the Bangui Agreement prioritizes registration over prior use, offering limited legal recourse for unregistered marks. Protection for unregistered trademarks is largely confined to exceptional circumstances such as well-known marks or cases of bad-faith

<sup>1</sup> World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

<sup>2</sup> European Union Intellectual Property Helpdesk. (2022). IP enforcement and border measures in Africa.

<sup>3</sup> World Intellectual Property Organization. (2020). Introduction to intellectual property.

<sup>4</sup> *Ibid.*

registration, leaving many small and informal businesses legally vulnerable despite their market presence.

The study also finds that civil enforcement mechanisms are underutilized and often inefficient due to procedural delays, high litigation costs, and limited judicial specialization in intellectual property matters. Criminal enforcement, although provided for in national laws, is inconsistently applied and frequently deprioritized by law enforcement agencies. Border and customs measures, while recognized in law, suffer from operational constraints, inadequate training, and limited coordination with trademark owners.

Another key finding is the low level of awareness and compliance among businesses, consumers, and enforcement officials. Many market participants lack adequate knowledge of trademark rights, registration procedures, and enforcement mechanisms, contributing to widespread infringement and counterfeiting. This problem is particularly acute in informal markets, which dominate economic activity in many OAPI member states.

Finally, the study finds that although the OAPI framework presents strong prospects for effective regional trademark protection, these prospects remain largely unrealized due to institutional weaknesses, fragmented enforcement practices, limited protection for unregistered trademarks, and insufficient regional coordination. Without targeted reforms aimed at strengthening enforcement capacity, harmonizing procedures, and increasing awareness, the full economic and legal benefits of the OAPI trademark system will remain constrained.

## 10. Conclusion

This study has examined the prospects and challenges associated with the protection and enforcement of registered and unregistered trademark rights within the OAPI sub-region. It has demonstrated that the OAPI trademark regime, anchored in the Bangui Agreement, provides a harmonized and internationally aligned legal framework that promotes regional economic integration through a unitary trademark registration system. This centralized registration model offers legal certainty and broad territorial protection, positioning OAPI as a distinctive regional intellectual property system within the African context.

Despite these institutional strengths, the study concludes that the practical effectiveness of trademark protection and enforcement remains uneven and constrained. The decentralization of enforcement to national institutions has produced fragmented outcomes, procedural inefficiencies, and disparities in judicial expertise and enforcement capacity across member states. While registered trademarks benefit from strong statutory protection, unregistered trademarks remain inadequately safeguarded, particularly within informal and small-scale business environments, thereby undermining inclusivity and weakening the developmental objectives of trademark law.

The study further finds that enforcement mechanisms civil, criminal, administrative, and border measures are limited by high litigation costs, procedural delays, weak institutional prioritization of intellectual property crimes, and low levels of awareness among stakeholders. These shortcomings, coupled with inadequate data collection and coordination, allow trademark infringement and counterfeiting to persist despite the existence of a comprehensive legal framework.

Beyond its evaluative findings, this study makes a clear contribution to knowledge by advancing African intellectual property scholarship through a context-driven analysis of trademark protection within the OAPI sub-region. It reconceptualizes OAPI as a hybrid regime of centralized registration and decentralized enforcement, exposing the structural disconnect between legal harmonization and enforcement outcomes. By foregrounding the neglected position of unregistered trademarks particularly within informal commercial settings the study fills a critical gap in existing literature. Anchored in institutional and economic incentive theories, it deepens understanding of how enforcement capacity and market behavior interact in developing economies, while offering practical, region-specific insights capable of informing policy reform, judicial practice, and institutional strengthening within the OAPI framework.

In conclusion, while the OAPI trademark system holds significant promise, realizing its full potential requires deliberate and coordinated reforms aimed at strengthening enforcement capacity, harmonizing national practices, expanding protection for unregistered trademarks, and enhancing stakeholder awareness. Addressing these challenges will not only improve the effectiveness and credibility of trademark protection in the OAPI sub-region but will also contribute meaningfully to sustainable economic development, innovation, and fair competition across member states.

## 11. Recommendations

The protection and enforcement of trademark rights in the OAPI sub-region are vital for ensuring fair competition, protecting business reputation, and driving economic growth. Yet, persistent challenges-ranging from weak institutions and fragmented enforcement to inadequate protection for unregistered marks and low stakeholder awareness-continue to undermine the system's effectiveness. Tackling these issues demands bold,

coordinated, and strategic interventions. The following recommendations outline practical steps to strengthen legal frameworks, enhance enforcement capacity, foster compliance, and build a more robust, inclusive, and resilient trademark system across the sub-region.

#### *11.1 Strengthen Institutional and Judicial Capacity*

The effectiveness of trademark enforcement in the OAPI sub-region is often hindered by weak institutional capacity. To address this, member states should establish specialized intellectual property courts or tribunals to handle trademark disputes efficiently. Specialized courts can ensure uniform interpretation of laws, expedite proceedings, and provide technical expertise necessary for complex cases. Furthermore, judicial officers and law enforcement personnel should receive regular training in trademark law, infringement investigations, and evidence collection to improve the consistency and quality of judicial decisions and criminal prosecutions. Allocating adequate resources to national enforcement agencies, including customs authorities, is also essential to strengthen operational capacity and ensure effective enforcement.

#### *11.2 Harmonize National Enforcement Procedures*

While OAPI provides centralized registration, enforcement outcomes are governed by national procedural laws, resulting in fragmented protection across member states. Harmonizing enforcement procedures would reduce inconsistencies and increase predictability. Member states should develop standardized guidelines for civil, criminal, and administrative enforcement, ensuring uniform application of laws. Regional cooperation among national IP offices and enforcement authorities, through joint operations and sharing of best practices, would further strengthen enforcement efforts. Additionally, OAPI-led monitoring and evaluation of enforcement outcomes could ensure regional consistency and improve cross-border legal certainty.

#### *11.3 Expand Legal Protection for Unregistered Trademarks*

The current OAPI regime offers limited protection for unregistered trademarks, disadvantaging small and informal businesses. To address this gap, member states should explicitly recognize well-known and prior-use trademarks in their national laws and adopt flexible evidentiary standards that enable these businesses to assert rights more easily (WIPO, 2013). Capacity-building initiatives should educate enterprises on the benefits of registration and assist them in documenting trademark usage, reputation, and consumer recognition to support potential legal claims. This approach would make the trademark system more inclusive and equitable.

#### *11.4 Reduce Procedural Delays and Litigation Costs*

Lengthy legal proceedings and high litigation costs often discourage rights holders from enforcing trademarks. To mitigate this, member states should promote alternative dispute resolution (ADR) mechanisms, such as mediation, arbitration, and negotiation, which provide faster, cost-effective, and less adversarial ways to resolve disputes.

Simplified civil procedures, including expedited injunctions and provisional remedies, would further enhance access to justice. Additionally, financial support or legal aid for small and medium-sized enterprises would ensure that enforcement is not prohibitively expensive, encouraging broader compliance.

#### *11.5 Enhance Criminal and Border Enforcement Mechanisms*

Criminal sanctions and border enforcement are underutilized in the sub-region. Member states should prioritize intellectual property crimes in law enforcement agendas and establish specialized investigative units to tackle large-scale counterfeiting (WIPO, 2015). Customs authorities require training and technological support, including access to trademark databases and risk profiling for suspicious goods. Enhanced collaboration between rights holders and customs officials is essential to ensure proper recording and monitoring of trademarks at borders, improving the overall effectiveness of enforcement measures.

#### *11.6 Promote Awareness and Cultural Change*

Low awareness of trademark rights and informal market practices undermine compliance. Member states should implement regional awareness campaigns targeting consumers, businesses, and enforcement officials to emphasize the legal, economic, and social importance of trademarks. Incorporating IP education into academic curricula and professional development programs would cultivate a culture of compliance. Industry associations and business networks can also play a role by encouraging voluntary compliance and self-regulation, especially within informal sectors.

#### *11.7 Improve Data Collection, Monitoring, and Transparency*

The absence of reliable enforcement data hinders policy development and effective decision-making. OAPI and member states should maintain centralized databases tracking trademark applications, infringement cases, enforcement actions, and counterfeit trade patterns. Public accessibility to enforcement data, while respecting confidentiality, would facilitate research, policy evaluation, and stakeholder engagement. Periodic audits of

enforcement performance would help identify gaps, monitor progress, and guide strategic reforms.

#### 11.8 Leverage Regional and International Cooperation

Finally, regional and international collaboration can strengthen the OAPI trademark system. Member states should work closely with ARIPO, WIPO, and WTO to adopt best practices, access technical assistance, and harmonize enforcement standards. Cross-border enforcement initiatives can help combat transnational counterfeiting and provide consistent protection across jurisdictions. Participation in regional IP forums also facilitates knowledge sharing, joint capacity-building efforts, and the development of model legislation.

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