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Africa's Premier Journal on Fashion Law, Policy & Innovation

Foundations of Fashion Law in Africa: Concepts, Cases & Contemporary Issues

Volume 1, Issue 1

Editor-in-Chief: Bernice Asein
Managing Editor: Kélicia Massala

Fashion Law Institute Africa

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Masthead

EDITORIAL

The publication of the inaugural issue of the *Journal of African Fashion Law, Policy & Innovation* (JAFaLPI) marks a significant milestone in the evolution of legal scholarship on the African fashion industry. It reflects a growing recognition that fashion, once regarded primarily as a cultural or commercial enterprise, has become an increasingly important subject of legal inquiry. Across the African continent, fashion contributes to economic development, job creation, cultural preservation, technological innovation and international trade. Yet, despite its expanding influence, the legal and regulatory dimensions of the industry have remained comparatively underexplored within African scholarship. This journal seeks to address that gap by providing a dedicated platform for rigorous, interdisciplinary and policy-oriented research at the intersection of fashion, law and innovation.

The theme of this inaugural issue, *Foundations of Fashion Law in Africa: Concepts, Cases & Contemporary Issues*, reflects this ambition. Before meaningful reforms can occur, there must first be a clear understanding of the conceptual foundations upon which the discipline is built. Defining fashion law within the African context requires more than importing foreign legal theories or regulatory models. It demands a careful examination of indigenous textile traditions, informal markets, regional integration, digital transformation, environmental sustainability, consumer behaviour and the evolving relationship between local industries and global supply chains. Fashion law in Africa must therefore develop as a discipline informed by African realities while remaining engaged with international legal developments.

The articles assembled in this issue collectively demonstrate both the breadth of the field and the urgency of its legal challenges. They illustrate that fashion law extends far beyond intellectual property protection. Contemporary African fashion intersects with questions of artificial intelligence, digital commerce, environmental governance, international trade, cultural heritage, extractive industries, certification systems and cross-border regulation. Each contribution examines a different aspect of this expanding landscape, offering valuable insights into how law can both enable innovation and address structural deficiencies within existing regulatory frameworks.

As this journal begins its journey, it also seeks to establish a community of scholarship dedicated to advancing African perspectives on fashion law. We envision JAFaLPI as a forum where established academics, emerging researchers, legal practitioners, policymakers and industry professionals can engage in meaningful dialogue capable of shaping legal reform across the continent. We hope that future issues will continue to expand the boundaries of the discipline, encourage comparative research, promote interdisciplinary collaboration and support evidence-based policymaking that strengthens Africa's fashion economy.

The successful publication of this inaugural issue would not have been possible without the dedication of our authors, peer reviewers, members of the Editorial Board and the invaluable support of the Fashion Law Institute Africa. Their collective commitment to academic excellence has laid a strong foundation upon which this journal will continue to grow.

It is our sincere hope that the *Journal of African Fashion Law, Policy & Innovation* becomes more than a repository of scholarship. We aspire for it to serve as a catalyst for legal reform, a forum for critical dialogue, and a trusted resource for those seeking to understand and shape the future of fashion law in Africa. As the continent's fashion industry continues to evolve, so too must the legal frameworks that support it. Through rigorous scholarship, thoughtful policy analysis and innovative legal thinking, this journal aims to contribute meaningfully to that ongoing transformation.

Bernice O. Asein

Editor-in-Chief

Journal of African Fashion Law, Policy & Innovation

MANAGING EDITOR'S NOTE

The publication of a journal is often understood as the end of an editorial process. In reality, it marks the beginning of an intellectual conversation.

This inaugural issue of the *Journal of African Fashion Law, Policy & Innovation* (JAFaLPI) is founded on a simple but important premise: African fashion deserves rigorous legal scholarship that reflects the realities of the continent while contributing meaningfully to global discourse. Fashion law is no longer a peripheral or emerging curiosity. It has become an increasingly important field of legal inquiry, shaped by questions of intellectual property, trade, sustainability, technology, labour, cultural heritage, consumer protection and commercial regulation. As African fashion continues to evolve, so too must the legal and policy frameworks that support it.

Across the continent, fashion is generating employment, preserving cultural knowledge, driving entrepreneurship and expanding into international markets. Designers, manufacturers, artisans, digital creators and fashion businesses are operating within increasingly complex commercial environments that transcend national borders. Yet legal scholarship has not always evolved at the same pace. Discussions surrounding African fashion law have often been dispersed across separate legal disciplines, leaving limited space for sustained, interdisciplinary engagement with the sector as a whole.

JAFaLPI was established to help fill that space.

Our ambition is not simply to publish articles about fashion. Rather, it is to contribute to the development of fashion law as a serious academic discipline within African legal scholarship, one that is theoretically grounded, institutionally relevant and responsive to the continent's unique legal, economic and cultural realities.

One of the most rewarding aspects of serving as Managing Editor for this inaugural volume has been observing the remarkable breadth and maturity of the submissions received. Although the authors approached their research from different jurisdictions, legal traditions and methodological perspectives, several common themes emerged organically throughout the editorial process.

First, many of the contributions challenge the assumption that existing legal frameworks are inherently inadequate. Instead, they reveal a more nuanced reality: in many instances, the law already exists, but its practical application remains constrained by institutional fragmentation, informality, inconsistent enforcement or regulatory design. This distinction shifts the conversation from merely asking whether Africa needs more law to examining how existing legal systems can be better aligned with the industries they seek to govern.

Second, the papers consistently demonstrate that fashion law cannot be reduced to intellectual property alone. While copyright, trade marks and design protection remain foundational, the discipline increasingly intersects with environmental governance, digital regulation, international trade, dispute resolution, extractive industries, artificial intelligence, consumer protection and labour rights. Collectively, the scholarship presented in this volume illustrates that fashion law is, by its very nature, multidisciplinary.

Third, this inaugural issue reflects a forward-looking perspective. Rather than focusing exclusively on describing existing legal problems, many of the authors engage directly with institutional design and policy innovation. Questions surrounding AI governance, data sovereignty, cross-border dispute resolution, ethical supply chains, circular economy regulation and the protection of indigenous knowledge demonstrate a growing willingness not only to critique current systems but to imagine more effective ones.

This evolution is encouraging.

Throughout the peer review process, our objective was not merely to evaluate submissions for publication, but to strengthen them. Every accepted article underwent substantive editorial engagement intended to refine arguments, improve analytical precision and reinforce methodological clarity. Academic publishing is ultimately a collaborative endeavour, and I would like to express my sincere appreciation to each contributor for approaching the review process with professionalism, openness and intellectual generosity. Their willingness to revisit, reconsider and further develop their work has significantly enriched this inaugural volume.

The organisation of this issue reflects that editorial philosophy.

It begins by asking a foundational question: *What is African fashion law?* From there, the discussion progressively expands to examine institutional reform, intellectual property, digital governance, regional integration, sustainability, artificial intelligence, ethical sourcing and, finally, the enduring challenge of imitation within apparel and textiles. Although each article stands independently, together they offer a broader narrative about the evolution of African fashion law—from conceptual foundations to practical governance challenges.

This is precisely what I hope readers will take away from the volume. Not definitive answers, but meaningful conversations.

Academic journals play a unique role within developing fields. They do more than disseminate research. They establish vocabulary, identify emerging priorities, encourage constructive disagreement and gradually shape the direction of future scholarship. As fashion law continues to mature across Africa, I hope JAFaLPI will serve as a platform where rigorous legal analysis, interdisciplinary collaboration and policy-oriented research can continue to flourish. None of this would have been possible without the collective efforts of many individuals.

My sincere appreciation goes to Bernice Ofunre Asein, whose vision and commitment laid the foundation for this journal, to the editorial and review team for their diligence throughout the publication process, and to every contributor who entrusted us with their research. I also extend my gratitude to the participants of the Inaugural Publication Symposium, whose thoughtful discussions reaffirmed the importance of creating dedicated spaces for scholarly dialogue on African fashion law.

The conversations begun in these pages are only the beginning.

As Africa's creative industries continue to evolve, the legal questions surrounding them will become increasingly complex. New technologies will emerge. Markets will integrate. Regulatory priorities will shift. Yet throughout these changes, one principle should remain constant: legal scholarship must evolve alongside the industries it seeks to understand.

It is my hope that this inaugural issue will not simply document that evolution, but contribute to shaping it.

Kélicia Massala, LL.M.

Managing Editor

Journal of African Fashion Law, Policy & Innovation

CONTENTS

FRONT MATTER

ARTICLES

ARTICLES

DEFINING FASHION LAW IN AFRICA: SCOPE, FOUNDATIONS, AND FUTURE DIRECTIONS

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Abstract

The fashion industry in Africa has become a major part of the creative economy in the continent, contributing to a lot of employment, cultural impact and international trade. Even though the commercial growth of the sector has been fast, the legal framework regulating the sector is still disjointed, poorly theorised and with uneven enforcement. This paper builds a theoretical framework of fashion law in Africa as a specific area of legal investigation rather than a specific branch of intellectual property law. It claims that fashion law should be perceived as a multidisciplinary system governing the entire chain of values of fashion production, distribution and consumption. The paper initially traces the area of fashion law by determining the main legal areas of the law such as intellectual property, business and commercial law, trade and regional integration, labour law, consumer law, environmental law and cultural heritage law. It shows that fashion law in Africa is working both in formal and informal economies and in plural legal systems in which statutory regimes co-exist with customary norms. The paper then looks at the structural basis of the field, which will involve the legal, economic, cultural, and institutional factors that determine its effectiveness in regulation in African countries. Lastly, the article examines the growing challenges and future, such as artificial intelligence in design, cross-border e-commerce, sustainability regulation and harmonisation potential of the African Continental Free Trade Area. It argues that the absence of consistent and context-sensitive legal framework would mean that the fashion industry would contribute to the consolidation of inequality, loss of cultural protection, and hamper the intra-African integration of trade.

Keywords: *Fashion law, Creative economy, Intellectual property, Cultural heritage, Technological innovation*

1 Introduction

Historically, Africa was derided as 'the people without fashion',[1] but the achievements of the African fashion industry in recent decades has altogether rebutted this assertion. The industry is now reputed as one of the fastest-growing globally, and is primed as the next world fashion leader.[2] The multi-billion-dollar industry is also predicted to generate up to $100 billion in revenue by 2030 in addition to creating over 15 million employment opportunities.[3] With the aid of digitalisation, the African fashion industry has transcended the continent's shores and acquired international recognition and patronage.[4] True to Jennings' words, the African fashion sector is blossoming.[5]

However, the growth of the African fashion industry has not been without challenges, such as the absence of 'legal clarity'.[6] Owing to the interdisciplinary nature of fashion, it intersects with multiple sectors thus giving rise to regulatory overlap, in some cases and gaps in others.[7] This conundrum is exacerbated in the case of the African fashion industry where there are afrocentric concepts, principles, and practice—for example traditional cultural expressions (TCEs)—that cannot be neatly pigeonholed into western legal schisms.[8] Thus, the African fashion industry suffers from a patchwork of overlapping and conflicting laws that are neither fashion-specific or afrocentric.

Premised on the foregoing, there is an obvious need to recognise the distinct legal field of fashion law in Africa. Accordingly, its scope requires proper delineation because while fashion law typically draws upon traditional legal disciplines like intellectual property, environmental regulation, labour law, and trade law, the African fashion industry operates within unique cultural, economic, and

1 Jean Allman (ed), *Fashioning Africa: Power and the Politics of Dress* (Indiana University Press 2004), 3. This assertion was fueled by the Eurocentric vision of fashion which conceptualises fashion as a western concept rooted in capitalism.

2 Audrey Azoulay, 'UNESCO Report: A New Global Fashion Leader' *UNESCO* (26 October 2023) https://www.unesco.org/en/articles/unesco-report-africa-new-global-fashion-leader accessed 17 February 2026.

3 Bernice O. Asein, *Fashion Law in Africa: A Comprehensive Guide for Lawyers, Entrepreneurs, and Industry Leaders* (1st edn, Fashion Law Institute 2025), 15-16.

4 Helen Jennings, 'A Brief History of Postcolonial African Fashion' in Elke Gaugele and Monica Titton (eds.), *Fashion and Postcolonial Critique* (Sternberg Press 2019), 104–113. The author narrated with precision, the teeming global influence of the African fashion industry, even on notable western brands and designers such as Yves Saint Laurent (YSL), Nike, Adidas, and Burberry.

5 Helen Jennings, A Brief History of African Fashion' (2015) 37(1) *Nka Journal of Contemporary African Art* 44–53. https://doi.org/10.1215/10757163-3339860

6 Lauren England and others, 'Africa Fashion Futures: Creative Economies, Global Networks and Local Development' (2021) 15(9) *Geography Compass* 1–13, 3. https://doi.org/10.1111/gec3.12589

7 United Nations Educational, Scientific, and Cultural Organisation (UNESCO), *The African Fashion Sector: Trends, Challenges & Opportunities for Growth* (UNESCO 2023) 34–35. https://doi.org/10.58337/PHDP8559.

8 Brigitte Vezina, 'Curbing Cultural Appropriation in the Fashion Industry with Intellectual Property' *WIPO Magazine* (29 August 2019). https://www.wipo.int/en/web/wipo-magazine/articles/curbing-cultural-appropriation-in-the-fashion-industry-with-intellectual-property-40880 accessed 11 June 2026. In the publication, the author acknowledged that TCEs are largely excluded from legal protection under the existing IP laws. See also: World Intellectual Property Organization (WIPO), *The Protection of Traditional Cultural Expressions: Updated Draft Gap Analysis* (Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, 37th Session, WIPO Doc WIPO/GRTKF/IC/37/7, 6 July 2018.

institutional contexts that are not envisaged under conventional laws. Additionally, given the conflict between the realities of African fashion and western legal concepts, forward-looking, Afrocentric directions are required to ensure that African fashion is not stymied by the indiscriminate transplantation of mismatched foreign doctrines.

In achieving these objectives, and for logical convenience, this article is stratified into five parts: Part one introduces the research by providing a succinct contextual background that captures the legal ambiguity pervading African fashion and the urgent need for clarity; Part two defines the concept of fashion law generically and from an Ubuntu lens, and clarifies its scope in Africa; Part three discusses the foundations of fashion law in Africa, from legal and economic standpoints; Part four maps the future trajectory of fashion law in Africa and offers corresponding recommendations; Part five recapitulates the findings of the article and concludes.

2 Mapping the Scope of Fashion Law in Africa

2.1 Conceptual Framework

Fashion law in Africa is the term used to refer to the set of legal norms, institutions and rules that regulate the creation, production, distribution, marketing and protection of fashion-related products and services within African jurisdictions.[9] It is not restricted to intellectual property law, neither is it solely about textile manufacturing regulation, but it is a function of the intersection of creative expression, commerce, culture, labour and trade. Meanwhile, intellectual property (IP) laws have become the centre of dispute in the fashion industry, where brand identity is secured using copyright.[10] It is fallacy to make fashion law mainly from IP laws. Instead, fashion companies need to negotiate contracts, establish companies, raise capital, supply chain management, adhere to customs regulation and react to consumer protection laws.

Fashion law in Africa is paramount due to the common practice design copying, especially in informal markets where enforcement mechanisms are uneven, and IP laws cannot protect economic and institutional realities that influence the fashion sector.[11] This means that for the law to be effective in fashion, they must be well combined with IP laws, trade laws, commercial laws, and other regulatory laws. This will ultimately lead to the protection of fashion brand and identity, licencing and distribution of contracts and traditional motifs owned by culture, and e-commerce compliance across borders. For example, clothing garments like Adire is a commodity and an art

9 Ibid.

10 AFL Business, 'Intellectual Property (IP) Strategies for Fashion Entrepreneurs' Africa Fashion Law (3 September 2024) https://africafashionlaw.com.ng/intellectual-propertyip-strategies-for-fashion-entrepreneurs/ accessed 12 February 2026.

11 AFL Business, 'Intellectual Property (IP) Strategies for Fashion Entrepreneurs' Africa Fashion Law (3 September 2024) https://africafashionlaw.com.ng/intellectual-propertyip-strategies-for-fashion-entrepreneurs/ accessed 12 February 2026.

piece that is sold, exchanged, exported, taxed and controlled like a tangible commodity. This hybrid nature that only fashion law can offer results in legal issues that cannot be addressed by IP laws.[12]

In Africa, fashion law thus operates in plural legal systems, where statutory laws can intermingle with customary practice and communal heritage, co-existing with formal IP laws. The regional systems set in place are ARIPO and OAPI in collaboration with national laws.

2.2 Core Legal Domains

Fashion law in Africa exists within intersecting legal frameworks which govern creativity, commerce, labour, trade, culture and environmental laws. However, it is worthy of note that intellectual property law is the main pillar of fashion law.[13] This legal protection help designers to protect their textile prints, garment sketches, logos, and brand identity. The protection of artistic works under copyright is affected by international instruments like the Berne Convention on the Protection of Literary and Artistic Works and the TRIPS Agreement.[14] These agreements have member African states who are obligated to offer minimum levels of protection and enforcement.

In real life, some fabric patterns, surface patterns and fashion sketches are copyrighted, while the trademark law protects brand names, logos and designs. When satisfied with statutory provisions of novelty and distinctiveness, industrial design law secures the visual outlook of clothing, footwear, and accessories. Meanwhile, the African Regional Intellectual Property Organisation (ARIPO)[15] and the Organisation Africaine de la Propriete Intellectuelle (OAPI) run regional legal systems on which fashion designers are able to protect their rights in any and every jurisdiction, under single filing systems.

Consequently, the law on paper is always present but not always with effective protection. The essence of fashion law is thus characterised by intellectual property, though not an exclusive one. Furthermore, fashion businesses are conducted on the basis of commercial legal frameworks that define formation, financing, and regulation. The contract law regulates agreement between designers and manufacturers, distributors, retailers, and marketing agencies.[16] In cases where the contracts are not well drafted or enforced, designers may get exploited in the distribution schemes or global partnerships.

12 Ibid.

13 World Intellectual Property Organization (WIPO), 'World Intellectual Property Indicators 2023' Geneva: WIPO. DOI: 10.34667/tind.48541 accessed 12 February 2026

14 UNCTAD-ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press, New York 2005) 138

15 ARIPO Secretariat, Colloquium for the Judiciary on Intellectual Property Rights, Protection of Tradition al Knowledge, Expressions of Folklore and Access to Genetic Resources, Swakopmund, Namibia (April 13 to 15 2008)

16 Susanna Monseau, *Protecting Creativity in Fashion Design; US Laws, EU Design Rights, and other Dimensions of Protection* (Routledge 2023).

2.3 Structural Characteristics of Fashion Law in Africa

African fashion law is not solely determined by the text of statutes, treaties, but by structural realities, which determine the operation of these laws in practise. These are some of the features that make the African context different from other regions in which fashion law evolved in highly formalised luxury markets. However, in African fashion industries, informality, legal pluralism, low enforcement, and regional fragmentation are common structural characteristics to consider. Any further description of its extent must involve these structural aspects.

2.3.1 Formal-Informal Economy Interaction

The informal enterprise dominance of fashion production is a characteristic feature in Africa as tailors, seamstresses, dyers, embroiderers and fabric traders usually work without legal registration, tax filing and contractual framework.[17] Instead, verbal orders are custom orders, payments are made in cash, and designs are given to imitation as opposed to proper licencing.[18] Meanwhile, formal intellectual property regimes presuppose the registration, documentation, and institutional enforcement. Thus, there arises a discrepancy between law and economic reality. Theoretically, designers have copyright but might not have the resources and motivation to enforce it in court.[19] This means that craftsmen get to copy other creators' designs without infringement and they perceive duplication as being a normal aspect of competition in the market space. Such interplay forms a stratified regulatory setting where African fashion law operates in a hybrid creative economy and formal conformity exists alongside informal adjustment.

2.3.2 Legal Pluralism: Norms of Law and Norms of Custom

The plural sources of authority are evidently seen in the African legal system. Here, statutory law, inherited colonial system, provisions of the constitution, and customary norms all co-exist. This legal pluralism is especially apparent in the case of cultural ownership in the sphere of fashion. This way, communal identity is often infused with traditional norms that denote descent, rank or religious connotation. There are traditional standards that can govern the right to make or wear some designs, but the regimes of statutory intellectual property are designed in terms of individual authorship and commercial registration.

A design can be legally registered under industrial design law[20] and yet be sensitive to the culture of a community. On the other hand, communal heritage remain unprotected as it does not correspond to the statutory requirements of originality. The fashion law in Africa has to work through parallel normative systems. Within this context, courts and policymakers have to balance individualised rights in IP laws with collective cultural entitlements.

17 HQ Legal, 'Fashion Law in Nigeria: What Fashion Businesses Need to Know About Its Evolution, Challenges, and Future Growth' (23 June 2025) https://www.shqlegal.com/publications/fashion-law-in-nigeria-what-fashion-businesses-need-to-know-about-its-evolution-challenges-and-future-growth accessed 12 February 2026.

18 Ibid.

19 Rosati, Originality in EU Copyright. Full Harmonization Through Case Law, 102–110.

20 World Intellectual Property Organization (WIPO), 'World Intellectual Property Indicators 2024' Geneva: WIPO DOI: 10.34667/tind.50133 accessed 12 February 2026.

2.3.3 Defective Enforcement and Institutional Capacity Restraints

Another structural characteristic is uneven enforcement of existing laws met to protect the fashion industry. A good number of African countries have up to date IP laws that are in line with international standards, but enforcement systems are usually associated with low resources, judicial system backlog, lack of training, and expensive legal proceedings.[21] Foreign imitations are competing with locally designed, original products.[22] Hence, institutional infrastructure such as IP offices and specialised commercial courts for legalised systems and digital filing platforms has to be well developed. This way, the power of fashion law is not established only on the basis of the statutory language but on the administrative and judicial capacity of African countries.

2.3.4 Regulatory Diversity and Regional Fragmentation

The continent of Africa has various legal traditions and regulatory models. There are Anglophone, Francophone, and Lusophone systems. The regional IP systems like ARIPO and OAPI are not similar. The national laws on consumer protection and labour laws differ in terms of their scope and level of enforcement.[23] This variety brings about fragmentation where fashion designers with intentions of expanding across the continent has to go through the various trademark laws, customs documentation and products standardization. Likewise, poor homogeneous structure of tariffs and border processes, with out of sight practical harmonisation of regional trade initiatives further discourages small fashion businesses from global scaling, especially those in Africa.

2.3.5 Regulatory Development

Fashion law in Africa is usually expressed within the context of development policy. The government perceives the fashion industry as a job industry, youth entrepreneurship, and export diversification. Here, economic development when prioritised, can affect regulatory designs to boost development.[24] This policy orientation also influences policy decisions in fashion industries. However, there are regulatory gaps that compromise long-term competitiveness and global scaling of African brands in the fashion industry. Hence, the balance between growth and accountability should be in structural reform.

2.3.6 Global Integration and Imbalanced Power of Bargaining

African fashion companies are daily growing and expanding. Some of these designers are involved in world supply chain, where they work in collaboration with global retailers from Asia or Europe.[25] Export markets have compliance conditions of sustainability, labelling, and safety, but the power of bargaining is unequal. This way, foreign distributors have the edge over their counterparts in terms of contract and international standards, which can be costly without assistance to implementation. This is the global asymmetrical framework of fashion law in Africa where states are contracted to

21 Ibid..

22 Ibid.

23 Tanya Kumari and Harshita Singh, 'The Impact of Intellectual Property Rights in the Fashion Industry' (2024) 4(2) India Journal of Integrated Research in Law 1124–1143.

24 Barbara Kolsun and Douglas Hand, *The Business and Law of Fashion and Retail* (Carolina Academic Press 2020), 43–48.

25 Ibid.

minimum standards in international treaties, whereas the domestic ability to capitalise on those frameworks is weak.[26] The effect of structural inequality is the way legal rights are converted into economic value. These characteristics do not rule out the fact that fashion law exists. Rather, they define how it functions, interfering with economic organisation, culture, and institutional capabilities.[27] Any attempt to theorise or restructure fashion law in Africa should put these structural realities into consideration, since they define whether formal rules create effective protection and sustainable development or not.

3 Foundations of Fashion Law in Africa

3.1 Legal Foundations

Fashion law in Africa has legal foundations that are based on multi-layered sources of legal strength within the national, regional, and international levels. These frameworks are all involved in controlling ownership of designs, commercial transactions, trade flows, consumer relations and cross-border protection. These foundations are important in order to place fashion law in the larger framework of African legal systems, as well as in international markets.

3.1.1 National Laws

The main legal foundation of fashion control is constituted by national legislation. Every African state has the statutes of intellectual property, commercial activity, and consumer transactions.[28] These laws dictate the manner in which fashion business is established, the manner in which designs are guarded, the manner in which contracts are legally enforced and how conflicts are eliminated. The intellectual property laws have been reformed to match international standards. At the national law level, corporation, partnership structures, taxation and insolvency are governed by company and commercial laws. Consumer protection laws establish marketing, product standards, as well as its liabilities. Domestic legislative clarity and institutional capacity is thus of great concern to the effectiveness of fashion law in Africa.

3.1.2 The Intellectual Property Laws

The national level of fashion protection is comprised of intellectual property laws.[29] These are laws governing copyright, trademarks, industrial designs and similar rights. The copyright laws safeguard artistic works like textile prints, sketches, and some graphic designs. Nonetheless, it is implemented on the basis of authorship and originality evidence. The trademark law[30] safeguards the names of the brands, logos, and other unique signs applied in business. Registration gives exclusive rights on a territorial level. In most cases, the commercially important protection mechanism of interest to

26 Ibid.

27 Ibid.

28 FO Babafemi, *Intellectual Property: the Law and Practice of Copyright, Trademark, Patents and Industrial Design in Nigeria* (Justinian Books Limited 2007), 1.

29 Ibid, 6.

30 Trade Marks Act, CAP 506 (59)

fashion enterprises is trade mark registration in case they plan to grow into the market. The industrial design laws protect the aesthetic aspect of fashion brands like clothes, footwear, and accessories. Freshness and registration are normally needed to get protection. These national IP regimes are usually written in accordance with international treaties.

3.1.3 Trade and Commercial Laws

In Africa, fashion enterprises exist in a wider commercial legislative framework, involving company formation, contractual duties, secured transactions, insolvency and commercial dispute settlement that are governed by trade and commercial laws.[31] Fashion houses are incorporated and run under the company law, establishing the rights of shareholders, the responsibilities of directors and reporting requirements. Moreover, import and export activities are also governed by commercial laws. This reform in most African jurisdictions is aimed at modernisation of fashion business environments in Africa and encourage investment. Regardless, informal enterprise is prevalent in the fashion industry, which does not allow formal commercial regulation to have practical impact.

3.1.4 Consumer Protection Laws

Laws on consumer protection govern the interaction between fashion industries and consumers.[32] Such laws deal with misleading advertisement, product safety, labelling standards, warranties and refund claims. Fashion products are physical products that can be assessed under quality and safety measures. Important factors like fabric composition, country of origin, or pricing misrepresentation can be the focus of regulatory sanctions. Good consumer protection enhances consumer confidence in the market. Hence, any laxity in enforcement destroys brand credibility and puts the buyers at a risk of being exploited. In the African fashion markets, consumer law is a factor that can boost professionalisation and formalisation of the industry.

3.1.5 Regional Frameworks

In addition to national laws, there are regional frameworks that influence the principles of fashion law in Africa. These frameworks are meant to balance the protection of intellectual property and promote integration of trade within this context. Africa Regional Intellectual Property Organisation (ARIPO) is primarily serving Anglophone African states and also works under protocols like the Harare Protocol where applicants are given the opportunity to have their patents and industrial designs granted regional protection under centralised filing system.[33] In spite of the fact that trademark registration by ARIPO has evolved over time, the ultimate protection of fashion goods is based on designation and recognition by member states. ARIPO makes it easier to register IPs across national borders, yet unable to complete harmonisation of substantive law.

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31 Giuliano G. Castellano, 'Commercial Law Intersections' (2021) 72(4) Hastings Law Journal 999–1054.

32 Guillermo C Jimenez and Barbara Kolsun, *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys* (2nd edn, Bloomsbury 2014).

33 United Nations Conference on Trade and Development (UNCTAD), Creative Economy Outlook 2022 (UNCTAD 2022) https://unctad.org/webflyer/creative-economy-outlook-2022 accessed 12 February 2026.

Whereas, the Organisation Africaine de la Propriete Intellectuelle (OAPI) offers a single IP system to its Francophone member states. This centralised system is more uniform than the system of ARIPO because there is significant harmonisation of IP laws between OAPI states, which minimises fragmentation.[34] In the case of fashion businesses that conduct business in Francophone Africa, this structure makes it easy to protect their brands and crafts across countries.

The African Continental Free Trade Area Agreement (AfCFTA) is a trade integration agreement that covers the continent. It seeks to decrease tariffs, standardise custom practises, and encourage trade within Africa.[35] Although it is not a tool of intellectual property, AfCFTA has a profound impact on fashion law, as it affects market access, laws of origin, and coordination of regulations. With the increasing growth of textile and garment trade in Africa, the protocols of AfCFTA will have an indirect impact on branding, labelling, and dispute resolution procedures.

3.1.6 International Treaties

African fashion law is also founded on the international-treaty obligations which put down minimum standards of protection. The TRIPS Agreement, which is administered by the World Trade Organisation (WTO) framework establishes minimum standards on copyright, trademarks, patents and industrial designs. It further obliges member states to offer enforcement and legal redress. Africa is an active member of the WTO; hence, bound by TRIPS Agreement.[36] These obligations are manifested in national IP laws as TRIPS provide the minimum security for flexible implementation.

Likewise, the Berne Convention on the Protection of Literary and Artistic Works provides the protection of copyright on automatic basis. Here, member African state designers get the same protection in other member states in the fashion industry. To African fashion designers who want to have international coverage of their artistic works without registration, Berne membership will ensure such cross-border protection.[37]

The Paris Convention of the Protection of industrial property regulates the rights of industrial property such as patents and trademarks, creating principles like national treatment and priority rights. Priority rights enable applicants filing in one member state to claim an earlier filing date in another, assuming that they apply within a certain period. This is especially applicable to fashion companies that are about to go global.

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34 ARIPO Secretariat, Colloquium for the Judiciary on Intellectual Property Rights, Protection of Tradition al Knowledge, Expressions of Folklore and Access to Genetic Resources, Swakopmund, Namibia (April 13 to 15 2008).

35 United Nations Conference on Trade and Development (UNCTAD), Creative Economy Outlook 2022 (UNCTAD 2022) https://unctad.org/webflyer/creative-economy-outlook-2022 accessed 12 February 2026.

36 Agreement Establishing the African Continental Free Trade Area (adopted 21 March 2018, entered into force 30 May 2019) https://au.int/en/treaties/agreement-establishing-african-continental-free-trade-area accessed 12 February 2026.

37 WIPO, 'Diplomatic Conference for the Revision of Berne Convention' (July 5 to July 24 1971) Diplomatic Conference for the Revision of Berne Convention accessed 12 February 2026.

3.2 Economic Foundations of African Fashion Law

The law of African fashion is economic in nature and is determined by the organisation of production, size of the enterprise, availability of capital, and value chain organisation across the continent. The law is not a vacuum that exists by itself. It operates in small business dominated, informal labour dominated, limited financing and fragmented supply chain dominated markets. These economic attributes are fundamental to explain the fashion law functioning and structural limitations of some legal reform proposals.

3.2.1 SMEs and Micro-Enterprises

The African fashion industry is composed of small and medium-sized enterprises (SMEs) and micro-enterprises.[38] The majority of the designers are small partnerships or sole proprietors. A lot of them have less than ten employees. The volumes of production are usually low, and custom orders constitute a large part of the income. The structure influences the engagement of legal structures. Intellectual property can be registered formally and this might be seen as expensive as compared to turnover. Formalisation is discouraged by legal compliance needs like incorporation of a company, registration of taxes and regulatory filings.

Small businesses are likely to have insufficient legal competence.[39] Therefore, payment disputes, ownership of designs or distribution rights are a common occurrence that is often not clearly documented. The high number of SMEs implies that the fashion law should be in a size that can be afforded by small enterprises. The multidimensional processes or costly charges can lock out most players in the industry. The legal design, which presupposes big corporate actors, is not in line with the reality of the sector.

3.2.2 Informal Sector Dominance

The informal economy is a major source of production of African fashion. Artisans such as tailors, textile traders, dyers, embroiderers, and street vendors do not have formal systems that regulate their activities. Employment relationships in most cases are not documented and registration of intellectual property is not very common. Informality has various implications on the strength of law to protect various fashion brands. To begin with, the right enforcement is not easy when the businesses are not registered or have no commercial or traceable identity. Second, the copying of garment designs in an informal way is rather usual, and it is not necessarily viewed as infringement but as a competitive habit. Third, labour protection might not extend to those workers in informal production.

Formal economic actors are normally given preference in legal systems. In the case of a high rate of informality in the sector, statutory protections are not fully exploited and accessibility to credit, insurance and export markets is also restricted, further contributing to economic vulnerability.[40] Simultaneously, the informal sector employs millions of people and helps to preserve culture in the

38 Barbara Kolsun and Douglas Hand, *The Business and Law of Fashion and Retail* (Carolina Academic Press 2020), 43–48.

39 Ibid.

40 Ibid.

textile industry. Fashion law reform should, therefore, strike the right balance between formalisation objectives and livelihood maintenance.

3.2.3 Barrier to Finance Constraints

The lack of access to finance is one of the structural limitations to African fashion business development. Creative businesses are also considered high risk by commercial banks because they have unpredictable earnings, poor collateral and lack of audited financial statements. Many designers are unable to open business bank accounts and get loans without formal incorporation.[41] This is because intellectual property assets are not often recognised as a collateral in the local financial system and the presence of venture capital in the creative industry is still low in most jurisdictions. Meanwhile, trademarks or industrial designs must be registered at a fee.

Civil litigation involves the need of legal representation. The export standards might demand investments in equipment and certification. In situations where access to finances is limited, law protection is secondary to survival, yet most fashion designers value short term production instead of long-term brand protection. It is the economic environment that influences incentives to exercise available legal tools. The practical impact of the fashion law would be enhanced and the recognition of intangible assets and the creation of innovative industry financing schemes would be promoted.

3.2.4 African Fashion Value Chain Structure

The value chain of African fashion industry is discontinuous and extrinsic. This is as a result of increased level of competition amongst designers for imported fabrics in the production of textiles. This lack of integration minimises efficiency, coupled with high cost of transport and delay at customs. Also, in African fashion industry, large scale production is limited by inadequate industrial capacity. Hence, value capture is uneven as artisans are paid small salaries in comparison with retail prices. Meanwhile, the middlemen who export these goods might end up taking a huge portion of the profit margin. The customs law influences the importation cost of textile and export potential is affected by trade agreements.[42]

The labour law, however, defines production conditions, safeguarding brand value. The development of the value chain is not sufficient to guarantee reduction in competitiveness. The economic structure determines the effectiveness with which fashion law facilitates the growth of the industry. All of these factors influence the practise of legal frameworks in the fashion industry. There are statutory rights and these rights are invoked and enforced depending on the economic capacity. Reform that does not reflect enterprise size, informality and funding limit is a danger of coming up with rules that are not in touch with the market reality.

Hence, fashion law in Africa should be thus aligned to economic development strategies that enhance the formalisation of enterprises, financial inclusion, and value chain integration. Legal

41 African Growth and Opportunity Act (AGOA), Pub L No 106-200, 114 Stat 251 (2000).

42 OECD, Model Tax Convention on Income and on Capital: Condensed Version 2017 (OECD Publishing 2017) arts 17–18.

doctrine only can be given practical effect by having an economic environment that is able to support compliance and enforcement.

3.3 Cultural and Institutional Foundation

The cultural principles of African fashion law are based on identity systems, community property, inherited knowledge, and symbolism that are not subject to modern state law.[43] Fashion is not just commercial production in African society. It is a well-organised social manifestation where clothing, fabrics, patterns and colours convey membership, rank, religion and culture. These cultural structures must then be the starting point of any legal analysis of African fashion industries, as they give better meaning to rights, its relevance, and struggle.

In most African societies, dressing code is controlled by non-written social rules known as social norms. For instance, there are certain clothing or designs that indicate marriage, chieftain title, age group, family or religion. Likewise, traditional rulers may be confined to royal regalia, ritual clothing can be the preserve of rites of passage, while some beads work, headwear or wrappers can be put on during funerals or festivals.[44] All of these dictate that cultural norms make certain the things someone can wear and in what situations they can be seen in the streets. These norms do not exist in written texts but they serve as regulations in societies.

When commercial fashion production and these restrictions come into contact, there tend to be conflict. The African fashion law should thus consider the interplay between the formal legal systems and customary authority. Another cultural base is communal ownership of designs. Numerous patterns of African textiles, weaving styles, and dyeing styles cannot be attributed to a single individual. Instead, they are developed as groups throughout generations. Meanwhile, modern intellectual property laws especially copyright and patent law are designed in such a way that they are on individual authorship, originality and limited duration of rights. Hence, group innovation does not smoothly fall into this model, creating legal gaps.

The presence of cultural embedded designs means that external actors recreate or commercialise those designs without the consent of the community in which they originate, as the conventional IP laws cannot be applied to establish formal ownership.[45] Some African states in reaction seek protection through geographical indications, traditional knowledge systems or cultural heritage laws. These strategies aim at appreciating collective custodianship and not individual proprietorship. A primary conflict in African fashion law is the proximity of shared cultural rights and individual statutory rights.

43 Eze, 'Rethinking African culture and identity: the Afropolitan Model' (2014) 26(2) Journal of Accounting and Contemporary Studies http://www.jstor.org/stable/24758424 accessed 13 February 2026.

44 Ibid.

45 Sara Cavagnero, 'Governing the Fashion Industry (through) Intellectual Property Assets: Systematic Assessment of Dividual Trade Marks Embedding Sustainable Claims' Journal of Intellectual Property Law & Practice, 16(8) (August 2021) Pages 850–868, https://doi.org/10.1093/jiplp/jpab059 accessed 13 February 2026.

The transfer of the knowledge among generations also influences the cultural framework of the fashion industry. In most African settings, fashion skills are passed on via apprenticeship system within the family or even in a local guild system.[46] Oral instruction and demonstration are commonly used to teach weaving, embroidery, dyeing, leather work and tailoring, instead of being taught in an institution. Such arrangements are hardly ever based on written contracts. The issue of trade secret protection is challenging in cases where methods are commonly distributed in a society.

The large part of the fashion economy is ruled by informal production systems, and legal frameworks which suppose corporate entities and documented agreements and centralised record keeping usually fail to represent this fact. The survival of apprenticeship culture supports the significance of relational trust, community norms and reputation in discipline of behaviour. African fashion law must work in harmony with these informal systems of governance, and not as a substitution. There is another dimension of cultural symbolism and heritage claims where large number of African clothes and fabrics serve as reservoirs of history and religious significance.[47]

There are proverbs encoded as patterns and colours embodied as political conflicts or family histories. The textile custom shows a sign of resistance, movement or social strength when these symbols are reproduced and used in other ways, they disconnect them from their cultural context. The impacted populations then find themselves harmed in other ways other than merely economically. This sensitivity is evident in the modern controversies surrounding cultural appropriation, misinterpretation and commercial exploitation without authorization. These are being increasingly regulated by African laws in terms of heritage protection laws, unfair competition laws and new traditional knowledge laws.[48] These reactions are indicative of the realisation that fashion in Africa cannot be separated with cultural identity.

When combined, these factors prove that the cultural underpinnings of African fashion law go beyond the legal protection of the intellectual property. They include traditional authority, shared custodianship, inherited competence systems and connotation. These cultural realities need to be incorporated into law analysis in order to map the scope of fashion law in Africa. Regulatory frameworks may end up being out of touch with social structures that support the production and expression of African fashion, without considering them.

The African fashion law has institutional infrastructure that comprises of formal and informal institutions that govern, adjudicate, and facilitate the industry. The registration, compliance monitoring and enforcement of national and regional IP laws are administered by intellectual property offices and regulatory agencies. Courts and dispute settlement systems offer mechanisms of enforcing rights, dealing with instances of violation, contract, and misappropriation. Associations and guilds of industries provide collective representation, training and advocacy to designers and artisans. Networking, capacity building, and market access Fashion councils and creative hubs are

46 Ibid.

47 African Growth and Opportunity Act (AGOA), Pub L No 106-200, 114 Stat 251 (2000).

48 Ibid.

making the difference between informal production and formal legal structures. These institutions collectively make up the working structure within which the fashion law operates in the continent.

4 Recommendations and Future Outlooks of the African Fashion Law

The African fashion law is confronted with a dynamic array of challenges that are influenced by technological innovation, digital business, sustainability demands, regional integration, and inclusive development requirements. These future trends are important to understand so as to establish a legal system that can support the growth process by safeguarding cultural, economic and social interests.

Firstly, the design and production of fashion around the world is being altered by artificial intelligence (AI), bringing new legal issues in Africa. Artificial intelligence based designs put traditional concept of authorship and intellectual property to test. When a machine is used to produce the textile pattern or garment design, it becomes complicated to find out who is entitled to the legal ownership of the end product. Copyright laws presuppose that the author is a person, and AI outputs are in the grey zone.[49] Protection is further complicated by the digital replication as patterns have high-resolution images that can be copied and altered anonymously. This compromises enforcement of designers who use territorial IP laws. NFTs and other digital fashion items to bring about new ownership. Designers are becoming more active with digital clothes, limited editions, and blockchain-based collectibles. The law should demystify NFT rights, licencing, resale, and reproduction.

Another issue that is developing is the ownership of data on fashion sites. E-commerce market places gather design files, preferences of the consumers and production data. Concerns exist over control, permission, and payment of creators who have their work utilised to create AI models or analytics. The regulation should strike a balance between innovation and safeguarding of proprietary information of designers. There is an additional complexity in digital payment regulation when converting currencies, mobile money systems, and integration with fintech raising legal issues of liability, fraud prevention, and legal adherence to financial regulations.[50] African fashion law has to adjust to these cross border commercial realities without compromising market access and confidence.

Fashion law is becoming more and more concerned with environmental and sustainability-related issues. Circular fashion models encourage reuse, recycling, and reduction of waste, and legal mechanisms must be assisted to help producers to be responsible and manage the product lifecycle. Extended producer responsibility (EPR) systems can be used to hold brands accountable after the consumer use of the products, forcing them to meet the required environmental standards.[51] African fashion brands are beginning to have environmental, social, and governance (ESG) requirements,

49 OECD, "Blockchain Technologies and Competition Policy: Issues Paper‘ (OECD, 2022) https://www.oecd.org/daf/competition/blockchain-and-competition.htm accessed 13 February 2026.

50 Ibid.

51 Agreement Establishing the African Continental Free Trade Area (adopted 21 March 2018, entered into force 30 May 2019).

particularly those that are exported to markets with high sustainability standards. Another issue is climate adaptation in textile production. The processes of cotton production and dyeing are influenced by water shortage, altered rain patterns and temperatures. The regulatory frameworks should bring in the aspect of environmental risk reduction to facilitate sustainable production without losing the industry competitiveness.

Continental integration also provides prospects of coherent fashion law in Africa. The African Continental Free Trade Area (AfCFTA) facilitates trade between African countries and establishes a structure of tariff and market access and cross-border cooperation. The enforcement of IP harmonisation should be conducted to safeguard the designers of different jurisdictions. This means that conflicts that involve two or more member states can be resolved using regional dispute settlement bodies. Co-ordination of policies between national authorities guarantees uniformity in regulation, minimises legal uncertainty and enhances capacity to enforce. The continuity of harmonisation in continents also facilitates investment and expansion through the establishment of predictable regulations among designers, investors and consumers who operate in different markets in Africa.

Inclusion in legal development is very crucial, as fashion laws should safeguard even the weakest individual or brand in the fashion industry. Informal creators who control production in most communities need to have ways of formalising rights without losing their means of livelihood. Reform of the law should be gender sensitive as a large percentage of artisans and small enterprises entrepreneurs are women. The young designers are the ones who can innovate, however, they do not always get access to the legal advice, financial resources or business support. The availability of justice to creative industries enables such players to protect rights, settle disputes, and conduct business without fear. Hence, inclusive legal development makes sure that fashion law not only formalises the fashion sector but also makes it more equitable, supportive and socially sustainable throughout the African fashion ecosystem.

5 Conclusion

African fashion law should be identified as a unique area of law and not to be confused with the general intellectual property, commercial, or cultural law. It overlaps with various areas, such as IP protection, commercial regulation, labour, trade, sustainability, and cultural rights, but its peculiar blend of economic, cultural, and technological elements makes it stand out. The idea of fashion law as a specific discipline enables scholars, policymakers, and legal practitioners to deal with the challenges and opportunities unique to the sector instead of making use of imported or fragmented legal approaches.

Although, gaps in doctrine and policy still exists on a structural level, statutory rules in African country tend to offer formal protection, excluding informal creators and micro-enterprises. Enforcement systems are still patchy, administrative strength is weak and customary regulations that regulate fashion industry and cultural legacy exist beyond the law. The harmonisation of regions remain partial, the application of ARIPO and OAPI systems is unequal, and even the coordination of the continent within the framework of AfCFTA remains in its infancy state. The cross-border e-commerce, technological disruption, and sustainability needs also reveal the weaknesses in the legal and institutional infrastructures of fashion law in Africa. Hence, strengthening of these institutions is important.

IP offices, courts and regulatory bodies should raise accessibility, efficiency and ability to settle disputes regarding fashion law and its corresponding industry. Associations of industry, its creative economy, and fashion council ought to be given the mandate to fill the gap between informal and formal sectors, to train and champion the interests of designers. The AfCFTA provides regional coordination that brings about IP enforcement, intra African trade and dispute resolution procedures across African fashion industries. The alignment of these policies and cooperation of the member states will help to increase access to markets, lessen fragmentation, and motivate formalisation.

However, the implications of the long-term effect on the creative economy of Africa are still farfetched. Only properly organised, financed fashion law systems can ensure economic benefits to designers, artisans and entrepreneurs, encourage international trade, preserve collective cultural heritage and promote sustainable development of the fashion industry. It places fashion not only as a source of creative business, but as a source of cultural continuity, social integration and economic development in a sustainable way.

In conclusion, fashion law in Africa should no longer be viewed merely as the incidental application of existing legal doctrines to the fashion industry. Rather, it constitutes an emerging field of legal inquiry with its own subject matter, regulatory concerns, and conceptual foundations. This article has sought to lay that foundation by defining the scope of African fashion law, identifying its legal, economic, and cultural pillars, and outlining its future trajectory. In doing so, it offers a starting point for the development of a distinctly African fashion law scholarship capable of responding to the opportunities and challenges of one of the continent's most dynamic creative industries.

THE REGULATORY PARADOX: STRUCTURAL DEFECTS OF CERTIFICATION TRADE MARKS IN THE PROTECTION OF NIGERIAN INDIGENOUS TEXTILES

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Abstract

Nigeria's indigenous textile industry, encompassing heritage fabrics such as Adire and Akwete, represents a $4.7 billion heritage asset essential to the creative economy. However, this sector faces existential threats from digital exploitation and industrial counterfeiting, which exploit critical gaps in the nation's intellectual property framework. This paper identifies a fundamental 'Regulatory Paradox' within section 43 of the Trade Marks Act 2004: the statutory prohibition against certification mark proprietors carrying on a trade in certified goods legally disenfranchises the very artisan guilds that simultaneously produce and regulate these works. The study argues that this defect is compounded by the judicial 'ornamentation doctrine' established in *Ferodo Ltd v Ibeto Industries Ltd*, which creates a 'Distinctiveness Trap' by categorizing traditional motifs as mere decoration rather than protectable badges of origin. Through a comparative analysis of the robust protections afforded by the African Intellectual Property Organization (OAPI), the introduction of Collective Marks in Kenya, and the utilization of Geographical Indications (GIs) for Kente in Ghana, the paper demonstrates that Nigeria's legal vulnerability is a specific legislative failure. Consequently, it proposes a tripartite reform strategy: the immediate adoption of non-trading Special Purpose Vehicles (SPVs) to circumvent statutory bars, the amendment of the Trade Marks Act 2004 to recognize Collective Marks, and the urgent enactment of the Geographical Indications Bill 2025 to anchor cultural value to terroir in the age of Artificial Intelligence (AI).

Keywords: *Automated appropriation, Certification trademarks, Collective marks, Geographical indications*

1 Introduction: Economic Value and Legal Vulnerability

1.1 The Economic Context: Indigenous Textiles as National Assets

The Nigerian fashion and textile industry has evolved beyond a mere cultural showcase into a critical economic engine, with market valuations estimated at approximately $4.7 billion,[1] accounting for roughly 15% of the Sub-Saharan fashion market [2] and with revenues projected to reach US$1,194.00m as at 2024.[3] Within this ecosystem, indigenous textiles such as the Adire of Egbaland[4] and the Akwete of Abia State function as 'Cultural Oil'—finite, high-value assets that drive tourism, employment, and intergenerational wealth transfer. For instance, Adire production in Abeokuta has historically operated as an entrepreneurial craft that sustains family lineages and local economies, transforming cultural heritage into tangible capital. Consequently, the protection of these assets is not merely a matter of cultural preservation but an economic imperative to safeguard the livelihoods of millions of artisans against market erosion.

1.2 The External Threat: Automated Appropriation and Mass Production

This vibrant economy faces an existential threat from 'Automated Appropriation,'[5] where digital technologies and mass manufacturing converge to exploit the gaps in Nigeria's intellectual property framework.[6] The controversy surrounding the 'Owambe' exhibition,[7] where digital artists were

1 Wunmi Akinsola, 'The State of Nigeria's Fashion Industry' (*Stears*, 18 November 2022) https://www.stears.co/article/the-state-of-nigerias-fashion-industry/ accessed 31 January 2026; Euromonitor International, 'Apparel and Footwear in 2015: Trends, Developments and Prospects' (*Euromonitor International*, 24 June 2015) https://www.euromonitor.com/apparel-and-footwear-in-2015-trends-developments-and-prospects/report accessed 31 January 2026.

2 ibid.

3 Statista, 'Fashion - Nigeria' (*Statista Market Insights*, 2026) https://www.statista.com/outlook/emo/fashion/nigeria#key-market-indicators accessed 31 January 2026.

4 Zakaree S Saheed, 'Adire Textile: A Cultural Heritage and Entrepreneurial Craft in Egbaland, Nigeria' (2013) 1(1) International Journal of Small Business and Entrepreneurship Research 11 http://admin.umt.edu.pk/Media/Site/STD/FileManager/Entrepreneurship/3.pdf accessed 31 January 2025.

5 Rainer Rehak, 'AI Narrative Breakdown: A Critical Assessment of Power and Promise' in *Proceedings of the 2025 ACM Conference on Fairness, Accountability, and Transparency* (Association for Computing Machinery 2025) 1250 https://doi.org/10.1145/3715275.3732083 accessed 27 January 2026; Gabriel Menotti, 'The Model Is the Museum: Generative AI and the Expropriation of Cultural Heritage' (2025) 40 AI & Soc 5593 https://doi.org/10.1007/s00146-025-02290-1 accessed 27 January 2026.

6 Margaret Olughemisola Areo and Adebowale Biodun Areo, 'Ankara kampala: property rights as revamps for the Adire indigenous knowledge' Journal of Law, Policy and Globalization 26 (2014): 187. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jawpglob26&section=21 accessed 24 December 2025; Temitope O Oloko, 'Artificial Intelligence and Intellectual Property Rights in Nigeria: A Legal Discourse of the Challenges and Prospects' (2025) 16(1) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 140 https://www.ajol.info/index.php/naujilj/article/download/295718/278199 accessed 27 January 2026; Oyebola Coker, 'The Essential Role of IP to SMEs in Nigeria' (*Inventa*, 19 May 2021) https://inventa.com/ip-news-insights/opinion/essential-role-ip-smes-nigeria accessed 31 January 2026;

7 TVC News Nigeria, '"Owanbe Exhibition" Not About Yoruba Heritage, Uzo Njokwu Hits Back At Critics' (20 September 2025) https://www.youtube.com/watch?v=yuRmxrI3sKM accessed 31 January 2026.

accused of reducing deep cultural signifiers to 'consumable motifs for mercantile ends,' exemplifies how artificial intelligence (AI) and digital tools can decontextualize heritage without attribution or compensation. This mirrors the long-standing industrial threat of 'Ankara Kampala'[8] and Chinese textile imports,[9] which utilize superior manufacturing velocity to flood local markets with inferior imitations of Adire and Hausa resist-dyed fabrics,[10] effectively displacing the original artisans.[11] Current Nigerian intellectual property (IP) laws, which prioritize individual authorship and novelty,[12] create a legal void that allows these automated and industrial actors to commodify communal designs with impunity, as these indigenous works often fail to meet standard copyright requirements.[13]

1.3 The Legal Problem: The Paradox of Certification Marks

In the search for legal remedies, section 43 of the Trade Marks Act 2004 is frequently cited as the appropriate statutory vehicle for protecting communal goods like Adire. Ideally, a Certification Mark would certify the origin and method of manufacture, distinguishing authentic, hand-made textiles from industrial counterfeits. However, this paper argues that the Certification Mark functions as a 'False Shield' in the Nigerian context. The statutory structure contains a fatal flaw: the proprietor of a Certification Mark is strictly prohibited from carrying on a trade in the goods certified.[14] This creates a regulatory paradox where the very guilds and artisan communities that create and trade in indigenous textiles[15] are legally incapacitated from owning the mark designed to protect them, leaving their collective goodwill vulnerable to misappropriation.

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8 Areo and Areo (n 6) 187-188.

9 Elisha Renne and Salihu Maiwada (eds), *Textile Ascendancies: Aesthetics, Production, and Trade in Northern Nigeria* (University of Michigan Press 2020) 144-145.

10 ibid

11 ibid

12 This statutory bias is codified in section 1 of Patents and Designs Act, Cap P2, Laws of the Federation of Nigeria 2004, which predicates patentability on absolute "newness" and "inventive activity," thereby categorizing intergenerational indigenous knowledge—which is often orally transmitted and incrementally developed—as "state of the art" or "prior art" already in the public domain. Furthermore, section 2(1) of the Patents and Designs Act 2004 vests rights in the "statutory inventor" (defined as the "first to file"), a legal fiction that disenfranchises communal guilds and lineages that function as collective creators. Judicial interpretation reinforces this exclusion; in *Densy Ind Ltd v Uzokwe* (1998) 9 NWLR (Pt 567) 569, the Court of Appeal held that designs differing only in "minor or inessential ways" from earlier works fail the novelty test, effectively penalizing the traditional practice of iterating on standard motifs. Even under the Copyright Act 2022, while "expressions of folklore" are recognized in Part IX, the framework remains paternalistic rather than proprietary, vesting authorization rights in the Nigerian Copyright Commission rather than the originating communities, thus adhering to the "identifiable author" paradigm essential to Western IP jurisprudence. See Abdullahi Maryam Ibrahim, 'New Rules Visiting the Old Practice: A Case for the Protection of Traditional Knowledge in Nigeria' (2025) 1 AEFUNAI Law Journal of Public and Private Law 144, 148 https://www.nigerianjournalsonline.org/index.php/ALJPPL/article/download/1119/1046 accessed 14 February 2026.

13 Ibrahim (n 12) 148.

14 Trade Marks Act, Cap T13, Laws of the Federation of Nigeria 2004, s 43(1).

15 For instances of such lineage-based corporate bodies and cooperatives, see the Jojolola compound of Kemta and Ijemo quarters in Abeokuta (custodians of *Adire*); the Akwete Weavers Cooperative of Ndoki (custodians of

2 Doctrinal Analysis: Section 43 of the Trade Marks Act 2004

The statutory vehicle for the protection of certification marks in Nigeria is section 43 of the Trade Marks Act. Unlike standard trademarks which function as badges of origin indicating a trade connection between goods and a proprietor, certification marks function as badges of standard, guaranteeing that goods possess specific qualities.

2.1 Statutory Definition: Distinguishing Source from Characteristic

The legal definition of a certification trade mark is provided in section 43(1) of the Trade Marks Act 2004. It is defined as a mark:

> adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, method of manufacture, quality, accuracy or other characteristic, from goods not so certified.[16]

Doctrinally, this creates a fundamental bifurcation in Nigerian trademark jurisprudence between 'Source' and 'Characteristic':

a **Standard Trademarks (Source):** Under section 67 of the Trade Marks Act 2004, a standard trademark indicates a 'connection in the course of trade'[17] between the goods and the proprietor. [18] The essential function is to identify the commercial source (e.g., a specific textile mill).

b **Certification Marks (Characteristic):** Conversely, under section 43(1) of the Trade Marks Act 2004, the certification mark indicates that the goods have been examined and certified as possessing specific attributes (e.g., 'Hand-woven Akwete').

Consequently, the rights conferred are distinct. While section 5 of the Trade Marks Act 2004 grants a standard proprietor an exclusive right of use, the proprietor of a certification mark instead holds the right to authorize others to use the mark once their goods meet the certified standards. The distinction is analytically significant for indigenous textile communities: the relevant function is not

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Akwete); the Ilorin Weavers' Guilds; and the Kar Kari Trading Cooperative of Gwarzo, Kano. See Saheed (n 4) 13; Margaret Olugbemisola Areo and Razaq Olatunde Rom Kalilu, 'Adire in South-western Nigeria: Geography of the Centres' (2013) 7(2) African Research Review 350, 355 https://www.ajol.info/index.php/afrrev/article/download/88276/77920/0 accessed 30 January 2026; OJ Okpoko, 'Promoting Akwete Traditional Textiles of Abia State for International Consumption and Sustainable Development' (2023) 12(2) Journal of Tourism and Heritage Studies 39, 45 https://jths.org.ng/wp-content/uploads/2025/03/OKPOKO.pdf accessed 20 January 2026 accessed 30 January 2026; Ann O'Hear, 'Craft Industries in Ilorin: Dependency or Independence?' (1987) 86 African Affairs 505, 512–514 http://www.jstor.org/stable/722667 accessed 30 January 2026; Salihu Maiwada, 'Declining Supply and Continued Demand for Handwoven Textiles, Kano State' in Elisha Renne and Salihu Maiwada (eds), *Textile Ascendancies* (University of Michigan Press 2020) 79.

16 Trade Marks Act 2004, s 43(1).

17 ibid, s 67. See the definition of a trademark.

18 ibid.

commercial branding but communal validation of authenticity—a distinction that the statute, as shown below, imperfectly accommodates.

2.2 The Non-Trading Proviso: Separation of Regulation and Commerce

The most significant statutory impediment to the protection of indigenous textiles lies in the proviso to section 43(1) of the Trade Marks Act 2004, which stipulates: '[p]rovided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified'.[19] This proviso codifies a strict separation between the regulatory function and the commercial function. The jurisprudential rationale is the prevention of a conflict of interest; the law presumes that a proprietor cannot objectively certify the quality or origin of goods if they are simultaneously competing in the market with the goods they certify.

If an entity 'carries on a trade' in the specific goods (e.g., Adire textiles), it lacks the legal capacity to be the registered proprietor of a certification mark for those goods.[20] This creates a 'Regulatory Paradox.' Indigenous textile guilds (such as the Adire dyers of Abeokuta) are typically composed of active artisans who produce and sell their wares.[21] Because these collective bodies are engaged in 'trade,' they are statutorily disqualified by the section 43(1) proviso from holding the very IP right designed to protect their method of manufacture. To comply, they would need to establish a distinct, non-trading administrative body solely for certification—a bureaucratic burden often beyond their economic means.[22]

2.3 Evidentiary Requirements: Administrative Burdens and Distinctiveness

The Trade Marks Act imposes a dual evidentiary burden on the applicant for a certification mark: the proof of distinctiveness under section 43(2) of the Trade Marks Act 2004 and the submission of governing rules under section 43(7) of the Trade Marks Act 2004.

2.3.1 The Test of Distinctiveness

The statute requires that the mark must be 'adapted to distinguish.'[23] section 43(2) of the Trade Marks Act 2004 mandates that the tribunal (the Registrar or Court) consider:

a Inherent Adaptation: Whether the mark is inherently adapted to distinguish the certified goods.[24]

19 Trade Marks Act, s 43(1).

20 Trade Marks Act, s 43(1).

21 Areo and Areo (n 6) 186.

22 Studies indicate that approximately 77.5% of *Adire* entrepreneurs operate with an investment capital below ₦100,000, with 76% earning a monthly income between ₦1,000 and ₦50,000. See Saheed (n 4) 17. To comply with section 43, these subsistence-level guilds would be forced to incorporate a separate legal entity (likely a company limited by guarantee) to satisfy the *persona ficta* requirement for holding rights. The associated transaction costs—incorporation fees, legal retainers for annual returns, and administrative overhead for a non-revenue-generating body—are economically irrational for artisans whose trade is geared toward survival rather than corporate asset management, thereby rendering the statutory protection accessible only to well-funded foreign entities rather than the indigenous custodians it purports to protect.

23 Trade Marks Act 2004, s 43(2).

b Factual Adaptation**:** Whether, 'by reason of use or other circumstances, the mark is in fact adapted to distinguish.'[25] This aligns with the general principle in *Ferodo Ltd v Ibeto Industries Ltd*,[26] where the Supreme Court held that distinctiveness is a matter of fact and that a mark must identify the goods of a particular proprietor (or in this case, a particular standard) to the exclusion of others.[27] For indigenous textiles, proving that a traditional motif is 'distinctive' of a certified standard rather than merely decorative remains a high evidentiary hurdle.

2.3.2 The Requirement of Governing Rules

Unlike standard trademarks, the registration of a certification mark is not complete upon filing the mark itself. section 43(7) of the Trade Marks Act 2004 requires the deposit of 'rules approved by the Minister for governing the use thereof'. These rules must specify:

a The cases in which the proprietor is to certify goods.[28]

b The conditions under which the use of the mark is authorized.[29]

c Sanctions for unauthorized use.

Furthermore, under the schedule 1 to the Trade Marks Act 2004, the Minister must consider whether the applicant is 'competent to certify the goods',[30] whether the draft rules are 'satisfactory',[31] and 'whether in all the circumstances the registration applied for would be to the public advantage'.[32] This subjects indigenous communities to a rigorous ministerial review process that standard trademark applicants do not face. In practice, this imposes a double burden: communities that already struggle with the non-trading bar in section 43(1) must also navigate an additional administrative gatekeeping process requiring ministerial approval—a dual hurdle that effectively renders the certification mark framework inaccessible to resource-poor artisan guilds.

3 Structural Barriers to Protecting Indigenous Textiles

Having established the doctrinal framework in the preceding section, the following analysis examines how these rules operate in practice and identifies the structural barriers they create for indigenous textile communities. While section 43 of the Trade Marks Act theoretically offers a vehicle for protecting the collective reputation of goods like Adire and Akwete, a forensic analysis reveals a 'legislative mismatch.' The statute assumes a dichotomy between 'regulation' and 'commerce' that does not exist in the indigenous textile economy. Furthermore, judicial

24 ibid, s 43(2)(a).
25 ibid, s 43(2)(b).
26 *Ferodo Ltd v Ibeto Industries Ltd* (2004) 5 NWLR (Pt 866) 317 (SC).
27 ibid.
28 Trade Marks Act 2004, s 43(7).
29 ibid.
30 ibid, sch 1, para 1(5)(a).
31 ibid 1(5)(b).
32 ibid 1(5)(c).

interpretations of 'distinctiveness'[33] and 'jurisdiction' [34] create formidable barriers to enforcement for rural artisan communities.

3.1 The Guild Paradox: Customary Production Versus Statutory Exclusion

The most fatal structural flaw in applying section 43 to indigenous textiles is what this paper terms the 'Guild Paradox.' The proviso to section 43(1) of the Trade Marks Act 2004 stipulates that a mark shall not be registrable as a certification mark 'in the name of a person who carries on a trade in goods of the kind certified.' This provision intends to ensure the certifier remains an objective third-party regulator, distinct from the producer.

Indigenous textile production in Nigeria is historically organized around family compounds and guilds where production and trade are fused.[35] For instance, in Egbaland, Adire production was traditionally a 'family business structure' centered in compounds like the Jojolola compound in Abeokuta. [36] The 'Aladire' (owner/producer) is involved in sourcing materials, dyeing, and merchandising the final product.[37]

The Adire guilds are simultaneously the manufacturers and the traders.[38] By virtue of the proviso in section 43(1) of the Trade Marks Act 2004, the very community that possesses the traditional knowledge (the Adire guild or Akwete women weavers) is statutorily incapacitated from owning the certification mark because they carry on a trade in the goods.[39] To utilize this section, these resource-poor communities would be forced to incorporate a separate, non-trading administrative body solely for certification—a bureaucratic and financial burden that is unsustainable for rural artisans operating in an informal economy. Consequently, the law effectively disenfranchises the primary custodians of the heritage.

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33 *Ferodo Ltd v Ibeto Ind Ltd* (1999) 2 NWLR (Pt 592) 509 (CA), affd (2004) 5 NWLR (Pt 866) 317 (SC).

34 *Ayman Enterprises Ltd v Akuma Industries Ltd* (2003) 13 NWLR (Pt 836) 22 (SC).

35 See Saheed (n 4) 13; Kalu Anele, Lee Jung-Eun and Cha Eui-Young, 'A Comparative Analysis of the Making of the Nigerian Adire and the Indonesian Batik and their Socioeconomic Importance' (2021) 24(1) Journal of Korean Traditional Costume 129, 124 https://www.dbpia.co.kr/Journal/articleDetail?nodeId=NODE10544439 accessed 30 January 2026; Okpoko (n 15) 45.; KC Murray, 'Arts and Crafts of Nigeria: Their Past and Future' (1943) 14(4) Africa: Journal of the International African Institute 155, 156. http://www.jstor.org/stable/1156481?origin=JSTOR-pdf accessed 30 January 2026; O'Hear (n 15) 514.

36 Saheed (n 4) 12.

37 Habib Mustapha, Mukhtar A Ahmed and Leo I Shunom, 'Empowering Tradition, Enriching the Future: Reviving Hausa Traditional Hand Embroidery for Nigeria's Economic Renaissance' (2025) 11(3) Research Journal of Humanities and Cultural Studies 78 https://doi.org/10.56201/rjhcs.v11.no3.2025.pg78.83 accessed 30 January 2026.

38 Erin Michelle Rice, 'The Pattern of Modernity: Textiles in Art, Fashion, and Cultural Memory in Nigeria since 1960' (PhD thesis, Freie Universität Berlin 2020) 40 https://refubium.fu-berlin.de/bitstream/handle/fub188/27734/RICE_The%20Pattern%20of%20Modernity_2020.pdf?sequence=1 accessed 15 February 2026.

39 Anele, Lee and Cha (n 34) 124.

3.2 The Distinctiveness Trap: Judicial Interpretation of Ornamentation

Even if the 'non-trading' hurdle were surmounted, the protection of textile patterns (motifs) faces a jurisprudential crisis rooted in the judicial interpretation of 'distinctiveness.'

In the *Ferodo* case,[40] the Court of Appeal articulated a rigid test for distinctiveness regarding visual elements.[41] The Court held that 'chequered strip device' on the appellant's brake pads was merely 'decorative' and 'fanciful,' serving to 'garnish' the product rather than functioning as a distinctive trade mark indicating origin. [42]

Pats-Acholonu JCA originally formulated this principle, stating:

> Where a name... is used... but the proprietors... decided to garnish the intended trade mark with other colouration or devices which make it appealing and decorative, it cannot be assumed or taken that those fanciful and ornamental characters... form part of the trade mark.[43]

The Supreme Court explicitly adopted this reasoning. Musdapher JSC,[44] held that the colour outlay and geometrical outlines 'only qualify as embellishments and are merely added for decorative value or flourishes'.[45] Tobi JSC (concurring) reinforced this, concluding that 'all other elements are mere beautifications, ornamentations, embellishments, flourishes, or what the Court of Appeal called garnishes'.[46]

The Supreme Court relying on the provisions section 9(2) and (3) of the Trade Marks Act 2004, which requires a mark to be 'adapted to distinguish' ruled a pattern remains ornamentation unless it has acquired notoriety/distinctiveness.[47] Tobi JSC elucidated the test for acquired distinctiveness: 'Once the trade mark, by frequent use, has acquired a notoriety in the trade to the common knowledge... it will be said to have acquired the character of distinctiveness'.[48]

This precedent poses a 'Distinctiveness Trap' for indigenous textiles. While Adire motifs like Ibadan dun or Olokun carry deep semiotic meaning within the culture,[49] a Nigerian court applying the

40 *Ferodo Ltd v Ibeto Industries Ltd* 2 NWLR (1999) (Pt 592) 509 (CA).
41 ibid.
42 ibid 519-520.
43 ibid
44 He delivered the Leading Judgment.
45 *Ferodo Ltd v Ibeto Ind Ltd* (2004) 5 NWLR (Pt 866) 317, 346.
46 ibid 376-377.
47 ibid 348-351.
48 ibid 367-368
49 Margaret Olugbemisola Areo and Razaq Olatunde Rom Kalilu, 'Origin of and Visual Semiotics in Yoruba Textile of Adire' (2013) 12 Arts and Design Studies 22, 28- 30. https://www.iiste.org/Journals/index.php/ADS/article/viewFile/7566/7614 accessed 30 January 2026

precedent in Ferodo could categorize these patterns as 'fanciful and ornamental characters' [50] common to the trade, rather than distinctive badges of origin.

As noted in *International Tobacco (Nig) Ltd v British American Tobacco (Nig) Ltd,*[51] proving that a specific colour or pattern has acquired distinctiveness requires substantial evidence of 'long or extensive use' that distinguishes the goods from others. Since many Adire and Akwete designs have been 'standardized through generations of use'[52] and are produced by multiple families, no single entity can easily claim the 'exclusive' distinctiveness required by the Trade Marks Act 2004. Thus, the communal nature of the design becomes a barrier to its protection under the current trademark regime.

3.3 Procedural Barriers: Jurisdiction and Enforcement Costs

Finally, the procedural landscape for enforcing rights is fraught with jurisdictional landmines that disadvantage rural communities. The central problem lies in the unstable judicial delineation between 'trademark passing off' and 'common law passing off.'[53] Historically, the Supreme Court in *Ayman Enterprises Ltd v Akuma Industries Ltd*[54] created a significant hurdle by interpreting section 251(1)(f) of the Constitution of the Federal Republic of Nigeria 1999.[55] to mean that the Federal High Court's exclusive jurisdiction was triggered only by the infringement of a registered trademark.[56] Since most indigenous textile marks are unregistered (due to the Guild Paradox and Distinctiveness Trap described above), this ratio effectively barred indigenous communities from the specialized Federal court, relegating them to State High Courts.

While the Supreme Court subsequently revisited this position in *Omnia (Nig) Ltd v Dyktrade Ltd*, [57] asserting that the Federal High Court has jurisdiction over passing off "whether or not [the] claim arises from the infringement of a registered or unregistered trade mark,"[58] a closer reading of the *ratio* reveals a dangerous ambiguity for textiles. The Court in *Omnia* predicated its decision on the broad listing of "passing off" in the Constitution, yet it did not explicitly overrule the distinction made in earlier jurisprudence regarding passing off in respect of other matters.[59]

50 Ferodo (1999) 2 NWLR (Pt 592) 509 (CA). pages 519-520

51 *International Tobacco (Nig) Ltd v British American Tobacco (Nig) Ltd* (2023) 5 NWLR (Pt 1346) 1 (SC).

52 Areo and Areo (n 6) 186.

53 Chukwunweike A Ogbuabor and Sylvester N Anya, 'Jurisdiction in Actions for Infringement of Trade Marks and Passing-Off in Nigeria' (2013) 11 The Nigerian Juridical Review 83, 113 https://law.unn.edu.ng/wp-content/uploads/sites/12/2016/08/Article-5-Jurisdiction-in-Actions-for-Infringement-of-Trademarks-and-Passing-Off-in-Nigeria-Chukwunweike-A.-Ogbuabor1.pdf accessed 14 February 2026.

54 *Ayman Enterprises Ltd v Akuma Industries Ltd* (2003) 13 NWLR (Pt 836) 22 (SC).

55 Section 251(1)(f) of the 1999 Constitution of Nigeria grants the Federal High Court exclusive jurisdiction over civil causes and matters relating to intellectual property, including patents, designs, trademarks, copyright, and "passing off".

56 ibid 50-51

57 *Omnia (Nig) Ltd v Dyktrade Ltd* (2007) 15 NWLR (Pt 1058) 576.

58 ibid 606

59 *Patkun Industries Ltd v Niger Shoes Manufacturing Co Ltd* (1988) 5 NWLR (Pt 93) 138, 152.

As Ogbuabor and Anya observe, "the Supreme Court has, wittingly or unwittingly, [maintained a jurisprudential] distinction between passing off relating to trademarks [now firmly within the Federal High Court's ambit per *Omnia*][60] … [and] the common law tort of passing off"[61] in respect of "other matters" (such as get-up, packaging, or features of shape) which arguably remains outside the statutory definition of a 'mark'. This distinction is fatal for indigenous textiles. Because judicial precedent in *Ferodo* classifies textile patterns as mere "ornamentation" rather than "trademarks,"[62] a claim protecting *Adire* designs risks being categorized not as "trademark passing off" (covered by *Omnia*)[63] but as passing off of "features of shape" or "get-up."

This creates a fractured enforcement regime. If an indigenous guild sues a manufacturer for imitating the visual appearance (get-up) of Akwete cloth, a defendant can exploit this grey area to argue that such "common law passing off" belongs in a State High Court, distinguishing it from the "unregistered trademark" protections in *Omnia*. Conversely, the importation of such counterfeits involves customs and federal enactments, which are exclusive to the Federal High Court. The complexity and cost of navigating this "jurisdictional labyrinth"—where the venue depends on technical distinctions between an "unregistered mark" and "product get-up"—render the law's protection illusory for artisan communities who lack the financial war chest to settle questions of venue before even addressing the substance of the theft (leading to prolonged litigation).[64]

4 Comparative Analysis: Frameworks in the African Intellectual Property Organization (OAPI), Kenya and Ghana

To appreciate the extent of the structural defects within the Trade Marks Act 2004, one must examine the legal architectures of neighbouring African jurisdictions that share similar socio-cultural substrates but utilize different statutory mechanisms. A comparative analysis of the under the Bangui Agreement Instituting an African Intellectual Property Organization, Act of December 14, 2015 (Bangui Agreement)[65] governing OAPI member states and the recent legislative developments in Ghana regarding the Kente textile[66] reveals that the legal incapacity suffered by Nigerian textile

60 *Omnia (Nig) Ltd v Dyktrade Ltd* (2007) 15 NWLR (Pt 1058) 576.

61 Ogbuabor and Anya (n 53) 114.

62 (2004) 5 NWLR (Pt 866) 317

63 *Omnia (Nig) Ltd v Dyktrade Ltd* (2007) 15 NWLR (Pt 1058) 576.

64 TrustTV News, 'JUSTICE DISPENSATION: Lawyers Express Worry Over Long Delay In Nigeria | TRUST TV' (YouTube, 12 August 2023) https://www.youtube.com/watch?v=F7FQV1bJiZY accessed 14 February 2026; Okwy Iroegbu-Chikezie, 'Nigerian Artisans Abandon Trade for Foreigners' *The Nation* (Lagos, 29 August 2023) https://thenationonlineng.net/nigerian-artisans-abandon-trade-for-foreigners/ accessed 14 February 2026; Dahiru Jafaru Usman, Nurli Yaacob and Aspalella A Rahman, 'An Inquiry on the Affordability of Legal Services and the Appropriateness of the Regular Courts for Consumer Redress in Nigeria' (2016) 7 Beijing Law Review 43 https://www.scirp.org/journal/paperinformation?paperid=66307 accessed 14 February 2026.

65 Bangui Agreement Instituting an African Intellectual Property Organization, Act of December 14, 2015.

66 'Kente Gains Global Protection as Ghana's First Geographical Indication' *News Ghana* (14 October 2025) https://www.newsghana.com.gh/kente-gains-global-protection-as-ghanas-first-geographical-indication/ accessed 14 February 2026.

guilds is not an inevitable consequence of African communal production, but a specific failure of Nigerian legislative drafting.

4.1 The OAPI Model: Collective Marks and Regulatory Flexibility

The 17 member states of OAPI[67] operate under a uniform intellectual property regime established by the Bangui Agreement. A critical examination of article 38 of Annex III to the Bangui Agreement[68] exposes the deficiency of the Nigerian 'Certification Mark' model.

4.1.1 Integrating Production and Regulation

While section 43 of the Trade Marks Act 2004 enforces a rigid separation between the certifier and the trader, article 38 of Annex III to the Bangui Agreement[69] adopts a more flexible approach tailored to the reality of African artisan guilds. It explicitly permits 'unions or groups of unions and associations or groups of producers, manufacturers, craftsmen and tradesmen' to own Collective Marks. Crucially, the Bangui Agreement does not contain a prohibitive proviso barring these collective owners from trading in the goods.

In the Nigerian system, the Adire guilds of Abeokuta cannot register a Certification Mark because they trade in Adire. Under the OAPI system, a similar guild can register a Collective Mark specifically 'to foster the development of commerce, industry, crafts and agriculture'.[70] This statutory design recognizes that in the African context, the 'producer' and the 'guardian of quality' are often the same entity.

4.1.2 The Sui Generis Geographical Indication Option

Furthermore, OAPI provides a dedicated sui generis framework for Geographical Indications (GIs), defining a GI as:

> an indication that serves to identify a product as originating from a place, a region, or a country, in those cases where the quality, reputation or other specific characteristic of the product may be essentially attributed to such geographical origin.[71]

Unlike the Nigerian trademark system, which struggles with descriptive terms (as seen in the Ferodo analyses), article 6(3) of Annex VI prohibits the use of a registered name even when the true origin is indicated or when used with delocalizing terms. It provides that:

> … it shall be illegal to make any use of the registered geographical indication or a similar appellation for products listed in the register or similar products, even if the real origin of the product is stated, or if the geographical indication is used in

67 'African Intellectual Property Organization (OAPI)' https://oapi.int/en/ accessed 15 February 2026.
68 Bangui Agreement, Annex III art 38
69 Bangui Agreement, Annex III art 38
70 Bangui Agreement, art 38.
71 Bangui Agreement, Annex VI art 1.

translation, or accompanied by expressions such as sort, type, way, imitation or similar expressions.[72]

This means a product labelled 'Adire-style' (produced in China or any other foreign jurisdiction) would be illegal under OAPI law, whereas it remains arguably legal under Nigerian trademark law due to the lack of similar statutory prohibition against 'evocation'.[73]

This framework has allowed OAPI to successfully register African GIs such as:

a. Penja Pepper (Poivre de Penja).[74]

b. Oku White honey (Cameroon),[75]

c. Café Ziama Macenta (Guinea-Conakry),[76]

d. Ananas du Pain de sucre du Plateau d'Allada-Bénin. [77]

e. Kilichi du Niger.[78]

f. Oignon Violet de Galmi (Violet de Galmi Onion),[79]

g. Echalotte de Biandiagara

h. Chapeau de Sapone.[80]

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72 Bangui Agreement, annex VI, art 6(3).

73 Rebecca Anderson-Smith, 'Geographical Indications: The Evolving Scope of Evocation' (*Mewburn Ellis*, 5 August 2020) https://www.mewburn.com/forward/geographical-indications-the-evolving-scope-of-evocation accessed 15 February 2026.

74 The African Intellectual Property Organization (OAPI), 'Local Development' (OAPI) https://oapi.int/en/pi-development/local-development/ accessed 27 January 2026; Adams & Adams, 'Geographical Indication Leads to Pepper Festival' (Adams & Africa, 16 June 2025) https://www.adams.africa/cameroon/geographical-indication-leads-to-pepper-festival/ accessed 27 January 2026.

75 European Innovation Council and SMEs Executive Agency, 'Geographical Indications in Africa: Example of Success Stories' (European Commission Intellectual Property Helpdesk, 9 February 2025) https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/geographical-indications-africa-example-success-stories-2025-02-09_en accessed 27 January 2026; World Intellectual Property Organization, 'Bees, Geographical Indications, and Development' (24 November 2014) https://www.wipo.int/en/web/ip-advantage/w/stories/bees-geographical-indications-and-development accessed 27 January 2026

76 European Innovation Council and SMEs Executive Agency (n 1).

77 European Innovation Council and SMEs Executive Agency (n 1); The Pan-African Geographical Indications Information Hub, 'Registration of the Ananas Pain de Sucre du Plateau d'Allada in Benin, with the Support of FAO, AFD, EC and OAPI' (30 November 2021) https://africa-gi.com/en/pan-african-gi/news/registration-ananas-pain-de-sucre-du-plateau-dallada-benin-support-fao-afd-ec accessed 27 January 2026.

78 European Innovation Council (n 1)

79 European Innovation Council and SMEs Executive Agency (n 1); Magui Nnoko, 'Cooperation for Geographical Indications' (Worldwide Symposium on Geographical Indications, Tbilisi, 14–16 June 2023) https://www.wipo.int/edocs/mdocs/sct/en/wipo_geo_tbs_23/wipo_geo_tbs_23_panel_6_1.pdf accessed 27 January 2026.

These registrations were facilitated by state support through the PAMPIG project,[81] demonstrating that legal protection translates to economic value when the statute is fit for purpose.[82]

4.2 The Kenyan Model: Statutory Amendment

Unlike the OAPI system, which operates under a supranational civil law treaty, Kenya shares a common law heritage with Nigeria,[83] with a trademark statute historically rooted in the British Trade Marks Act 1938. Consequently, Kenya provides a more persuasive legislative precedent for Nigeria, demonstrating how a Commonwealth jurisdiction can resolve the legal incapacity of artisan guilds through statutory amendment rather than the enactment of a sui generis code.

4.2.1 Retention of Certification Marks

Similar to Nigeria, Kenya retains the regime of Certification Trade Marks under section 40 of its Trade Marks Act (Cap 506). Crucially, this section retains the traditional restriction prohibiting the registration of such marks in the name of a person who carries on a trade in the goods of the kind certified. Thus, under the strict certification regime, Kenyan regulators face the same "non-trading" limitation that currently incapacitates Nigerian guilds.

4.2.2 The Solution: Introduction of Collective Trade Marks

However, Kenya successfully circumvented this structural defect by amending its statute to introduce Part VIIA, specifically creating a separate category for Collective Trade Marks.

Section 40A(1) of the Trade Marks Act (Kenya) provides:

> A mark capable of distinguishing, in the course of trade, the goods or services of persons who are members of an association from goods or services of persons who are not members of such association, shall on application in the prescribed manner, be registrable as a collective trade mark or service mark in respect of the goods or services in the name of such an association.[84]

This provision effectively cures the "Regulatory Paradox" identified in the Nigerian context. Unlike the Certification Mark, section 40A of the Trade Marks Act (Kenya) contains no proviso disqualifying the proprietor from trading. By registering the mark in the name of an "association,"

80 Magui Nnoko (n 79)

81 The African Intellectual Property Organization (OAPI), 'Closure of the 2nd Phase of the PAMPIG: A Success for Geographical Indications in the OAPI Area' (OAPI, 2 December 2025) https://oapi.int/en/2025/12/02/the-second-phase-of-the-pampig-project-has-concluded-a-success-for-geographical-indications-within-the-oapi-area./ accessed 27 January 2026

82 Charlene Musiza, Form and substance: the developmental promises of geographical indications in Africa, *Journal of Intellectual Property Law & Practice*, Volume 20, Issue 8, August 2025, Pages 539–545, https://doi.org/10.1093/jiplp/jpaf044

83 Enyinna Nwauche, 'Introduction: Key Issues in the Protection of Traditional Cultural Expressions in Africa' in *The Protection of Traditional Cultural Expressions in Africa* (Springer 2017).

84 Trade Marks Act (Cap 506) (Kenya), s 40A(1).

the statute legally empowers producer guilds to hold the intellectual property rights while their members actively trade in the goods.

4.2.3 Governance and Geographical Origin

The Kenyan model imposes a governance structure similar to the certification regime but tailored for associations. Section 40A(2) requires the application to be accompanied by a copy of the "rules governing the use of the mark,"[85] ensuring that quality control remains central to the protection.

Furthermore, the Kenyan statute explicitly addresses the issue of terroir which is often contentious in standard trademark law. Section 40A(5) of the Trade Marks Act (Kenya) states, '[g]eographical names or other indications of geographical origin may be registered as collective trade marks or service marks'.[86]

This provision creates a statutory bridge between standard trademarks and geographical indications, allowing indigenous communities to protect names like "Adire" or "Akwete" immediately, without waiting for the enactment of a complex sui generis Geographical Indications Bill.[87]

4.2.4 Relevance to Nigeria

The Kenyan model represents a viable "Medium-Term Reform" for Nigeria. It demonstrates that the incapacity of indigenous guilds to own their collective brand is not an inherent flaw of the trademark system, but a specific defect of section 43 of the Nigerian Trade Marks Act 2004. By adopting a provision analogous to section 40A of the Trade Marks Act (Kenya), Nigeria could empower its artisan communities to register Collective Marks immediately, securing their market share against industrial counterfeits while maintaining their traditional dual role as both producers and regulators.

4.3 The Ghanaian Model: Kente and the Geographical Indications Act

The Republic of Ghana offers a compelling case study of a common law jurisdiction[88]—historically similar to Nigeria—that has successfully transitioned from the limitations of standard trademarks to a robust protection of indigenous textile heritage.

4.3.1 Leveraging Terroir for Legal Protection

Unlike Nigeria, which relies on the general Trade Marks Act 2004,[89] Ghana enacted the Geographical Indications Act 2003 (Act 659). This legislative foresight allowed for the recent landmark designation of Kente as a Geographical Indication in 2025.

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85 ibid, s 40A(5).

86 ibid s 40A(5).

87 Geographical Indications (Registration and Protection) Bill 2025 (HB 2387).

88 Deborah Ikonne, Bankole Sodipo and Temitope Olorunnipa, 'Regulation of Geographical Indications and Appellations of Origin in Nigeria' (2024) 7(3) African Journal of Law, Ethics and Education 140 https://ajleejournal.com/index.php/ajlee/article/view/205 accessed 14 February 2026.

The protection is anchored on the concept of terroir[90]—the link between the product and its specific geographical environment. The GI designation restricts the use of the 'Kente' label exclusively to textiles produced by registered artisans within "accredited Ghanaian weaving zones".[91] This legal manoeuvre effectively renders placeless mass-produced imitations illegal within the jurisdiction, protecting the market share of the indigenous weavers.

4.3.2 Synergy with International Cultural Heritage Frameworks

Ghana has effectively synchronized its intellectual property strategy with international cultural heritage instruments.[92] In 2024, United Nations Educational, Scientific and Cultural Organization (UNESCO) inscribed the craftsmanship of Kente weaving on the Representative List of the Intangible Cultural Heritage of Humanity.[93]

While UNESCO recognition does not inherently grant IP rights,[94] Ghana utilized this status to reinforce the reputation required for GI registration. The combination of the UNESCO designation and the domestic GI registration "strengthens Kente's position as a cultural ambassador,"[95] enhancing its commercial value and providing a dual layer of protection against misappropriation.

[89] Solomon Gwom, 'Protection of Geographical Indications in Nigeria: A Legal and Policy Deficit' (2017) WIPO-WTO Colloquium Papers 73, 74 https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2017/chapter_7_2017_e.pdf accessed 14 February 2026. See Trade Marks Act 2004, s 43.

[90] Sarah Bowen and Ana Valenzuela Zapata, 'Geographical Indications, Terroir, and Socioeconomic and Ecological Sustainability: The Case of Tequila' (2009) 25 Journal of Rural Studies 108 https://doi.org/10.1016/j.jrurstud.2008.07.003 accessed 14 February 2026.

[91] Ijeoma Uju, Inna Alli and Nyerhovwo Umukoro, 'Globalization of Adire: Strengthening Nigeria's Legal Protection and Economic Leverage' (Templars ThoughtLab, 17 December 2025) https://www.templars-law.com/app/uploads/2025/12/GLOBALIZATION-OF-ADIRE.pdf accessed 14 February 2026; 'Kente Gains Global Protection as Ghana's First Geographical Indication' *News Ghana* (14 October 2025) https://www.newsghana.com.gh/kente-gains-global-protection-as-ghanas-first-geographical-indication/ accessed 14 February 2026.

[92] 'Ghana drafts new comprehensive cultural policy thanks to UNESCO IFCD support' (*UNESCO* , 24 November 2023) https://www.unesco.org/creativity/en/articles/ghana-drafts-new-comprehensive-cultural-policy-thanks-unesco-ifcd-support accessed 14 February 2026.

[93] UNESCO Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, 'Craftsmanship of Traditional Woven Textile Kente' (Representative List of the Intangible Cultural Heritage of Humanity, 2024) https://ich.unesco.org/en/RL/craftsmanship-of-traditional-woven-textile-kente-02130 accessed 14 February 2026; UNESCO Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, 'Decision 19.COM 7.B.38' (IGO Doc 19.COM/7.B.38, 2024) https://ich.unesco.org/en/decisions/19.COM/7.B.38 accessed 14 February 2026.

[94] Uju, Alli and Umukoro (n 91) 2.

[95] Uju, Alli and Umukoro (n 91) 4.

4.3.3 The Role of State Support in IP Strategy

The most striking divergence is the role of the State. The GI status for Kente was achieved through the Trade Marks Active collaboration of the Registrar-General of Ghana's Industrial Property Office and WIPO.[96]

In stark contrast, Nigeria has demonstrated policy inertia. Despite the existence of the Geographical Indications (Registration and Protection) Bill, 2025 (HB 2387),[97][98] the legislation remains pending. Consequently, Nigerian textile guilds are forced to rely on the structurally defective section 43 of the Trade Marks Act 2004 or common law passing off, neither of which offers the international recognition or enforcement capabilities of the Ghanaian GI system. While Ghana has moved to secure its 'Cultural Oil' through specific legislation, Nigeria leaves assets like Adire and Akwete vulnerable to the 'spaghetti bowl' of fragmented and outdated regulations.

5 Recommendations for Reform

The preceding doctrinal analysis reveals a protection gap where the Nigerian legal framework, ostensibly designed to foster commerce, paradoxically disenfranchises indigenous textile communities. The strictures of the Trade Marks Act 2004—specifically the prohibition on trading for certification mark holders and the high threshold for distinctiveness—render the current regime ill-suited for the communal, commercially active nature of guilds producing indigenous textiles.[99]

To remedy the exposure of these 'Cultural Oil' assets to Automated Appropriation and industrial counterfeiting, this paper proposes a tripartite strategy: a pragmatic short-term procedural workaround, a medium-term legislative amendment, and a long-term sui generis overhaul.

5.1 Short-Term Strategy: Special Purpose Vehicles (SPVs) for Guilds

Until legislative amendments are enacted, indigenous communities must work within the 'Guild Paradox' identified in section 3.1 above—the statutory bar that prevents artisan guilds from holding the very certification marks designed to protect them. The most practical immediate mechanism to address this constraint is the incorporation of a separate legal entity: a Special Purpose Vehicle (SPV), likely structured as a Company Limited by Guarantee or an Incorporated Trustee under the Companies and Allied Matters Act (CAMA) 2020 (as amended 2023).

Two CAMA structures are particularly suited to serve as the SPV:

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96 'Kente Gains Global Protection as Ghana's First Geographical Indication' *News Ghana* (14 October 2025) https://www.newsghana.com.gh/kente-gains-global-protection-as-ghanas-first-geographical-indication/ accessed 14 February 2026.

97 Geographical Indications (Registration and Protection) Bill 2025 (HB 2387).

98 Africa IP Summit, 'Significance of Nigeria Draft Geographical Indications Bill' (*The Africa Intellectual Property Centre (Africa IP Centre)*, 30 April 2025) https://africaipsummit.it-rc.org/2025/04/30/significance-of-nigeria-draft-geographical-indications-bill/ accessed 30 January 2026.

99 Saheed (n 4) 13; Areo and Kalilu (n 15) 355; Okpoko (n 15) 45; O'Hear (n 15) 512–514; Maiwada (n 15) 79.

a Company Limited by Guarantee

This structure is well-suited to serve as the Regulatory Body. Under sections 26(1) and 26(3) of CAMA 2020, a Company Limited by Guarantee is constitutionally incapable of distributing profits to its members and cannot be incorporated for the purpose of profit-making. This statutory design aligns precisely with the "non-trading" requirement in the Trade Marks Act: the SPV holds the certification mark, administers the standards, and licenses the mark to active guild members—without itself engaging in trade. The practical effect is a clean structural separation between the regulatory function (vested in the SPV) and the commercial function (retained by the artisan guilds). Registration requires Attorney-General of the Federation approval under section 26(4)–(5) of CAMA 2020, which sets a 30-day approval window where no objections arise.

b Incorporated Trustees

This structure is particularly well-suited to indigenous communities and artisan guilds organized around custom or common purpose. Under section 823(1) of CAMA 2020, trustees appointed by such associations may apply for corporate recognition. Once registered, the Incorporated Trustees acquire legal personality under section 830(1)—including perpetual succession and the power to sue and be sued—enabling them to hold the Certification Trade Mark on behalf of the community. The non-profit mandate in section 838(1) ensures that income is applied exclusively to the association's objects, satisfying the non-trading requirement. The practical effect is identical to the Company Limited by Guarantee model, but with a governance structure that more naturally reflects the communal character of artisan guilds.

By utilizing either Section 26 of CAMA 2020 (Company Limited by Guarantee) or Section 823 of CAMA 2020 (Incorporated Trustees), artisan guilds can create a legal entity that satisfies the "non-trading" statutory bar of the Trade Marks Act while maintaining a structure designed for community development rather than commercial profit.

This SPV would function solely as the 'Regulatory Body.' It would apply for the Certification Trade Mark (e.g., 'Certified Abeokuta Adire'). Crucially, the SPV itself would not manufacture or sell textiles, thereby satisfying the non-trading requirement of section 43(1) of the Trade Marks Act 2004. The SPV would then license the use of the mark to the actual artisans (the guild members) who produce and sell the cloth, provided they adhere to the 'regulations governing use' deposited with the Minister under section 43(7) of the Trade Marks Act 2004.

These structures mimics the operation of the Tea Board of India (for Darjeeling Tea)[100] or the Comité Interprofessionnel du Vin de Champagne (for Champagne).[101] While legally viable under the current lex lata, it imposes a significant administrative and financial burden on rural communities,

[100] Tea Board of India, 'Darjeeling' (*Tea Board India*) https://www.teaboard.gov.in/TEABOARDCSM/NQ== accessed 30 January 2026.

[101] Comité Champagne, 'The Comité Champagne' (*Champagne.fr*) https://www.champagne.fr/en/find-out-more/champagne-industry/comite-champagne accessed 30 January 2026.

requiring them to maintain a corporate structure merely to hold rights that should naturally vest in their community. However, it remains the only immediate procedural mechanism to secure a statutory 'badge of origin' capable of surviving a Ferodo-style challenge regarding distinctiveness.

5.2 Medium-Term Reform: Statutory Recognition of Collective Marks

The 'non-trading' restriction in section 43 is a relic of Nigerian trademark jurisprudence that separates 'regulation' from 'trade.' This dichotomy is alien to the African communal mode of production. Therefore, a specific amendment to the Trade Marks Act 2004 is proposed to introduce 'Collective Marks.'

The National Assembly should amend the Trade Marks Act 2004 to include provisions analogous to article 38 of Annex III to the Bangui Agreement.[102] A new section should be inserted defining a Collective Mark as a mark 'capable of distinguishing, in the course of trade, the goods or services of persons who are members of an association from goods or services of persons who are not members thereof'.

Crucially, this amendment must explicitly omit the proviso found in the current section 43 of the Trade Marks Act 2004. It should permit 'unions or groups of unions and associations or groups of producers, manufacturers, craftsmen and tradesmen'[103] to be the registered proprietors of the mark while simultaneously allowing their members to trade in the goods.

This reform would align Nigeria with its regional counterparts. For instance, Kenya's Trade Marks Act[104] and the Bangui Agreement[105] recognize collective marks without the debilitating restrictions present in Nigerian law. By empowering guilds to own their brand collectively, the law would recognize the 'Collective Goodwill' of the community,[106] providing a stronger basis to sue for infringement when AI-generated counterfeits dilute their market share.

5.3 Long-Term Solution: Enactment of the Geographical Indications Bill

While trademark reforms are necessary, they are ultimately insufficient because trademarks function to identify a commercial source, not a geographical quality. The ultimate remedy for the protection of products like Adire (tied to the indigo chemistry of Abeokuta/Osogbo) or Akwete (tied to the weaving mathematics of Ndoki)[107] is the enactment of a sui generis Geographical Indications (GI) Law.[108]

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102 Bangui Agreement, Annex III art 38.
103 It should mirror the Bangui Agreement, Annex III art 38.
104 Trade Marks Act (Cap 506) (Kenya) s 40A
105 Bangui Agreement, annex III, arts 2(2), 38.
106 Aman K Gebru, 'Remediating Cultural Appropriation' (2025) SSRN Working Paper 4966783, 44–60 https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=4966783 accessed 30 January 2026.
107 Okpoko (n 15).
108 Uju, Alli and Umukoro (n 91) 4.

Under the current legal framework, indigenous textiles like Adire faces the "Distinctiveness Trap" established in *Ferodo*. Because the term Adire (etymologically "tie and dye") is descriptive of the process, it lacks the inherent distinctiveness required for Part A registration under the Trade Marks Act 2004. Furthermore, unlike trademarks which can suffer "genericide"[109] (losing protection if they become common terms), a *sui generis* GI law statutorily freezes the status of the name. As seen in the Geneva Act,[110] registered GIs cannot be considered to have become generic as long as they are protected in their country of origin. The enactment of HB.2387 would thus immunize *Adire* from being treated as a generic descriptor for all tie-dye fabrics.

The Geographical Indications Bill, submitted to the Minister of Industry, Trade and Investment in January 2025 and currently progressing through the National Assembly,[111] represents the Zero to One shift required.

Unlike the Trade Marks Act 2004, which struggles to prevent 'evocation' (e.g., 'Adire-style'), the Geographical Indications Bill 2025[112]—modelled on the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (Geneva Act)[113][114] —would criminalize the use of a protected name even if accompanied by delocalizing terms such as ' 'style', 'kind', 'type', 'make', 'imitation', 'method', 'as produced in', 'like', 'similar' or the like'.[115] This would legally bar AI-generated synthetic fabrics from being marketed as 'Adire-type' prints.[116]

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109 Jaclin Cassios and Serena Sajan, 'When a Trademark Becomes Too Popular: Understanding the Risk of "Genericide"' (*Dentons*, 12 November 2025) https://www.dentons.com/en/insights/newsletters/2025/november/12/dentons-intellectual-property-hub/when-a-trademark-becomes-too-popular-understanding-the-risk-of-genericide accessed 15 February 2026; Chinedum Umeche and others, 'Trademark Enforcement in Nigeria: Commentary on the Decision of the Federal High Court in Suit No: FHC/L/CS/332/2022 – Elo Othuke Azaino v Sterling Bank Plc' (*Banwo & Ighodalo*, 9 October 2025) https://www.banwo-ighodalo.com/media-files/2025/10/Azaino-Case-3.pdf accessed 15 February 2026; Somtochi Unachukwu and Simeon Okoduwa, 'Genericide: A Threat to Dominant Trademarks' (*Alliance Law Firm*, 5 December 2018) https://alliancelawfirm.ng/genericide-a-threat-to-dominant-trademarks/ accessed 15 February 2026.

110 Geneva Act, art 12.

111 Africa IP Summit, 'Significance of Nigeria Draft Geographical Indications Bill' (*The Africa Intellectual Property Centre (Africa IP Centre)*, 30 April 2025) https://africaipsummit.it-rc.org/2025/04/30/significance-of-nigeria-draft-geographical-indications-bill/ accessed 30 January 2026.

112 Geographical Indications (Registration and Protection) Bill 2025 (HB 2387)

113 Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (adopted 20 May 2015, entered into force 26 February 2020).

114 Oreoluwa Adebayo, 'The Rationale for Protecting Geographical Indications in Nigeria' (*SPA Ajibade & Co*, 28 October 2020) https://spaajibade.com/the-rationale-for-protecting-geographical-indications-in-nigeria-oreoluwa-adebayo/ accessed 15 February 2026.

115 Geneva Act, art 11(2).

116 This provision is the "silver bullet" against AI-generated designs. If *Adire* is registered as a GI, an AI-generated design marketed as "Adire-style" or "Adire-type" would be *ipso facto* illegal, regardless of whether consumers are confused. This effectively criminalizes the "Ankara Kampala" appropriation strategy described in section 1.2 of this paper.

The GI framework links the product to its terroir (geographical environment and human factors).[117] This ensures that the economic value of the textile remains anchored to the physical community in Nigeria. As evidenced by the success of Penja Pepper (Cameroon)[118] and Rooibos (South Africa),[119] a sui generis GI system provides the state-backed enforcement mechanism necessary to police international borders against infringing imports,[120] a capacity currently lacking under the private-enforcement model of trademarks.

Nigeria must move from a defensive reliance on an outdated Trade Marks Act to an offensive strategy utilizing Geographical Indications. The immediate adoption of the SPV model will stop the bleeding, but only the enactment of the Geographical Indications Bill 2025[121] will secure the future of Nigeria's indigenous textiles in the age of AI.

6 Conclusion

The doctrinal and forensic examination of section 43 of the Trade Marks Act reveals that the current Nigerian intellectual property framework functions as a 'False Shield' rather than a fortress for indigenous creativity. The indigenous textile sector—representing $4.7 billion in annual output and constituting the 'Cultural Oil' of the creative economy—remains legally exposed to industrial counterfeiting and digital misappropriation. The core vulnerability lies in the 'Regulatory Paradox': by disqualifying those who carry on a trade from holding certification marks, the law ignores the communal reality of African production, while the 'Distinctiveness Trap' established in Ferodo further relegates cultural motifs to the status of mere ornamentation.

Comparative analysis confirms that this legal incapacity is a specific failure of Nigerian legislative drafting, contrasting sharply with the robust protections afforded by the OAPI Collective Mark system Kenya's Trade Marks Act (Cap 506) and Ghana's Geographical Indication strategy for Kente. Consequently, safeguarding these assets requires an urgent departure from the status quo. Nigeria must implement a tripartite reform strategy: the immediate adoption of non-trading Special Purpose Vehicles (SPVs) to circumvent current statutory bars, the legislative introduction of 'Collective Marks' to recognize communal ownership, and the ultimate enactment of the Geographical Indications Bill 2025.[122] Only by transitioning from the outdated strictures of the Trade Marks Act 2004 to a sui generis system anchored in terroir can Nigeria effectively police its

117 Titilayo Adebola, 'The Legal Construction of Geographical Indications in Africa' (2023) 26 *The Journal of World Intellectual Property* 3, 8–9 https://onlinelibrary.wiley.com/doi/pdf/10.1111/jwip.12255 accessed 30 January 2026.

118 ibid 12, 14, 16.

119 ibid 18-20.

120 Delphine Marie-Vivien and Estelle Biénabe, 'The Multifaceted Role of the State in the Protection of Geographical Indications: A Worldwide Review' (2017) 98 World Development 1, 8–9 https://yucita.org/file_sub_302_Diger-The-Multifaceted-Role-of-the-State-in-the-Protection-of-Geographical-Indications:-A-Worldwide-Review.pdf accessed 30 January 2025.

121 Geographical Indications (Registration and Protection) Bill 2025 (HB 2387).

122 Geographical Indications (Registration and Protection) Bill 2025 (HB 2387).

borders against infringement and secure the intergenerational wealth of its artisan communities in the face of digital disruption.

DATA PRIVACY AND AI GOVERNANCE IN AFRICA'S DIGITAL FASHION ECOSYSTEM: REGULATORY FRAMEWORKS FOR E-COMMERCE, PERSONALISATION, AND CONSUMER PROTECTION

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Abstract

Africa's fashion industry, valued at $31 billion in 2021 and projected to reach $50 billion by 2030, is undergoing a profound digital transformation. E-commerce platforms, artificial intelligence, virtual reality, and blockchain are reshaping how African fashion is designed, marketed, and consumed. Yet this digital revolution carries a darker underside: significant data privacy risks, algorithmic biases, and governance gaps that existing regulatory frameworks are ill-equipped to address. This article critically examines the intersection of data privacy, AI governance, and Africa's digital fashion ecosystem. It analyses the extant continental and national regulatory landscape—including the AU Malabo Convention, the AU AI Continental Strategy, Nigeria's Data Protection Act 2023, and South Africa's POPIA—against the distinctive challenges posed by fashion e-commerce, AI-driven personalisation, virtual reality fittings, and blockchain-based supply chains. The article identifies critical lacunae, including the absence of fashion-specific data governance rules, under-resourced enforcement authorities, fragmented continental harmonisation, and the invisibility of African consumers in global AI training datasets. It concludes with a suite of Afrocentric, fashion-centred recommendations, including a model African Fashion Data Governance Framework, sector-specific algorithmic transparency obligations, and a Pan-African Fashion-Tech Regulatory Sandbox.

Keywords: *Data privacy, AI governance, African fashion, E-commerce, Digital fashion, Consumer protection, Afrocentrism, Regulatory framework*

1 Introduction

The African fashion sector, valued at $31 billion in 2021,[1] is one of the fastest-growing fashion markets in the global fashion industry The continent's burgeoning youth population,[2] varied cultural fashion expressions,[3] raw material deposits,[4] and vast local market,[5] drives the growth of its fashion industry, earning it retail sales of $1.3 trillion. The Continent's indigenous brands now regularly feature in, and even dominate, global fashion weeks,[6] in addition to hosting its own.[7] These stellar achievements prompted UNESCO's finding that, 'Africa hold all the cards to become one of the next fashion leaders'.[8]

The disruptive impact of digital technology did not elude the African fashion industry, and recent years have witnessed astronomical growth in the African fashion industry through its fusion with technology.[9] For instance, e-commerce, popularised through platforms like Jumia, Shopify, and Selar, has led to the international expansion of the African fashion industry at breathtaking speed.[10] Virtual reality (VR) technologies and computer-aided designs (CAD) have also enabled 3D designs,

1 Joshua Muhammed, 'The Global Impact of African Fashion: Can it Become a $50 Billion Industry?' *African Leadership Magazine* (19 April 2025) <https://www.africanleadershipmagazine.co.uk/the-global-impact-of-african-fashion-can-it-become-a-50-billion-industry/> accessed 17 February 2026. It is predicted that the market value of the industry will rise to $50 billion by 2030.

2 United Nations Educational, Scientific, and Cultural Organisation (UNESCO), *The African Fashion Sector: Trends, Challenges & Opportunities for Growth* (UNESCO 2023) <https://doi.org/10.58337/PHDP8559>.

3 In Africa, culture is interspersed with and expressed through fashion. For example, Yoruba's Aso Oke and Ghana's Kente are both cultural expressions and fashion attires.

4 UNESCO (n 3).

5 Ibid, 17.

6 Chiara Aluko, 'Celebrating 40 Years: African Designers Take the Centre Stage by Storm at the Official London Fashion Week' *Bella Naija* (15 October 2024) <https://www.bellanaija.com/2024/10/official-london-fashion-week-2024/> accessed 17 February 2026; Jevans Nyabiage, 'African Designers Strike a Pose at Shanghai Fashion Week as Chinese Market Beckons' *South China Morning Post* (6 April 2025) <https://www.scmp.com/news/china/diplomacy/article/3304261/african-designers-strike-pose-shanghai-fashion-week-chinese-market-beckons> accessed 17 February 2026.

7 'African Fashion Week' <https://africafashionweek.com/> accessed 17 February 2026.

8 Audrey Azoulay, 'UNESCO Report: A New Global Fashion Leader' *UNESCO* (26 October 2023) <https://www.unesco.org/en/articles/unesco-report-africa-new-global-fashion-leader> accessed 17 February 2026.

9 Ananse Africa, *Unleashing the Commercial Potential of African Fashion Creatives through Digital Technology* (Ananse Africa 2023); Adedoyin Akinsemoyin, 'Fashion and Technology: The Rise of Digital Fashion Design in Africa' *Ethnocentrique* (15 January 2026) <https://ethnocentrique.com/stories/fashion-and-technology-the-rise-of-digital-fashion-design-in-africa> accessed 17 February 2026; David Akinfenwa, 'Digitisation and Innovation: Exploring the Business of Fashion in Africa' *Guardian Life* (3 July 2022) <https://guardian.ng/life/digitisation-innovation-exploring-the-business-of-fashion-in-africa/> accessed 17 February 2026.

10 Ibid; Deborah Dan-Awoh, '"Digitalisation is Expanding Growth Opportunities for African Fashion Designers" – UNESCO' *Nairametrics* (2 November 2023) <https://nairametrics.com/2023/11/02/digitalization-is-expanding-growth-opportunities-for-african-fashion-designers-unesco/> accessed 17 February 2026.

virtual fittings, virtual runways, and customer personalisation,[11] eliminating waste and improving efficiency in the African fashion industry. Artificial intelligence (AI), social media, data analytics, and blockchain technology, are also redefining African fashion.[12]

However, the disruptive impact of digital technology in the African fashion industry has been two-sided. On one hand, it has heralded several benefits,[13] but on the other hand, it has introduced risks and challenges that Africa seems ill-prepared to handle.[14] For instance, Africa's digital fashion ecosystem has created data privacy risks, especially in e-commerce where consumers provide both personally identifiable information (PII) and financial information.[15] Recently, the Nigerian Data Protection Commission (NDPC) launched investigations into Temu, an e-commerce platform where fashion items, among other things, are bought and sold.[16] NDPC cited data privacy violations as the reason for its investigation, with the Commission alleging that Temu was involved in the unlawful data processing of over 12.7 million Nigerian users.[17] Additionally, existing data privacy regimes and AI Governance frameworks are not sufficiently calibrated to the realities of digital fashion, creating several lacunas and loopholes.

These untoward effects of the digitalisation of African fashion necessitate an examination of the regulatory frameworks that govern data privacy and AI generally, and the African fashion industry specifically, to examine whether they are sufficient for the challenges of this digital age, and if not, to propose recommendations for a more fashion-specific, afrocentric governance approach. To achieve this aim, this paper is stratified into six sections: Section 1 introduces the research; Section 2 provides a panoramic overview of Africa's digital fashion ecosystem; Section 3 discusses the risks and rewards of the digitalisation of African fashion; Section 4 critically analyses the extant regulatory frameworks, identifying gaps and weaknesses; Section 5 proposes recommendations for reform; and Section 6 concludes the paper.

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11 Bernard Dayo, 'Meet the Disruptors Guiding the African Fashion Industry Through a Digital Awakening' *Industrie Africa* (24 May 2022) <https://industrieafrica.com/blogs/imprint/report-meet-the-disruptors-guiding-the-african-fashion-industry-through-a-digital-awakening-balmlabs-reframd-thebe-magugu> accessed 17 February 2026.

12 Akinfenwa (n 9).

13 Akinsemoyin (n 9).

14 Owodiong-Idemeko B Maria, Folasade A Thompson, and Udom Owodiong, 'Investigation of Digital Transformation and Good Governance for Global Partnership among Fashion Designers in Lagos State, Nigeria' (2024) 4(1) *International Journal of Innovation and Pedagogical Techniques* 131.

15 Amara Adekunle, 'Application of Artificial Intelligence and Digital Technologies in Fashion Design and Innovation in Nigeria' (2024) 3(1) *International Journal of Fashion and Design* 37 <https://doi.org/10.47604/ijfd.2389>.

16 Camillus Eboh, 'Nigeria Opens Probe into Temu over Suspected Data Protection Breaches' *CNBC Africa* (17 February 2026) <https://www.cnbcafrica.com/2026/nigeria-opens-probe-into-temu-over-suspected-data-protection-breaches> accessed 17 February 2026; Omotoyosi Idowu, 'NDPC Investigates Temu for Alleged Violation of Data Protection Act' *Premium Times* (17 February 2026) <https://www.premiumtimesng.com/business/business-news/857206-ndpc-investigates-temu-for-alleged-violation-of-data-protection-act.html> accessed 17 February 2026.

17 Ibid.

2 An Overview of Africa's Digital Fashion Ecosystem

Adapting James Moore's seminal definition of a business ecosystem,[18] Africa's digital fashion ecosystem consists of the varied, yet interconnected stakeholders at the intersection of digital technology and African fashion. These stakeholders include African fashion designers (who are at the centre of the ecosystem); e-commerce platforms (whether generic or fashion-specific); digital fashion tools such as fashion AI, VR technologies, and blockchain, and government regulators. This section focuses on e-commerce platforms and digital tools, which are most relevant to this present study.

E-commerce is a crucial component of the African digital fashion ecosystem, leveraging the continent's over 500 million active e-commerce users.[19] Through e-commerce, African fashion brands, 90% of which are SMEs,[20] are able to access and sell to local and international markets, earning $13.4 billion in sales annually as at 2025.[21] The leading e-commerce platforms in the African fashion industry are Shopify, Selar, Paystack, Jumia, and Temu although they are generic platforms.[22] However, there are also fashion-specific e-commerce platforms like Afrikrea (ANKA),[23] IyeOgé,[24] and Stitches Africa,[25] which connect African fashion brands to global customers, especially other Africans in the diaspora. These developments point to the ubiquity and utility of e-commerce in the African fashion industry.

On digital fashion tools, fashion AI is one of the prime technologies. It refers to the application of artificial intelligence in fashion to either predict trends,[26] offer personalized recommendations,[27] or automate repetitive administrative tasks.[28]. Specific examples of the application of AI in African fashion are a dime a dozen. One such example is Heuritech, which uses AI to analyse images on

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18 James F. Moore, 'Predators and Prey: A New Ecology of Competition' (1993) 93309 *Harvard Business Review* 75–86.

19 International Trade Association, 'The Rise of eCommerce in Africa' <https://www.trade.gov/rise-ecommerce-africa> accessed 19 February 2026.

20 Lauren England and others, 'Africa Fashion Futures: Creative Economies, Global Networks, and Local Development' (2021) 15(9) *Geography Compass* 1 <https://doi.org/10.1111/gec3.12589>.

21 International Trade Association (n 19).

22 Akinfenwa (n 9); Akinsemoyin (n 9).

23 ANKA <https://www.anka.africa/> accessed 17 February 2026.

24 Guardian Nigeria, 'The Future of African Fashion is Here: IyeOgé, the Continent's First AI-Integrated Luxury E-Commerce Platform, Launches this September' (22 August 2025) <https://guardian.ng/business-services/the-future-of-african-fashion-is-here-iyeoge-the-continents-first-ai-integrated-luxury-e-commerce-platform-launches-this-september/> accessed 17 February 2026.

25 Taofeek Oyedokun, 'Stitches Africa Launches with $50m Financing to Globalise African Fashion through AI' *Business Day* (9 November 2025) <https://businessday.ng/life/article/stitches-africa-launches-with-50m-financing-to-globalise-african-fashion-through-ai/> accessed 17 February 2026.

26 Akinsemoyin (n 9).

27 Adekunle (n 15) 38; Yan Wang and others, 'Knowledge-Driven Innovation: Leveraging Digital Twins, Internet of Things, and AI for Cross-Cultural Fashion Design and Production between China and South Africa' (2025) *International Journal of High Speed Electronics and Systems* 1 <https://doi.org/10.1142/S012915642540645X>.

28 Maria, Thompson, and Owodiong (n 14) 134.

social media and build region-specific fashion collections, predict trends and forecast demand.[29] Another example is IyeOgé which helps identify and learn customer preferences using AI and ML.[30] Stitches Africa also integrates AI to generate accurate digital measurements, thereby enabling bespoke tailoring.[31] Additionally, Scharff and others noted two Senegalese fashion AI tools that classify fashion apparels and generate African textile patterns respectively.[32] .

Still on digital fashion tools, VR technologies are another crucial component of Africa's digital fashion ecosystem. These technologies virtually simulate fashion designs and shopping experiences, allowing customers to try on clothes digitally before purchasing. In the African context, VR applications in fashion serve a dual purpose: they reduce the rate of product returns by improving purchase decisions, and they democratise access to immersive retail experiences in markets where physical flagship stores may be unavailable or inaccessible.[33] Tools such as computer-aided design (CAD) platforms enable African designers to create 3D prototypes, share them with clients, and receive feedback without physical samples.[34] Virtual runways have also emerged, allowing African fashion weeks to transcend physical limitations and reach global digital audiences.

Finally, blockchain technology, another digital fashion tool, is primarily deployed to address supply chain transparency, anti-counterfeiting, and digital ownership verification.[35] Given that the global fashion industry loses an estimated $98 billion annually to counterfeiting,[36] the appeal of blockchain's immutable ledger for authenticating the provenance of African luxury garments and textiles is self-evident. Platforms are exploring the use of non-fungible tokens (NFTs) as digital certificates of authenticity for high-value African fashion items, linking physical garments to their digital twin on-chain.[37] Blockchain also enables more equitable payment structures for African artisans and designers by facilitating direct, peer-to-peer transactions and eliminating exploitative intermediaries.[38] Beyond payments, blockchain introduces the possibility of decentralised data governance models in which consumers hold their personal data and selectively grant access to e-

29 Akinsemoyin (n 9); Heuritech, 'About Us: Built for Fashion Brands, Powered by State-of-the-Art Artificial Intelligence' <https://heuritech.com/company-about-us/> accessed 17 February 2026.

30 Guardian Nigeria (n 24).

31 Oyedokun (n 25).

32 Christelle Scharff and others, 'Inclusion Ethics in AI: Use Case in African Fashion' (2024) 3(1) *Proceedings of the 2024 AAAI Spring Symposium Series* 516 <https://doi.org/10.1609/aaaiss.v3i1.31266>.

33 Akinsemoyin (n 9); Maria, Thompson, and Owodiong (n 14) 133.

34 Maria, Thompson, and Owodiong (n 14) 136. For example, Ghanian designer, Percy Okine, uses CAD tto create SD kente designs. Nigeria's Idiat Shole and Jessica James do the same things with Ankara fabric. See: Dayo (n 11).

35 Akinsemoyin (n 9); Harjit Singh and others, 'Blockchain Technology in the Fashion Industry' (2022) 20(2) Journal of Electronic Commerce in Organizations. https://doi.org/10.4018/JECO.300303

36 Jingshi (Joyce) Liu, Wiley Wakeman, and Michael Norton, 'The Egalitarian Value of Counterfeit Goods: Purchasing Counterfeit Luxury Gods to Address Income Equality' (2025) 35(2) Journal of Consumer Psychology 269–280. https://doi.org/10.1002/jcpy.1431

37 Wang and others (n 28).

38 Gautami Tripathi and others, 'Blockchain Technology and Fashion Industry – Opportunities and Challenges' in SK Panda, *Blockchain Technology: Applications and Challenges'* (Springer 2021). https://doi.org/10.1007/978-3-030-69395-4_12

commerce platforms. This model stands in sharp contrast to the centralised data hoarding that characterises mainstream e-commerce.[39] However, these benefits are accompanied by cybersecurity risks inherent in blockchain systems, including smart contract vulnerabilities, wallet security breaches, and 51% attacks, none of which are yet addressed in Africa's fashion regulatory landscape.

3 Digitalisation of African Fashion: Risks and Rewards

3.1 The Rewards of Digitalisation

The rewards of the digitalisation of African fashion are substantial and well-documented. At the most fundamental level, digital technology, particularly e-commerce, has internationalised African fashion brands at a speed and scale that would have been unimaginable in the pre-digital era.[40] Platforms like ANKA (formerly Afrikrea) have enabled African designers and artisans to access global markets without the prohibitive costs of establishing a physical international presence.[41] The result is a democratisation of market access for the continent's predominantly SME-based fashion sector, whose 90% SME composition means that cost efficiency is not merely preferable but existential.

AI-driven personalisation has also transformed the consumer experience in African digital fashion.[42] By analysing purchasing history, browsing behaviour, and stated preferences, AI recommender systems on platforms like IyeOgé deliver curated product suggestions that align with individual tastes.[43] This reduces decision fatigue for consumers and improves conversion rates for brands.[44] The integration of AI with trend forecasting tools, as deployed by Heuritech, further enables African designers to be proactive rather than reactive, anticipating what consumers will want before they

39 Digital Watch Observatory, 'E-Commerce Transformation through Blockchain Technology' <https://dig.watch/updates/e-commerce-transformation-through-blockchain-technology> accessed 19 February 2026.

40 Akinsemoyin (n 9). The author noted that, 'Online platforms such as Instagram, Jumia, and Shopify provide African designers with global access'. Empirical evidence equally abounds. See: Helen Bangbio Kuupole and Faustina Emefa Agordah, 'Transforming Clothing Innovation into Entrepreneurial Ventures in Ghana: The Case of Fashion and Clothing Designers in Sekondi-Takoradi Metropolis' (2026) 7(1) *International Journal of Research in Education, Humanities, and Commerce* 1–12, 9. <https://doi.org/10.37602/IJREHC.2025.7101>. The interviewed respondents, who are also clothiers in Sekondi-Takoradi Metropolis, Ghana, noted that most of their customers are from social media e-commerce platforms, such as Instagram and Facebook Marketplace, and that they have shipped to other continents. See also: Maureen Nkiru Anakwe, 'Digital Transformation and Innovativeness of Fashion Design Firms in Rivers State, Nigeria' (2025) 25(3) *Global Journal of Engineering and Technology Advances* 269–280, 276. <https://doi.org/10.30574/gjeta.2025.25.3.0358>. Therein, the respondent firms which are fashion design brands in Rivers State, Nigeria noted that digital technology exponentially expanded their online visibility and customer reach.

41 Presently, ANKA boasts of hosting over 20,000 fashion brands in 46 African countries and facilitating transactions worth over $500 million in 175 countries. See: <https://www.anka.africa/en> accessed 8 June 2026.

42 Adekunle (n 15).

43 Guardian Nigeria (n 24).

44 Ibid.

articulate it.[45] This predictive capability is particularly valuable in a continent with such rich diversity of cultural fashion expressions; AI can help surface trends within specific subcultures or regions that might otherwise be invisible to fashion houses operating at scale.

VR and CAD technologies have contributed meaningfully to sustainability in the African fashion industry. By enabling virtual prototyping and digital fittings, these tools reduce physical sample production, which is both cost-intensive and environmentally wasteful.[46] The elimination of unnecessary returns through improved virtual try-on accuracy also reduces the carbon footprint associated with reverse logistics.[47] For a continent that is simultaneously a major producer of fashion raw materials including cotton, silk, and raffia and highly vulnerable to the environmental consequences of textile waste, these sustainability dividends of digitalisation are of significant local importance.

Blockchain's contribution to combating counterfeiting is another major reward. African luxury fashion brands, whose distinctive textiles, dyeing techniques, and artisanal methods are increasingly coveted globally, are particularly vulnerable to intellectual property theft and counterfeiting.[48] Blockchain-based provenance verification systems create tamper-proof records that authenticate the origin and journey of each garment from raw material to consumer, thereby protecting not only commercial interests but also the cultural integrity of Africa's fashion heritage.[49]

3.2 The Risks of Digitalisation

3.2.1 Data Privacy Risks in Fashion E-Commerce

The single largest risk associated with the digitalisation of African fashion is that of data privacy. E-commerce, by its very nature, requires consumers to furnish platforms with significant personal information: names, physical addresses, payment details, body measurements, and browsing behaviour. In the African context, where many consumers are newly digitised and may lack the digital literacy to understand the implications of their data sharing, this information asymmetry creates acute vulnerability.[50] The NDPC's investigation into Temu is the most emblematic recent example: the commission alleged that the platform unlawfully processed the personal data of over

45 Adekunle (n 15).

46 Times Live, 'The Future of South African fashion through Digital Innovation' (28 January 2026). https://www.timeslive.co.za/news/2026-01-28-the-future-of-south-african-fashion-through-digital-innovation/ accessed 19 February 2026. The article describes the case of Epson's Monna printer which uses advanced technologies to reduce the use of water in SA fashion by up to 97%, thereby promoting sustainability.

47 Vanessa Vanderpuye, 'Weaving Culture and Innovation through Afro-Digital Fashion' Vice Versa Global (10 October 2025). https://www.viceversaglobal.com/weaving-culture-and-innovation-through-afro-digital-fashion/ accessed 19 February 2026. Herein, Rwandan fashion designer, Joselyne Ayinkamiye, revealed that she 'experiments with designs in CLO 3D, a digital fashion software that allows her to simulate texture, color, and form.'

48 Singh and others (n35).

49 Ibid.

50 African Researchers Magazine, 'Data Protection & AI Governance in Africa: Key Trends from 2024 & Projections for 2025' (24 February 2025) <https://www.africanresearchers.org/data-protection-ai-governance-in-africa-key-trends-from-2024-projections-for-2025/> accessed 19 February 2026.

12.7 million Nigerian users,[51] raising fundamental questions about whether global e-commerce giants are adequately calibrated to Africa's evolving regulatory requirements. That the investigation came to light in February 2026 underscores both the growing ambition of African regulators and the significant gulf that remains between regulatory intent and practical enforcement.[52]

Beyond e-commerce platforms, data privacy risks permeate the entire digital fashion ecosystem. AI recommender systems continuously collect and process granular data about consumer preferences, social media behaviour, and purchase patterns. VR fashion software captures biometric data such as body dimensions, gaze patterns, and movement signatures that is among the most sensitive categories of personal information. Blockchain, though often promoted as a privacy-enhancing technology, creates permanent, immutable records of transactions that, if inadequately anonymised, can expose users to surveillance risks. Each of these vectors demands specific regulatory consideration that sector-agnostic data protection laws are ill-suited to provide.

3.2.2 Algorithmic Bias and Discrimination

A second major risk of digitalisation in African fashion is that of algorithmic bias.[53] AI systems deployed in fashion e-commerce and trend forecasting are trained on datasets that, by default, reflect the cultural, racial, and economic biases of their creators.[54] For example. Scharff and others noted that fashion AI training datasets largely contained images of wetern fashion products and thus the resulting AI models would be biased against African fashion.[55] This translates into recommender systems that fail to surface culturally relevant products to African consumers, trend forecasting tools that overlook African-specific fashion movements, and personalisation algorithms that miscategorise African users' preferences based on data dominated by Western fashion consumption patterns.

The fashion-specific dimension of algorithmic bias manifests in several ways. Dynamic pricing algorithms may charge higher prices to consumers in specific African postcodes or demographic profiles, creating a form of digital redlining within the fashion retail space.[56] Targeted advertising algorithms, optimised for conversion based on historical data, may systematically exclude African fashion consumers from promotional offers if their demographic profile is underrepresented in the training dataset. The research of Scharff and others on Senegalese fashion AI tools that generate African textile patterns suggests that, while there are encouraging attempts to train AI on African-specific fashion data, these initiatives remain nascent and insufficiently resourced to counterbalance the systematic Western bias of the global AI industry.[57]

51 Eboh (n 16); Idowu (n 16).

52 Ibid.

53 Adekunle (n 15), 41.

54 Scharff and others (n 32).

55 Ibid, 516.

56 Commerce Centric, 'How do Biases in AI Algorithms Affect Personalised Marketing?' <https://www.commercecentric.com/blog-posts/how-do-biases-in-ai-algorithms-affect-personalised-marketing> accessed 19 February 2026.

57 Scharff and others (n 32).

3.2.3 Cybersecurity Threats

Digital fashion platforms are attractive targets for cybercriminals precisely because they aggregate valuable personal and financial data. The e-commerce sector globally is among the most heavily targeted by data breaches, phishing attacks, and ransomware,[58] and Africa's rapidly growing digital fashion market is no exception.[59] The cybersecurity risks are compounded by the continent's infrastructure challenges including inconsistent power supply, variable internet connectivity, and limited cybersecurity awareness among both consumers and SME operators, which make robust security implementation more difficult.[60]

VR fashion environments introduce novel cybersecurity attack surfaces. Head-mounted displays and immersive fashion platforms collect detailed biometric data such as eye-tracking, body movement, and physiological responses to virtual stimuli that, if compromised, could enable deeply invasive profiling of African consumers. Blockchain-based fashion applications, while offering certain security advantages through decentralisation and cryptography, are exposed to unique vulnerabilities including smart contract exploits, 51% attacks on smaller networks, and private key theft. None of these sector-specific threats are addressed in existing African data protection or cybersecurity frameworks.

3.2.4 Intellectual Property and Cultural Heritage Risks

A dimension of digital risk that is often overlooked in conventional data privacy scholarship, but which is of acute relevance to African fashion, is the risk of intellectual property and cultural heritage exploitation. AI systems that are trained on images of African textiles, motifs, and garments are oftenharvested without consent from social media, fashion show footage, or archival sources and can generate derivative designs that appropriate Africa's rich cultural fashion heritage without attribution or compensation to the originating communities. This form of data exploitation, which does not neatly fit within existing intellectual property or data protection frameworks, represents a significant emerging risk for African fashion.[61]

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58 Abiola E. Onalaja and Bisayo O. Otokiti, 'The Evolution of Digital Advertising in Africa: Emerging Trends, Key Challenges, and Business Opportunities' (2024) 5(1) International Journal of Multidisciplinary Research and Growth Evaluation 1595–1608. https://doi.org/10.54660/.IJMRGE.2024.5.1.1595-1608

59 Ibid.

60 MK Okonkwo and others, 'AI, IoT, and Blockchain in Fashion: Confronting Industry Challenges' (2024) *International Journal of Computer Network and Information Security* <https://ijcnis.org/index.php/ijcnis/article/view/7073/1557>.

61 For a fuller discussion on this conundrum, see: World Intellectual Property Organization (WIPO), 'Indigenous Peoples and Fashion' <https://www.wipo.int/en/web/traditional-knowledge/fashion> accessed 8 June 2026.

4 Data Privacy and AI Governance Framework in Africa: Overview, Analysis, and Gaps

4.1 The Continental Framework: The Malabo Convention

At the continental level, the African Union's primary instrument on data protection and cybersecurity is the African Union Convention on Cyber Security and Personal Data Protection, commonly known as the Malabo Convention. Adopted in June 2014, the Malabo Convention entered into force on 8 June 2023 following Mauritania's ratification as the 15th state party, nearly a decade after its adoption.[62] The Convention establishes a framework for electronic transactions, data protection, and cybersecurity, mandating that member states establish domestic laws conforming to its principles and create independent data protection authorities.[63]

The Malabo Convention's contribution to the governance of Africa's digital fashion ecosystem is, at best, indirect. Its data protection provisions require member states to establish rules governing the collection, processing, and storage of personal data, and to recognise individuals' rights over their data. These provisions are, in principle, applicable to e-commerce platforms and AI systems operating in the fashion sector. However, the Convention suffers from significant structural weaknesses that limit its practical relevance. It has attracted only fifteen ratifications from the African Union's fifty-five member states, leaving the vast majority of the continent's consumers without the protection of its provisions. The world's largest and most digitally active African fashion markets including Nigeria, Ghana, Kenya, and Egypt are not state parties.

Beyond its limited ratification, the Malabo Convention has been extensively criticised for being simultaneously over-inclusive and under-inclusive. Critics, including civil society organisations and academic commentators, have noted that the Convention's attempt to address data protection, e-commerce, cybercrime, and cybersecurity within a single instrument results in a framework that aggregates human rights, commercial law, and criminal law issues without the coherence or depth needed to address any of them adequately.[64] Crucially for present purposes, the Convention contains no provisions on artificial intelligence, algorithmic decision-making, or the sector-specific risks associated with digital fashion technologies. It also lacks robust mechanisms for cross-border enforcement, a critical omission given the global nature of fashion e-commerce platforms. The Convention's designers, writing in 2011–2014, could not have anticipated the explosion of AI-driven personalisation, VR fashion environments, or blockchain-based provenance tracking; the

62 African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) (adopted 27 June 2014, entered into force 8 June 2023). See: 'The African Union's Malabo Convention on Cyber Security and Personal Data Protection Enters into Force' (2023) *EJIL: Talk!* <https://www.ejiltalk.org/the-african-unions-malabo-convention-on-cyber-security-and-personal-data-protection-enters-into-force-nearly-after-a-decade-what-does-it-mean-for-data-privacy-in-africa-or-beyond/> accessed 19 February 2026.

63 Malabo Convention, art 11.

64 ALT Advisory, 'The Malabo Roadmap: Approaches to Promote Data Protection' (2022) <https://dataprotection.africa/wp-content/uploads/malabo_roadmap_Sept_2022.pdf> accessed 19 February 2026.

instrument's silence on these technologies is therefore understandable but nonetheless consequential.[65]

4.2 The AU AI Continental Strategy

In July 2024, the African Union Executive Council adopted the AU AI Continental Strategy, a landmark document that represents the continent's most comprehensive articulation of AI governance principles to date.[66] The Strategy identifies five focus areas: harnessing AI's benefits, building AI capabilities, minimising risks, stimulating investment, and fostering cooperation. It proposes a multi-tiered approach to AI governance that accommodates the varying levels of development among African states. Its implementation timeline runs from 2025 to 2030, with Phase 1 (2025–2026) focused on establishing governance structures and national AI strategies.[67]

While the AU AI Continental Strategy represents meaningful progress, it is not a binding instrument, and its governance framework is aspirational rather than prescriptive. The Strategy's sector focus encompasses agriculture, healthcare, public services, climate change, and security, but not fashion or e-commerce. This omission is significant: as this paper demonstrates, the digital fashion sector is one of the most data-intensive and AI-dependent sectors of the African economy, and its regulatory invisibility in the continental AI governance framework leaves millions of African fashion consumers without dedicated protection. Furthermore, the Strategy does not contain specific provisions on algorithmic transparency, bias mitigation, or consumer rights in AI-mediated commercial environments, all of which are essential for meaningful governance of fashion AI.

4.3 National Frameworks: Nigeria and South Africa

4.3.1 Nigeria: The Data Protection Act 2023

Nigeria's Data Protection Act 2023 (NDPA) is arguably the most significant national data protection legislation in Africa's fashion industry context, given Nigeria's position as the continent's largest economy and most populous digital fashion market. The NDPA, which received presidential assent on 12 June 2023, replaces the Nigerian Data Protection Regulation (NDPR) 2019 and establishes the Nigeria Data Protection Commission (NDPC) as the apex regulatory authority.[68] The Act mirrors, to a significant extent, the structure and principles of the EU's General Data Protection Regulation

65 Diplo Foundation, 'What is the Malabo Convention?' (30 January 2025) <https://www.diplomacy.edu/blog/what-is-the-malabo-convention/> accessed 19 February 2026.

66 Future of Privacy Forum, 'The African Union's Continental AI Strategy: Data Protection and Governance Laws Set to Play a Key Role in AI Regulation' <https://fpf.org/blog/global/the-african-unions-continental-ai-strategy-data-protection-and-governance-laws-set-to-play-a-key-role-in-ai-regulation/> accessed 19 February 2026.

67 Ibid.

68 Nigeria Data Protection Act 2023 (NDPA), s 1; Aluko & Oyebode, 'Introducing the Nigeria Data Protection Act 2023' <https://www.aluko-oyebode.com/insights/nigeria-data-protection-act-2023-ndpa/> accessed 19 February 2026.

(GDPR), introducing key principles of lawfulness, fairness and transparency; purpose limitation; data minimisation; accuracy; storage limitation; integrity and confidentiality; and accountability.[69]

Of particular relevance to the digital fashion ecosystem, the NDPA's Section 37 restricts the exclusive use of automated decision-making processes for processing personal data that will have legal or similarly significant effects on data subjects, except with the data subject's consent, for the fulfilment of a legal obligation, or where necessary for the performance of a contract.[70] This provision has direct implications for AI-driven personalisation and dynamic pricing in fashion e-commerce: where an AI system makes purchase recommendations or sets prices in ways that have material economic effects on consumers, those decisions may require explicit consent or contractual justification. The Act also mandates Data Protection Impact Assessments (DPIAs) for high-risk processing activities, which would include the large-scale processing of consumer data by fashion e-commerce platforms.[71]

The NDPA's extraterritorial scope is also noteworthy. It applies to foreign organisations that offer goods or services to Nigerian consumers, which encompasses global fashion e-commerce platforms including Temu, Shein, and ASOS that serve the Nigerian market. The NDPC's investigation into Temu demonstrates that the Commission is prepared to use this extraterritorial jurisdiction assertively.[72] However, practical enforcement against foreign platforms remains challenging, as the Commission's investigative and enforcement capacities are still being developed.

Despite these strengths, the NDPA has significant limitations in the fashion technology context. The Act does not contain sector-specific provisions for fashion e-commerce, AI-driven personalisation, VR data collection, or blockchain applications. Its provisions on children's data, while innovative in establishing a digital age of consent framework, do not address the specific risks associated with minors' participation in virtual fashion environments. The Act is also silent on cultural heritage data which includes the distinctive patterns, motifs, and textile traditions of Nigeria's diverse peoples which AI systems may scrape and exploit without the knowledge or consent of the originating communities.

4.3.2 South Africa: POPIA and the AI Policy Framework

South Africa's Protection of Personal Information Act (POPIA), which came into full effect in 2021, is the most mature and institutionally well-supported data protection framework in sub-Saharan Africa. POPIA governs all processing of personal information by AI systems, including profiling, automated decision-making, transparency obligations, and cross-border data transfers. It also grants

69 NDPA 2023, s 24.

70 Ibid, s 37. See also: Adeola Oyinlade & Co, 'Nigeria Data Protection Act, 2023 (NDPA) Restrictions on Automated Data Processing and Artificial Intelligence' <https://www.adeolaoyinlade.com/en/nigeria-data-protection-act-2023-ndpa-restrictions-on-automated-data-processing-and-artificial-intelligence/> accessed 19 February 2026.

71 NDPA 2023, s 27.

72 Eboh (n 16).

individuals the right to object to automated decisions that produce significant effects on them.[73] The South African Information Regulator, established under POPIA, has demonstrated willingness to impose significant sanctions, including a $220 million fine against Meta Platforms for data protection violations.[74]

In August 2024, the South African Department of Communications and Digital Technologies published its National Artificial Intelligence Policy Framework, emphasising a 'human-centred AI' approach and establishing strategic pillars including AI talent development, digital infrastructure, ethical guidelines, and privacy protection.[75] While this Framework is not yet binding legislation, it signals South Africa's intent to develop a risk-based, sector-sensitive AI governance regime. The Framework's alignment with the AU AI Continental Strategy also reflects a commendable effort at continental coherence.[76]

Nonetheless, South Africa's AI Policy Framework, like its counterparts, does not address the fashion sector specifically. The absence of sector-specific rules for fashion AI, e-commerce data practices, and VR environments means that the governance of digital fashion in South Africa remains dependent on general-purpose data protection principles that may not be sufficiently calibrated to the sector's distinctive risks.

4.4 Critical Gaps in the Regulatory Landscape

An analysis of the extant continental and national frameworks reveals five critical structural gaps in the governance of Africa's digital fashion ecosystem. First, there is a complete absence of fashion-specific data governance rules at any level, continental, regional, or national. No African jurisdiction has enacted provisions specifically governing the data practices of fashion e-commerce platforms, AI trend forecasting tools, or VR fitting environments. This sector-blindness is especially consequential because the digital fashion ecosystem collects uniquely sensitive combinations of personal data such as body measurements and cultural identity markers, and financial information that general-purpose data protection rules do not adequately address.

Second, there is a significant enforcement capacity deficit. Data Protection Authorities across Africa are chronically under-resourced in terms of staffing, funding, and technical expertise. The NDPC, despite its institutional ambition demonstrated by the Temu investigation, operates in an environment of significant resource constraints. The result is a regulatory landscape in which laws

73 Protection of Personal Information Act 4 of 2013 (South Africa) (POPIA), s 71. See: Nemko Digital, 'South Africa AI Laws: POPIA & Policy Framework' <https://digital.nemko.com/regulations/ai-regulation-in-south-africa> accessed 19 February 2026.

74 Africa Privacy Roundup, 'Roundup on Data Protection in Africa 2024' <https://africaprivacyroundup.com/roundup-on-data-protection-in-africa-2024/> accessed 19 February 2026.

75 Department of Communications and Digital Technologies (South Africa), 'Artificial Intelligence (AI) Policy Framework' (August 2024). See: White & Case, 'AI Watch: Global Regulatory Tracker—South Africa' <https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-south-africa> accessed 19 February 2026.

76 Ibid.

exist on paper but are only sporadically enforced in practice, creating perverse incentives for non-compliance by powerful global platforms.

Third, continental harmonisation remains embryonic. With only fifteen of fifty-five African states having ratified the Malabo Convention, and with significant divergences between national data protection laws in scope, enforcement, and technical standards, cross-border enforcement of consumer rights in pan-African fashion e-commerce transactions is effectively impossible. An African consumer whose data is misused by a platform operating across multiple jurisdictions has minimal practical recourse.[77]

Fourth, none of the existing frameworks contains provisions specifically governing algorithmic bias or AI fairness obligations in commercial contexts. The risk of AI-driven discrimination against African consumers in fashion personalisation, dynamic pricing, and targeted advertising is real and growing, but the regulatory tools to address it are either absent or insufficiently developed. While Section 37 of Nigeria's NDPA addresses automated decision-making,[78] it does not impose proactive bias auditing requirements or algorithmic transparency obligations of the kind introduced by the EU AI Act, 2024.[79]

Fifth, and most distinctively, the existing frameworks fail to address the cultural heritage dimension of data exploitation in African fashion. The scraping of African textile designs, traditional motifs, and cultural fashion expressions by AI systems for commercial exploitation represents a form of digital extractivism that is neither addressed by data protection law, which focuses on personal data, nor by intellectual property law, which is generally ill-equipped to protect communal and intangible cultural heritage. This gap is of existential importance to the cultural integrity of Africa's fashion sector.

5 Recommendations: Towards an Afrocentric, Fashion-Centred Data Protection and AI Governance Framework

5.1 A Model African Fashion Data Governance Framework

The most foundational recommendation of this paper and arguably the most important is for the African Union (AU), working in partnership with the African Continental Free Trade Area (AfcFTA) Secretariat and the Network of African Data Protection Authorities, to develop a Model African Fashion Data Governance Framework (MAFDGF). This instrument should be designed as a sector-specific annex to the Malabo Convention, establishing binding minimum standards for the data practices of fashion e-commerce platforms, AI fashion tools, VR fitting environments, and blockchain-based fashion applications operating on the continent. Rather than a standalone treaty

77 Brookings Institution, 'Reforming Data Regulation to Advance AI Governance in Africa' (15 March 2024) <https://www.brookings.edu/articles/reforming-data-regulation-to-advance-ai-governance-in-africa/> accessed 19 February 2026.

78 NDPA 2023, s 37.

79 EU AI Act 2024.

which would face the same ratification challenges that have bedevilled the Malabo Convention, the MAFDGF should be structured as an implementing protocol that can be adopted by existing Malabo Convention state parties and used as a model law by non-state parties.

The MAFDGF should be Afrocentric in both conception and content. It should reflect the continent's specific data privacy vulnerabilities including low digital literacy rates, infrastructure deficits, and the cultural sensitivity of fashion-related data. It should incorporate Ubuntu principles of communal rights, recognising that data collected from African fashion consumers often reflects collective cultural identities rather than purely individual preferences, and that governance frameworks must account for this collective dimension. The Framework should establish explicit provisions on cultural heritage data, recognising the right of African communities to control the commercial use of their distinctive fashion traditions, motifs, and techniques by AI systems.

5.2 Mandatory Algorithmic Transparency and Bias Auditing

African data protection authorities should introduce mandatory algorithmic transparency and bias auditing requirements for AI systems deployed in the fashion sector. This would require regional and national coordination under the aegis of the African Union (AU). Drawing on the conceptual approach of the EU AI Act, 2024 while adapting its specifics to the African context, each country's data protection authorityshould mandate that fashion AI systems including recommender engines, trend forecasting algorithms, dynamic pricing tools, and targeted advertising systems conduct regular bias audits using Africa-specific demographic datasets. Where audits reveal systematic underperformance for specific African consumer groups, the platform should be required to remediate the bias within a prescribed timeframe and disclose the remediation steps taken.[80]

Algorithmic transparency obligations should require fashion e-commerce platforms to provide meaningful explanations to African consumers of how AI-driven decisions like product recommendations, pricing determinations, and advertising targeting have been made. These explanations should be provided in accessible, plain language and in relevant local languages, recognising that the diversity of Africa's linguistic landscape means that English-only or French-only disclosures will be inaccessible to significant portions of the consumer population. Data Protection Impact Assessments (DPIAs) should be mandated for any fashion AI system that processes biometric data, including body measurement data generated in VR fitting environments.

5.3 A Pan-African Fashion-Tech Regulatory Sandbox

In the long-run, and also with national collaboration, African regulators, such as Nigeria's NDPC and Malawi's MACRA, who have already announced plans for regulatory AI sandboxes, should establish a Pan-African Fashion-Tech Regulatory Sandbox.[81] This collaborative sandbox would

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[80] See generally: Agbo (n 38); Scharff and others (n 32). For the EU AI Act approach, see: Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence [2024] OJ L 2024/1689.

[81] Digital Policy Alert, 'The Year of the Teeth: Data Protection in Africa Roundup, 2025, Projections for 2026' <https://digitalpolicyalert.org/blog/data-protection-in-africa-roundup> accessed 19 February 2026.

provide a controlled environment in which African fashion-tech startups can test innovative AI applications, VR platforms, and blockchain-based provenance tools under regulatory supervision, without immediately facing the full weight of compliance obligations. The sandbox would enable regulators to develop informed, evidence-based governance rules calibrated to the actual operating conditions of African fashion technology, while enabling innovators to develop products with clear regulatory guidance.

The Pan-African Fashion-Tech Regulatory Sandbox should be governed by a multi-stakeholder board that includes representatives from national data protection authorities, African fashion industry associations, civil society organisations representing consumer interests, and academic institutions with expertise in fashion technology and data governance. Learnings from the sandbox should be systematically incorporated into the iterative development of the MAFDGF, creating a feedback loop between regulatory practice and policy development that has been conspicuously absent from Africa's data governance architecture to date.

5.4 Strengthening Enforcement Capacity

No regulatory framework, however well-designed, can deliver meaningful consumer protection without adequate enforcement capacity. African governments must substantially increase investment in the staffing, technical infrastructure, and operational budgets of national data protection authorities. This investment should be complemented by capacity-building programmes jointly delivered by the Network of African Data Protection Authorities and international partners, covering specialised skills in AI auditing, digital forensics, and fashion technology. The NDPC's investigation of Temu demonstrates what a well-resourced and determined regulator can achieve; the goal should be to replicate this ambition across the continent.

Cross-border enforcement cooperation is equally essential. African data protection authorities should conclude mutual enforcement cooperation agreements analogous to the Global Privacy Enforcement Network that enable them to jointly investigate and sanction cross-border violations by global fashion platforms. The AfCFTA's Protocol on Digital Trade, whose annexes on cross-border data transfer were adopted in December 2024, provides a valuable institutional basis for this cooperation, and its data governance provisions should be leveraged to establish enforceable cross-border consumer protection standards for fashion e-commerce.

5.5 Consumer Education and Digital Literacy

Effective data governance in Africa's digital fashion ecosystem requires not only supply-side regulation of platforms, but also demand-side empowerment of consumers. African governments, data protection authorities, and civil society organisations should invest in targeted digital literacy programmes that equip fashion consumers with the knowledge and skills to exercise their data rights. These programmes should be designed for the specific cultural and linguistic contexts of African consumers, integrated into existing community structures, and delivered through channels that reach populations with limited internet access like radio, social media, and community events. In a continent where, as the research indicates, significant portions of the population remain unaware of their data protection rights, consumer education is not a luxury but a prerequisite for meaningful governance.

5.6 Protecting Cultural Heritage Data

African governments should enact legal provisions specifically protecting cultural heritage fashion data from AI exploitation without community consent. These provisions, which could be incorporated into existing intellectual property frameworks or enacted as standalone sui generis protections, should establish collective rights for African communities over their distinctive fashion traditions, textile motifs, dyeing techniques, and artisanal methods. Any AI system that trains on or generates derivative works from protected cultural heritage fashion data without obtaining free, prior, and informed consent from the relevant community should be liable to enforcement action by data protection authorities and cultural heritage institutions acting jointly. This represents a genuinely Afrocentric regulatory innovation that addresses a dimension of digital exploitation invisible in Eurocentric data governance frameworks.

6 Conclusion

Africa's digital fashion ecosystem stands at a pivotal juncture. The confluence of e-commerce, artificial intelligence, virtual reality, and blockchain technology has unlocked extraordinary opportunities for the continent's $31 billion fashion industry, democratising market access, enabling bespoke personalisation, combating counterfeiting, and positioning African designers for genuine global leadership. Yet these same technologies have introduced data privacy risks, algorithmic biases, cybersecurity threats, and cultural heritage exploitation that Africa's current regulatory architecture is palpably inadequate to address.

The analysis in this paper reveals that Africa's data privacy and AI governance frameworks, from the Malabo Convention at the continental level to the NDPA and POPIA at the national level, are general-purpose instruments ill-calibrated to the distinctive characteristics of the digital fashion sector. They are silent on fashion-specific data categories, algorithmic bias in fashion AI, cultural heritage data exploitation, and the novel privacy risks of VR fashion environments. The enforcement capacity of Africa's data protection authorities remains insufficient to match the sophistication and scale of global fashion platforms operating on the continent.

The path forward requires a fundamentally Afrocentric approach to fashion-tech governance—one that is not merely a derivative of European or American regulatory paradigms, but an original continental response to Africa's specific circumstances, values, and aspirations. The Model African Fashion Data Governance Framework proposed in this paper, complemented by mandatory algorithmic transparency obligations, a Pan-African Fashion-Tech Regulatory Sandbox, strengthened enforcement cooperation, targeted consumer education, and the protection of cultural heritage data, constitutes a coherent agenda for transforming Africa's digital fashion governance from aspiration to reality. The continent that holds all the cards to become the world's next fashion leader must also hold all the tools to govern its digital fashion ecosystem on its own terms.

HARMONISING THE AFRICAN FASHION MARKET: A POLICY FRAMEWORK FOR ALTERNATIVE DISPUTE RESOLUTION IN CROSS-BORDER TRADE UNDER THE AFCFTA

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Abstract

This paper examines the role of Alternative Dispute Resolution (ADR) in harmonising cross-border commercial disputes within the African fashion market under the African Continental Free Trade Area (AfCFTA). The research adopts a doctrinal methodology, analysing legal instruments, international conventions, and sector-specific practices to assess the limitations of traditional litigation and the suitability of ADR mechanisms for creative industries. The study identifies structural features of the African fashion ecosystem, including SME dominance, informal commercial practices, intellectual property reliance, and digitalised operations, which expose participants to jurisdictional, procedural, and enforcement challenges under conventional court systems. Drawing on comparative lessons from the European Union and ASEAN, the paper argues that mediation and arbitration supported by frameworks such as the WIPO Rules, the New York Convention, and the Singapore Convention on Mediation offer a commercially sensitive, enforceable, and procedurally adaptable alternative. It further proposes a harmonised, expert-led, and sector-specific ADR framework integrated into the AfCFTA architecture, emphasising accessible contractual tools, capacity building, and digital dispute resolution platforms. The study concludes that the institutionalisation of ADR is essential for enhancing commercial confidence, reducing transaction costs, preserving creative partnerships, and promoting sustainable economic integration across African fashion markets.

Keywords: *AfCFTA, African fashion industry, Cross-border trade, Alternative Dispute Resolution (ADR), Market harmonisation*

1 Introduction

1.1 Background to AfCFTA and The African Fashion Market

The establishment of the African Continental Free Trade Area (AfCFTA) represents one of the most ambitious economic integration projects in contemporary international trade law. Adopted in 2018 and entering into force in 2019, the AfCFTA seeks to create a single continental market for goods and services, promote the free movement of business persons and investment, and ultimately deepen Africa's economic integration.[1] By liberalising tariffs on 90 per cent of goods and addressing non-tariff barriers. The Agreement aims to increase intra-African trade, which has remained comparatively low when measured against other regional blocs.[2]

Africa's fashion industry has evolved from a largely domestic, culturally embedded craft sector into a transnational commercial ecosystem involving designers, textile manufacturers, retailers, digital platforms, and export-oriented enterprises. Increasingly, African designers source fabrics from one country, manufacture in another, and distribute across multiple jurisdictions. This interconnected structure situates fashion squarely within the operational framework of the AfCFTA.

However, the sector remains predominantly driven by small and medium-sized enterprises (SMEs), informal traders, and independent creatives who often operate without sophisticated contractual safeguards or structured dispute resolution mechanisms.[3] Intellectual property protections are uneven across the continent, and enforcement mechanisms remain inconsistent, thereby exposing designers and traders to risks of design appropriation, breach of contract, delayed payments, and quality disputes.[4] As cross-border transactions increase under AfCFTA liberalisation, the frequency and complexity of commercial disputes within the fashion value chain are likely to expand correspondingly.

1.2 Statement of the Problem

While the AfCFTA contains a Protocol on Rules and Procedures on the Settlement of Disputes, its mechanism is largely state-to-state in orientation and does not directly provide accessible remedies for private commercial actors engaged in cross-border trade.[5] Consequently, private disputes arising from fashion transactions are left primarily to domestic courts or conventional litigation. Litigation, however, presents significant challenges within the African context. Jurisdictional fragmentation, high costs, procedural delays, weak enforcement across borders, and limited judicial specialisation in

1 *Agreement Establishing the African Continental Free Trade Area* (signed 21 March 2018, entered into force 30 May 2019).

2 United Nations Economic Commission for Africa, 'An empirical assessment of the African Continental Free Trade Area modalities on goods' (ECA ATPC Policy Brief, November 2018) https://archive.uneca.org/publications/empirical-assessment-african-continental-free-trade-area-modalities-goods accessed 14 February 2026.

3 International Trade Centre, 'SMEs and the AfCFTA: Building the Capacity of African Small Businesses to Trade' (Report, 2021).

4 World Intellectual Property Organization (WIPO), *Intellectual Property and the Creative Industries in Africa* (WIPO 2022).

5 *Protocol on Rules and Procedures on the Settlement of Disputes to the Agreement Establishing the AfCFTA* (2018).

creative industry disputes undermine its effectiveness.[6] For SMEs and informal traders who constitute the backbone of the African fashion market, litigation often represents an impractical or inaccessible avenue for redress. The absence of a harmonised, efficient, and industry-sensitive dispute resolution framework risks undermining the broader objectives of the AfCFTA. Without credible mechanisms for resolving commercial disputes, market integration may generate uncertainty rather than confidence.

1.3 Aim and Scope of the Paper

This paper argues that Alternative Dispute Resolution (ADR), particularly mediation and arbitration, should serve as the primary mechanism for resolving cross-border disputes within the African fashion market under the AfCFTA framework. It contends that ADR is better suited to the economic realities, structural characteristics, and relational dynamics of the fashion industry than traditional litigation.

Beyond doctrinal analysis, this paper adopts a practice-oriented approach. It seeks to propose a policy framework through which ADR can be institutionalised within AfCFTA's trade architecture, harmonised across member states, and tailored to the specific needs of SMEs, informal traders, and creative entrepreneurs. By positioning ADR as a central pillar of dispute resolution, this study advances the broader thesis that effective market harmonisation under AfCFTA depends not only on tariff liberalisation but also on accessible, predictable, and inclusive justice mechanisms capable of sustaining cross-border commercial confidence.

2 Conceptual and Legal Framework

2.1 Conceptualising Market Harmonisation under AfCFTA

Harmonisation in international trade law does not necessarily imply the complete unification of national legal systems. Rather, it refers to the alignment or coordination of legal principles, regulatory standards, and institutional mechanisms in order to reduce fragmentation and promote predictability across jurisdictions.[7] Within the context of the African Continental Free Trade Area (AfCFTA), harmonisation seeks to facilitate a coordinated continental market.

The AfCFTA embodies this objective through tariff liberalisation, trade facilitation measures, and cooperation across customs and regulatory frameworks.[8] However, market harmonisation extends beyond the removal of trade barriers. It also encompasses the development and coordination of reliable and accessible mechanisms for resolving disputes that arise from increased commercial

6 Emilia Onyema, *International Commercial Arbitration and the Arbitrator's Contract* (Routledge 2010) https://books.google.com.ng/books?id=C_WMAgAAQBAJ accessed 14 February 2026.

7 Jürgen Basedow, *'Uniform Interpretation of Uniform Private Law Conventions: On Treaty Law, Global Jurisprudence and Procedural Safeguards'* (2024) 56(1) *NYU Journal of International Law and Politics* 1, 26.

8 *Agreement Establishing the African Continental Free Trade Area* (signed 21 March 2018, entered into force 30 May 2019) arts 3–4.

interaction.[9] Without effective dispute resolution, liberalisation may generate uncertainty rather than integration.

In this regard, dispute resolution forms an integral part of market governance. The European integration experience demonstrates that legal certainty and enforceable remedies are central to sustaining cross-border commerce.[10] Harmonisation therefore requires not only aligned trade policies but also structured mechanisms that ensure disputes are addressed efficiently and consistently across member states.

For the African fashion market, where transactions frequently occur between SMEs across diverse legal systems common law, civil law, customary law, and hybrid systems, the absence of harmonised dispute processes risks undermining commercial confidence. Hence, harmonisation in this sector must therefore include the coordination of mechanisms that bridge legal diversity while remaining sensitive to economic realities.

2.2 Cross-Border Trade and Dispute Resolution under AfCFTA

The AfCFTA establishes a formal dispute settlement mechanism through its Protocol on Rules and Procedures on the Settlement of Disputes.[11] This mechanism, modelled in part on the WTO dispute settlement system, provides for consultations, panel proceedings, and an appellate review process between member states.[12]

However, the AfCFTA dispute settlement system is predominantly state-to-state in orientation. It does not provide direct standing for private commercial actors such as designers, manufacturers, or fashion retailers engaged in intra-African trade transactions. As a result, private disputes arising from trade activities must be pursued through domestic courts or private contractual mechanisms.

This structural gap is significant. Cross-border commercial disputes, particularly those involving intellectual property, contract performance, and supply chain obligations rarely escalate to state-to-state controversies. Instead, they arise between private parties who require swift and enforceable remedies.

Furthermore, enforcement of domestic court judgments across African jurisdictions remains uneven, despite regional efforts toward judicial cooperation.[13] The diversity of legal systems and procedural rules complicates recognition and enforcement, thereby increasing transaction costs and discouraging cross-border engagement.

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9 Ernst-Ulrich Petersmann, '*Constitutional Functions and Constitutional Problems of International Economic Law*' (1991) 9 SZIER 77.

10 Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases and Materials* (6th edn, OUP 2015).

11 *Protocol on Rules and Procedures on the Settlement of Disputes to the Agreement Establishing the AfCFTA* ***(2018).***

12 ibid

13 Richard Frimpong Oppong, *Private International Law in Commonwealth Africa* (CUP 2013).

Accordingly, while AfCFTA advances economic integration, it does not yet provide a harmonised framework tailored to private commercial dispute resolution within sector-specific industries such as the fashion industry.

2.3 Alternative Dispute Resolution: Meaning, Forms, and Legal Foundations

Alternative Dispute Resolution (ADR) encompasses a range of non-judicial processes through which parties resolve disputes outside traditional court litigation.[14] These processes include negotiation, mediation, conciliation, and arbitration.

Mediation and conciliation involve a neutral third-party facilitating dialogue between disputants to reach a mutually acceptable settlement. Arbitration, by contrast, is a binding adjudicatory process in which a neutral tribunal renders an enforceable decision.[15] Unlike litigation, ADR mechanisms are typically consensual, flexible in procedure, and adaptable to the needs of the parties.

From a legal standpoint, arbitration benefits from a well-established international enforcement regime under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[16] Many African states are parties to this Convention, thereby enabling arbitral awards to be enforced across borders with relative predictability.

More recently, the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) has sought to enhance the enforceability of mediated settlement agreements.[17] Although ratification among African states remains limited, the Convention represents a significant development in strengthening mediation as a viable cross-border mechanism.

ADR also resonates with long-standing African traditions of consensual dispute settlement. Communal approaches to conflict resolution have emphasised dialogue, reconciliation, and negotiated settlement rather than adversarial confrontation.[18] While modern commercial disputes require structured legal safeguards, this cultural context strengthens the normative legitimacy of ADR within African markets.

In the context of the African fashion industry, it is characterised by relational contracts, repeated transactions, and reputational capital. ADR provides procedural flexibility and confidentiality that align more closely with commercial realities than rigid court processes. It allows parties to preserve relationships, craft creative remedies, and resolve disputes in a timeframe consistent with the fast-paced nature of fashion markets.

14 Black's Law Dictionary (11th edn, Thomson Reuters 2019) 91.

15 Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021).

16 *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3.

17 *United Nations Convention on International Settlement Agreements Resulting from Mediation* (adopted 20 December 2018, opened for signature 7 August 2019).

18 Emilia Onyema, '*Why Do People Use Mediation? A Reflection on the African Context*' (2014) 31 J Int'l Arb 1.

3 The African Fashion Market Beyond Textiles: Structure, Commercial Realities, and Dispute Dynamics under AfCFTA

The project of harmonising the African fashion market under the African Continental Free Trade Area (AfCFTA) requires an appreciation of what "fashion" truly encompasses. Fashion law extends far beyond fabric production and textile trade.[19] It covers the full spectrum of commercial activities linked to style and identity: apparel, footwear, accessories, jewellery, cosmetics, beauty products, modelling contracts, branding, merchandising, digital fashion platforms, influencer marketing, and luxury retail.[20]

In contemporary markets, fashion is a multidimensional commercial ecosystem built upon creativity, intellectual property, image rights, supply chains, and digital visibility. It intersects with contract law, intellectual property law, labour and trade law, competition law, employment law, consumer protection, and increasingly, technology regulation.[21]

Within the African context, this fashion ecosystem is expanding rapidly. Designers in Lagos collaborate with manufacturers in Addis Ababa; beauty brands in Accra source raw materials across borders; luxury retailers in Johannesburg distribute to East and West African markets; digital fashion entrepreneurs sell through continental e-commerce platforms. AfCFTA promises to facilitate these cross-border flows. Yet the legal infrastructure that should sustain them remains ineffective.

3.1 Structural Features of the African Fashion Ecosystem

Three structural characteristics define the African fashion market in its broader sense.

a Intellectual Property and Intangible Value

Fashion is fundamentally driven by intangible assets. The commercial value of a product frequently lies in its trademark, logo, design originality, trade dress, or brand narrative rather than in its material composition. For instance, disputes may concern trademark infringement in cosmetics or luxury accessories, design copying in footwear or jewellery, counterfeit branding in apparel distribution, image rights violations involving models or influencers, or unauthorised use of cultural motifs. The intellectual property dimension makes dispute resolution in fashion technically specialised and commercially sensitive.

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19 Susan Scafidi, 'Introduction: *Fashion Law Triumphant—Designing Success in a New Legal Field' in Navigating Fashion Law* (Aspatore 2015) 8, quoted in Joanna Buchalska, 'Fashion Law: A New Approach' (2016) 7 QMLJ 13, 14 https://www.qmul.ac.uk/law/research/journals/the-queen-mary-law-journal/media/law/docs/research/Fashion-Law-A-New-Approach.pdf accessed 14 February 2026.

20 Guillermo C. Jimenez and Barbara Kolsun (eds), *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys* (2nd edn, Fairchild Books 2014) https://books.google.com.ng/books?id=0BMRAwAAQBAJ accessed 14 February 2026.

21 ibid.

b Small Medium Enterprises (SMEs) Dominance and Informal Commercial Practices

The African fashion market is predominantly SMEs driven.[22] Independent designers, small-scale beauty manufacturers. Because these entities routinely rely on trust-based, informal relationships rather than formal contracts, they face severe jurisdictional uncertainty when transactions fail. While this reflects entrepreneurial flexibility and commercial norms, it also creates vulnerability when disputes arise. Harmonising this market under AfCFTA therefore requires mechanisms that are accessible to small enterprises.

c Digitalisation and Cross-Border Visibility

Fashion today is inseparable from digital presence. Social media marketing, influencer endorsements, online retail platforms, and domain name branding have become central to commercial success. Through domain name dispute mechanisms administered by the World Intellectual Property Organization under the Uniform Domain Name Dispute Resolution Policy developed by the Internet Corporation for Assigned Names and Numbers, brand misuse in digital environments has become a frequent legal issue.[23]

For African fashion enterprises expanding under AfCFTA, digital infringement across borders can occur swiftly and with significant reputational consequences. The legal response must therefore be equally swift and coordinated.

3.2 Cross-Border Trade under AfCFTA: Expansion and Exposure

AfCFTA seeks to create a single continental market for goods and services through tariff reduction and trade facilitation.[24] For the fashion ecosystem, this means increased intra-African trade sourcing of raw materials, regional production networks, expanded retail markets and greater continental brand competition.

However, as commercial integration deepens, so too does legal exposure. Disputes now extend beyond fabric shipments to include breach of licensing agreements for cosmetics brands, distribution defaults in luxury goods retail, counterfeiting of accessories across borders, disputes over modelling contracts and endorsement agreements, conflicts over cross-border franchise arrangements, and online brand impersonation. Each dispute implicates multiple jurisdictions and varying regulatory standards. Without harmonised dispute mechanisms, commercial confidence may weaken.

3.3 Common Disputes in Cross-Border Fashion Trade

Three categories of disputes frequently arise in cross-border fashion transactions.

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22 African Development Bank, *African Economic Outlook 2020* (AfDB 2020).

23 WIPO, *WIPO Overview of WIPO Panel Views on Selected UDRP Questions* (3rd edn, 2017); ICANN, Uniform Domain Name Dispute Resolution Policy (1999).WIPO,

24 *Agreement Establishing the African Continental Free Trade Area* (signed 21 March 2018, entered into force 30 May 2019).

First, non-payment and breach of contract disputes are common where distributors fail to remit proceeds or where manufacturers do not fulfil agreed production terms. In SMEs dominated markets, such breaches can threaten business survival.

Second, quality and delivery disputes occur where goods do not meet agreed specifications or where delays disrupt seasonal product launches. Given the time-sensitive nature of fashion cycles, delayed delivery can result in significant commercial losses.

Third, intellectual property disputes particularly design imitation, trademark infringement, and unauthorised brand use are common.[25] In markets where brand identity constitutes core economic value, infringement can rapidly undermine competitiveness.

These dispute patterns illustrate the structural gap within AfCFTA's integration project. While the Agreement facilitates trade flows, it does not provide a dedicated mechanism for resolving private commercial disputes within sectors such as fashion. Consequently, litigation remains the default recourse despite its jurisdictional and enforcement limitations.

The harmonisation of the African fashion market therefore requires not only trade liberalisation but the development of a predictable, accessible, and enforceable dispute resolution framework tailored to its commercial realities.

4 Limitations of Litigation in Resolving Fashion Trade Disputes

While litigation remains the traditional mechanism for resolving commercial disputes, its suitability for intra-Fashion trade under the AfCFTA is deeply questionable. The nature of the African fashion market exposes the structural weaknesses in court-based adjudication. This section examines those limitations through three interrelated lenses: jurisdictional complexity, access to justice concerns, and the unique commercial realities of the fashion industry.

4.1 Procedural and Jurisdictional Challenges

Cross-border fashion transactions frequently involve parties in different African jurisdictions, each governed by distinct legal systems, procedural rules, and conflict-of-laws principles. Where a dispute arises, whether from non-payment, defective goods, or IP infringement, the question becomes: which court has jurisdiction and which law will apply?

In the absence of harmonised private international law rules across African states, jurisdictional uncertainty becomes a practical obstacle. Although the AfCFTA establishes a Dispute Settlement Mechanism (DSM), its mechanism is primarily state-to-state and does not provide a forum for

25 Daniel Gervais, *The TRIPS Agreement: Drafting History and Analysis* (4th edn, Sweet & Maxwell 2012).

private commercial actors.[26] Consequently, designers, distributors, and manufacturers must rely on domestic courts whose jurisdiction may be contested.

Conflict of laws principles further complicate matters. Courts may apply lex loci contractus, lex loci solutionis, or other connecting factors depending on national legal doctrine.[27] For fashion enterprises operating across multiple jurisdictions often without formally drafted contracts, this creates unpredictability. SMEs and informal traders rarely negotiate detailed jurisdiction or governing law clauses. When disputes arise, the absence of clarity results in preliminary litigation over jurisdiction before substantive issues are even addressed.

Moreover, the enforcement of foreign judgments within Africa remains uneven. While regional instruments such as the Organisation for the Harmonization of Business Law in Africa(OHADA) Uniform Act provide some harmonisation within West and Central Africa,[28] continental coherence remains limited. And this results in fragmentation rather than integration, an outcome that undermines AfCFTA's broader objective of market harmonisation. Litigation, therefore, introduces procedural uncertainty at precisely the moment when commercial certainty is most needed.

4.2 Cost, Delay, and Access to Justice Concerns

Litigation is not only procedurally complex, it is also financially burdensome and time-consuming. Cross-border cases often require legal representation in foreign jurisdictions, interpretation of documents, travel costs, and prolonged evidentiary processes. These costs are quite expensive for SMEs, the backbone of the African fashion sector.

Empirical assessments of African judicial systems frequently show court congestion and prolonged delay in litigation.[29] Even in relatively efficient jurisdictions, commercial disputes may take several years to conclude, especially where appeals are pursued. For fashion businesses operating on seasonal production cycles, such delay can render judgments ineffective.

Access to justice concerns are particularly acute for creatives and informal traders. Many operate without formal incorporation, written contracts, or sufficient documentation. Litigation procedures of pleadings, formal evidence rules, technical procedural requirements are too rigid for the fast-moving fashion industry, resulting in inefficiency and exclusion. A system that is legally available yet practically inaccessible cannot be considered effective.

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26 Agreement Establishing the African Continental Free Trade Area (adopted 21 March 2018, entered into force 30 May 2019) 55 ILM 1023; Protocol on Rules and Procedures on the Settlement of Disputes, arts 3–5.

27 Adrian Briggs, *The Conflict of Laws* (5th edn, OUP 2024) 12–15 https://books.google.com.ng/books?id=y6n4EAAAQBAJ accessed 14 February 2026.

28 OHADA, *Uniform Act on General Commercial Law* (adopted 17 April 1997, revised 15 December 2010) https://www.ohadalegis.com/anglais/telAUGB/2010-Ohada-General-Commercial-Law-en.pdf accessed 14 February 2026.

29 World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (World Bank 2020) 64–68

4.3 Incompatibility of Litigation with the Fashion Industry

Beyond procedural and financial constraints, litigation is not structurally aligned with the nature of the fashion industry itself. Fashion operates within compressed timelines. Production cycles are seasonal, trends evolve rapidly, and market value is time-sensitive. A delayed remedy is often equivalent to no remedy at all. If a distributor fails to deliver garments ahead of a major fashion week or retail season, a court judgment obtained years later cannot restore lost commercial opportunities.

Furthermore, fashion law extends beyond textiles to branding, image rights, digital content, licensing arrangements, and collaborative design ventures. These relationships are relational and reputational in character. Litigation, by design, is adversarial. It produces winners and losers, frequently at the cost of future collaboration. The fashion industry is dependent on creative partnerships between designers and manufacturers, stylists and brands, influencers and retailers relationship preservation is economically valuable. Litigation tends to harden positions, escalate conflict, and publicise disputes. Court proceedings may also expose commercially sensitive information, including design prototypes or trade strategies.

The adversarial model therefore conflicts with the collaborative ecosystem of fashion. In a continental market still consolidating under the AfCFTA, sustained commercial relationships are essential to long-term integration.

5 ADR as a Preferred Mechanism for Cross-Border Fashion Disputes

Having established the structural limitations of litigation, the question is not whether dispute resolution is necessary intra-African trade, but rather which mechanism best supports the objectives of the AfCFTA and the realities of the African fashion market. Alternative Dispute Resolution (ADR) offers a commercially effective, legally coherent, and institutionally adaptable framework capable of addressing both sector-specific and continental integration concerns.

5.1 Suitability of ADR for the Fashion Industry

The fashion industry operates at the intersection of creativity and commerce. Its transactions are time-sensitive, relational, and often confidential. ADR mechanisms, particularly mediation and arbitration are uniquely suited to these characteristics.

First, in terms of speed, arbitration and mediation procedures can be streamlined and tailored to the urgency of commercial cycles, unlike court litigation, which is bound by rigid procedural timelines and severe backlogs, arbitration allows parties to agree on expedited procedures, limited discovery, and sector-specific expertise.[30] For fashion enterprises working within seasonal production schedules, this speed is not merely convenient, but economically essential.

Second, ADR allows for flexibility and permits parties to shape procedural rules to reflect their commercial realities. Institutional frameworks, such as the WIPO Arbitration and Mediation Rules, are designed to adapt seamlessly to the intellectual property, technology, and branding disputes that define the modern fashion ecosystem.[31] This flexibility allows parties to appoint arbitrators or mediators with specialized sector expertise.

Third, ADR mechanisms allow for confidentiality in an industry driven by reputation, innovation, and brand value; public litigation can expose sensitive information. Arbitration and mediation proceedings are typically private, thereby protecting trade secrets, Non-Disclosure Agreements (NDA), and strategic commercial data.[32] This assurance strengthens trust between parties and encourages cross-border collaboration.

Finally, ADR is less adversarial in nature, particularly in mediation. It fosters negotiated outcomes and preserves commercial relationships, an invaluable feature in a market where designers, manufacturers, and distributors often depend on repeated market interactions. In this sense, ADR aligns more closely with the relational nature of fashion commerce than litigation's win–lose system.

5.2 ADR and Access to Justice for SMEs and Informal Traders

The African fashion market is largely driven by SMEs and informal traders. Any effective dispute resolution mechanism must therefore be accessible, affordable, and procedurally comprehensible. ADR mechanisms generally reduce cost by limiting procedural formalities, shortening timelines, and avoiding protracted appeals.[33] While arbitration may still involve professional fees, mediation in particular offers lower-cost alternatives, especially where institutional support structures are developed at regional levels.

Procedural simplicity further enhances accessibility. ADR processes are less rigid than court litigation and can accommodate parties who lack sophisticated legal infrastructure. This is especially relevant for informal traders operating across borders through trade fairs, digital platforms, and regional supply networks.

Inclusivity is another key advantage. ADR allows proceedings to be conducted in mutually agreed languages and cultural contexts. Mediators and arbitrators with sector-specific expertise can be appointed, ensuring that creative and commercial nuances are understood. Such contextual

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30 *UNCITRAL Model Law on International Commercial Arbitration* 1985 (as amended in 2006) arts 18–19.

31 WIPO, *WIPO Arbitration Rules* (effective 1 January 2020) arts 1–4 https://www.wipo.int/amc/en/arbitration/rules/ accessed 14 February 2026; WIPO, *WIPO Mediation Rules* (effective 1 January 2020) arts 1–3 https://www.wipo.int/amc/en/mediation/rules/ accessed 14 February 2026.

32 Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 98–100.

33 Thomas J Stipanowich, 'ADR and the "Vanishing Trial": The Growth and Impact of "Alternative Dispute Resolution"' (2004) 1 *Journal of Empirical Legal Studies* 843, 850–852

sensitivity is critical in Africa's plural legal landscape, where formal law often intersects with customary and commercial practice.

By lowering procedural and financial barriers, ADR strengthens access to justice and reinforces commercial confidence among smaller market participants thereby supporting AfCFTA's inclusive development objectives.[34]

5.3 Enforceability and Legal Certainty

A primary concern about prioritising ADR in cross-border trade is whether outcomes will be legally enforceable across jurisdictions. For the African fashion market where transactions frequently cross diverse legal systems, enforcement certainty is indispensable. Without it, dispute resolution mechanisms risk becoming symbolic rather than effective.

In the context of arbitration, the primary source of enforceability remains the New York Convention, which obliges contracting states to recognise and enforce foreign arbitral awards subject only to limited procedural exceptions.[35] A significant number of African states are parties to the Convention, thereby providing a continental enforcement backbone for arbitral awards rendered in cross-border fashion disputes. This is particularly important when a designer's assets are located outside the forum of arbitration.

Beyond international conventions, effectiveness depends on procedural integrity. The WIPO Arbitration Rules provide a structured and internationally respected framework, especially relevant to disputes involving intellectual property, branding, design rights, and licensing which are one of the core components of fashion law.[36] The WIPO Rules contain detailed provisions on the arbitral tribunal constitution, procedural timetables, evidence, and interim measures. By balancing party autonomy with due process safeguards, awards rendered under the WIPO framework also enjoy the same enforcement advantages as other international arbitral awards under the New York Convention.

For mediation, questions of enforceability have historically been more complex, as mediated settlements traditionally relied on voluntary compliance. This landscape has evolved with the adoption of the Singapore Convention on Mediation, which provides a framework for the direct enforcement of international mediated settlement agreements.[37] Although ratification across Africa

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[34] *Agreement Establishing the African Continental Free Trade Area* (adopted 21 March 2018, entered into force 30 May 2019) art 3.

[35] *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention) arts III–V

[36] WIPO, *WIPO Arbitration Rules* (effective 1 January 2020) arts 1–4, 34–36 https://www.wipo.int/amc/en/arbitration/rules/ accessed 14 February 2026.

[37] *United Nations Convention on International Settlement Agreements Resulting from Mediation* (adopted 20 December 2018, entered into force 12 September 2020) (Singapore Convention) arts 3–5 https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements accessed 14 February 2026.

is still emerging, the Convention strengthens the legal credibility of mediation as a serious cross-border mechanism.

Within this evolving framework, the WIPO Mediation Rules offer a particularly relevant procedural model for fashion-related disputes.[38] These Rules provide structured guidance on appointment of mediators, conduct of proceedings, confidentiality obligations, and termination of mediation. They are designed to accommodate disputes involving creative industries where commercial relationships and reputational interests are often more valuable than purely monetary compensation. By formalising mediation procedures while preserving flexibility, the WIPO Rules enhance both legitimacy and predictability.

The combined effect of the New York Convention, the Singapore Convention, and institutional rules such as those developed by WIPO is the transformation of ADR from an informal alternative into a legally embedded and enforceable system. For the purposes of harmonising the African fashion market under the AfCFTA, this legal infrastructure is crucial. It ensures that ADR outcomes are not merely expedient but reliable, capable of crossing borders with the same authority as domestic court judgments often with greater efficiency and commercial sensitivity.

5.4 ADR as a Tool for Market Harmonisation

Beyond its functional mechanism, ADR contributes to the broader project of market harmonisation under the AfCFTA. Harmonisation in trade law does not necessarily require uniform substantive law; it requires procedural coherence and predictability. By encouraging the use of arbitration and mediation governed by internationally recognised rules, AfCFTA member states can achieve consistency in dispute resolution outcomes without fully unifying domestic judicial systems.

ADR also reduces fragmentation by shifting disputes away from divergent national courts into agreed procedural frameworks. Where fashion contracts incorporate standardised arbitration or mediation clauses, cross-border transactions operate within a shared legal environment. Predictability strengthens investor confidence, lowers transaction costs, and supports long-term integration of value chains across the continent. In this way, ADR functions not merely as a dispute resolution mechanism, but as a structural instrument of economic integration.

For a sector as dynamic and culturally significant as African fashion, dispute resolution must facilitate creativity rather than discourage it. ADR offers the possibility of balancing legal certainty with commercial flexibility and aligning dispute resolution with the integrative purpose of the AfCFTA.

[38] *WIPO, WIPO Mediation Rules* (effective 1 January 2020) arts 1–3, 14–17 https://www.wipo.int/amc/en/mediation/rules/ accessed 14 February 2026.

6 Comparative Analysis: Lessons from other Regions

Regional economic integration projects often reveal that dispute resolution mechanisms are as important as trade liberalisation measures. The experience of the European Union (EU) and the Association of Southeast Asian Nations (ASEAN) demonstrates how ADR can be institutionalised to support cross-border commerce, enhance legal certainty, and strengthen market confidence. For the African fashion market under the AfCFTA, these comparative experiences offer instructive, though not mechanically transferable, lessons.

6.1 The European Union

The EU has taken a deliberate regulatory approach to embedding ADR within its internal market framework. Through Directive 2013/11/EU on Alternative Dispute Resolution for Consumer Disputes and Regulation (EU) No 524/2013 on Online Dispute Resolution (ODR), the EU created a structured system encouraging the use of ADR in cross-border commercial disputes.[39].

The ADR Directive requires Member States to ensure the availability of quality ADR entities that are independent, transparent, and effective.[40] This institutionalisation enhances trust in cross-border transactions, especially where parties operate in different legal systems. By setting minimum standards, the EU balances harmonisation rather than imposing complete uniformity. The ODR Regulation further demonstrates the importance of technology-driven dispute resolution.[41] It established a digital platform through which parties can submit complaints and engage accredited ADR bodies online. In the fashion industry, where e-commerce, digital branding, and cross-border online sales are increasingly prevalent, Online Dispute Resolution (ODR) offers speed, accessibility, and reduces procedural complexity.

The EU model highlights three key lessons: first, that ADR can be mainstreamed within regional integration frameworks; that technology enhances access and efficiency; and, that minimum harmonised standards can foster predictability without erasing national diversity.

6.2 Association of Southeast Asian Nations (ASEAN)

In contrast to the EU's centralized regulatory framework, ASEAN utilizes a decentralized approach focused on institutional coordination, gradual harmonization, and respect for member state sovereignty. The ASEAN Protocol on Enhanced Dispute Resolution Mechanisms strengthens regional trade consultation while actively promoting the use of private commercial ADR.[42]

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39 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes [2013] OJ L165/63; Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes [2013] OJ L165/1.

40 Directive 2013/11/EU, arts 6–9.

41 Regulation (EU) No 524/2013, arts 5–9.

42 *ASEAN Protocol on Enhanced Dispute Settlement Mechanism* (signed 20 December 2019, entered into force 20 June 2022) arts 1–6 https://agreement.asean.org/media/download/20200128120825.pdf accessed 14 February 2026.

ASEAN fosters procedural coherence through capacity-building, the development of regional arbitration centers, and cross-border professional training. Furthermore, ASEAN's integration of virtual hearings and electronic filing systems has made dispute resolution accessible across geographically and economically diverse states. This flexible approach is particularly suited to small and medium-sized enterprises (SMEs) within creative industries that lack the capital to navigate foreign court systems.

6.3 Relevance of Comparative Models to Africa

While both the EU and ASEAN provide valuable insights, Africa's legal and socio-economic landscape requires contextual adaptation rather than replication. The AfCFTA encompasses states with diverse legal traditions; common law, civil law, mixed systems, and customary law influences. A rigid transplant of EU-style regulation may not align with this pluralism.

Instead, Africa can draw principled lessons. First, ADR can be formally integrated into regional trade architecture without displacing or replacing domestic courts. Second, the implementation of localized digital platforms, inspired by the EU's Online Dispute Resolution model, could enhance access to justice for African fashion entrepreneurs. Finally, ASEAN's emphasis on gradual harmonisation and institutional cooperation offers a more sustainable and efficient path. This will allow the continent's legal frameworks to evolve alongside its incremental economic integration.

Crucially, any policy design must remain sensitive to the realities of the African fashion market: high SMEs participation, informal trade networks, infrastructural disparities, and varying levels of technological access. Legal transplantation executed without localized adaptation inevitably produces a framework that is formally sophisticated yet practically inaccessible.

The comparative analysis therefore reinforces a central argument of this paper that while ADR can serve as an effective harmonizing instrument for Africa fashion trade. Its institutional design must remain locally responsive, achieving innovation that is informed by global standards but firmly rooted in African commercial realities.

7 Designing a Harmonised ADR Policy Framework for Cross-Border Trade under the AfCFTA: Repositioning Dispute Resolution for Market Harmonisation

The central argument of this paper is that the effectiveness of the AfCFTA cannot be measured solely by tariff reduction or trade facilitation protocols. Market integration requires a dispute resolution system that is accessible to the actual drivers of cross-border trade; designers, manufacturers, distributors, SMEs, and creative entrepreneurs. Yet the AfCFTA's existing dispute settlement architecture remains predominantly state to state oriented [43] While it's suitable for

[43] Jochnick C, *The Dispute Settlement System of the African Continental Free Trade Area (AfCFTA): Challenges and Prospects* (2021) 15 *Journal of World Trade* 601.

intergovernmental disputes, it is structurally ill-equipped to resolve private commercial conflicts arising within the African fashion market.

If cross-border disputes in fashion trade are left to fragmented litigation systems, the promise of continental integration risks being undermined by procedural uncertainty, delay, and inaccessibility. ADR therefore emerges not as an effective alternative, but as the practical solution to the limitations of dispute resolution under the AfCFTA.

7.1 Integrating ADR into the AfCFTA Architecture

The AfCFTA Dispute Settlement Mechanism is primarily state to state centred.[44] completely excluding private commercial actors such as designers, manufacturers, distributors, and digital fashion entrepreneurs from direct access. As demonstrated in earlier sections, reliance on fragmented domestic litigation systems undermines predictability and access to justice To address this, ADR must be formally recognised within the AfCFTA framework as the primary mechanism for resolving cross-border commercial disputes, particularly in sectors characterised by intellectual property, branding, and creative collaboration.

Consequently, the formal integration of private Alternative Dispute Resolution (ADR) into the AfCFTA architecture is not merely an advantageous policy option; it is a structural necessity for the treaty's ultimate operational effectiveness. For integrated regional value chains to survive, the AfCFTA framework must formally recognize ADR as the primary mechanism for resolving cross-border commercial disputes in high-value, IP-intensive sectors.

This can be achieved through a supplementary protocol, interpretative declaration, or policy directive that institutes mandatory pre-litigation mediation before recourse to courts. Also, tiered dispute resolution clauses should be promoted as a standard requirement of AfCFTA-related commercial contracts. For an African fashion ecosystem that relies heavily on fast-moving image rights, digital branding, and cross-border licensing, an institutionalized ADR system is necessary for the effectiveness of AfCFTA policy.

Institutional frameworks such as the WIPO Arbitration and Mediation Rules illustrate how structured and specialised ADR regimes can function effectively in creative and IP-intensive industries.[45] The African fashion market, which extends beyond textiles to image rights, digital branding, licensing, and design protection, requires similar procedural adaptability.

7.2 Institutional Mechanisms: Expert-Led and Sector-Sensitive Design

For ADR to serve as a credible solution to dispute resolution deficiencies under the AfCFTA, institutional design must be both sector-sensitive and effective. A continental or regionally coordinated Fashion and Creative Industries ADR Framework should be established under the coordination of the AfCFTA Secretariat in collaboration with Regional Economic Communities

44 *ibid*

45 WIPO, *WIPO Arbitration and Mediation Rules* (WIPO 2016).

(RECs). Crucially, this framework must be administered and led exclusively by experts in both fashion law and alternative dispute resolution.

The leadership and panels of such a framework should include: Specialists in fashion law, intellectual property, and creative industries; accredited mediators and arbitrators with cross-border commercial experience; and professionals familiar with digital commerce and licensing disputes.

The rationale for expert-led governance is clear. Fashion disputes frequently involve nuanced issues such as design appropriation, branding conflicts, licensing agreements, digital content usage, and collaborative ownership structures. General commercial adjudicators may lack the contextual understanding necessary to resolve such disputes efficiently and sensitively. An expert-led ADR body enhances procedural legitimacy, through subject-matter competence; commercial confidence, as parties trust decision-makers who understand industry realities and consistency in outcomes, supporting market harmonisation.

Furthermore, to prevent this legal infrastructure from becoming practically inaccessible to the small-scale actors who form the backbone of the industry, the framework must incorporate a dedicated Online Dispute Resolution (ODR) platform. By digitizing case management, document submission, and hearings, the AfCFTA can dismantle the geographic and financial barriers that traditionally exclude SMEs and informal traders. Ultimately, building this expert-led, digitally accessible ADR framework is essential to transforming the AfCFTA from a symbolic political agreement into a functional, predictable commercial reality for Africa's creative economy.

7.3 Legal and Policy Harmonisation

Institutional reform must be supported by legal coherence. Member states should align domestic arbitration legislation with the UNCITRAL Model Law on International Commercial Arbitration to promote procedural consistency.[46] Ratification and effective implementation of the New York Convention ensures enforceability of arbitral awards across jurisdictions,[47] while broader adoption of the Singapore Convention strengthens the enforceability of mediated settlement agreements.[48] Legal harmonisation in this context does not imply uniform substantive contract or intellectual property law. Rather, it seeks procedural predictability and mutual confidence.

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[46] UNCITRAL, *Model Law on International Commercial Arbitration 1985* (as amended in 2006) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration accessed 14 February 2026.

[47] *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention) https://www.newyorkconvention.org/english accessed 14 February 2026.

[48] *United Nations Convention on International Settlement Agreements Resulting from Mediation* (adopted 20 December 2018, entered into force 12 September 2020) (Singapore Convention) https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements accessed 14 February 2026.

7.4 Model ADR Clauses for Fashion Contracts

The policy framework must translate into practical contractual tools. The AfCFTA Secretariat, in collaboration with industry bodies, should develop model ADR clauses tailored to cross-border fashion contracts. These clauses should incorporate:

a Good faith negotiation;

b Mediation under recognised institutional rules;

c Arbitration before a panel including at least one member with demonstrable expertise in fashion law or intellectual property.

For SMEs, simplified and accessible templates should be provided, reducing drafting complexity and cost. Widespread adoption of such clauses would gradually institutionalise ADR practice across the African fashion market, fostering predictability and reducing jurisdictional fragmentation.

7.5 Capacity Building and Awareness

Finally, the effectiveness of an ADR-centred framework depends on human capacity. Training programmes should be developed for:

a Mediators and arbitrators specialising in fashion and creative industries;

b Legal practitioners advising fashion entrepreneurs;

c SMEs operators and informal traders.

Professional accreditation systems should ensure that those heading and administering fashion-related ADR processes possess both sectoral expertise and procedural competence. Without specialised expertise, ADR risks replicating the same inefficiencies it seeks to replace.

8 Implications for the African Fashion Market

The adoption of ADR as the primary dispute resolution mechanism for cross-border fashion trade under the AfCFTA carries implications that extend beyond procedural reform. It reshapes the economic confidence of market actors and strengthens the institutional fabric supporting continental integration. For a sector characterised by creativity, mobility, and informality, these implications are both practical and transformative.

8.1 Economic and Commercial Implications

A predictable and accessible dispute resolution framework enhances investor and trader confidence. In cross-border commerce, risk is not only limited to production and logistics; it also includes uncertainty regarding enforcement and dispute management. Where ADR mechanisms are institutionalised and enforceable, parties are more willing to enter into cross-border contracts, invest in supply chains, and expand their market audience.

For the African fashion industry where designers frequently collaborate across jurisdictions, certainty in dispute resolution reduces perceived commercial risk. Arbitration backed by the New York Convention and structured mediation frameworks provide reassurance that rights can be protected beyond national borders. This assurance is particularly significant for SMEs, whose financial resilience may be limited.

ADR also contributes to the reduction of transaction costs. Prolonged litigation, jurisdictional disputes, and enforcement challenges increase the cost of doing business. By offering faster and more flexible resolution pathways, ADR reduces these indirect costs.

Ultimately, economic integration under the AfCFTA is not merely about removing tariffs; it is about creating an environment where commercial actors feel secure in their transactions. ADR supports that environment by reinforcing trust.

8.2 Legal and Institutional Implications

The institutionalisation of ADR strengthens private dispute resolution systems within African jurisdictions. Rather than overburdening domestic courts with complex cross-border commercial disputes, ADR channels such matters into specialised and procedurally adaptable forums. This enhances overall judicial efficiency.

Reduced pressure on domestic courts allows judicial resources to be allocated to public law matters and domestic disputes that require formal adjudication. In this sense, ADR does not undermine courts; it complements them. Courts retain supervisory and enforcement roles, particularly in recognising arbitral awards and mediated settlements.

Moreover, mainstreaming ADR contributes to legal harmonisation without imposing uniform substantive law. Through shared procedural standards and institutional cooperation, member states can achieve greater coherence in commercial dispute management while preserving legal diversity. For the African fashion market, these institutional developments signify maturation. They reflect a shift from fragmented dispute handling toward a coordinated, integration-supportive framework aligned with the broader ambitions of the AfCFTA.

9 Conclusion

The African fashion market, with its vibrant creativity, entrepreneurial spirit, and cross-border potential, represents both an economic and cultural asset for the continent. Yet, its growth has been constrained by fragmented legal frameworks, jurisdictional uncertainty, and the high cost and inefficiency of traditional litigation. This paper has argued that ADR offers the most practical, adaptable, and commercially sensitive mechanism for resolving intra-African trade disputes, providing a foundation for harmonising the African fashion market under the African Continental Free Trade Area (AfCFTA).

ADR aligns naturally with the realities of the fashion industry. Its flexibility, speed, and confidentiality cater to time-sensitive commercial cycles and preserve crucial business relationships. Its mechanisms offer SMEs and informal traders who dominate the market accessible and affordable options for resolving disputes. Also, these ADR mechanisms are supported by internationally recognised frameworks such as the WIPO Arbitration and Mediation Rules, the New York Convention, and the Singapore Convention on Mediation.

Comparative lessons from the European Union and ASEAN Free Trade Area demonstrate that regional integration benefits from structured, technology-enabled, and sector-sensitive ADR mechanisms. Africa can adapt these principles while respecting its diverse legal systems, socio-economic realities, and cultural contexts, avoiding direct transplantation and ensuring inclusivity.

Ultimately, ADR is more than a procedural tool; it is an instrument for African Fashion market harmonisation and economic integration. By reducing transaction costs, improving investor confidence, and alleviating pressure on domestic courts, ADR strengthens both the economic and legal architecture necessary for sustainable cross-border trade. For African fashion, this shift promises a future where creativity and commerce coexist in a predictable, supportive, and resilient framework.

In this light, the success of the AfCFTA in fostering intra-African trade will depend not only on tariff reduction and market access but also on the effective institutionalisation of ADR, ensuring that the African fashion industry and by extension, the continent's creative economy can flourish with confidence, continuity, and legal certainty.

Intellectual Property and the Informal Fashion Economy in Africa: Structural Misalignment and Reform

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Abstract

African fashion is no longer peripheral. It shapes global aesthetics, drives youth entrepreneurship, and contributes meaningfully to national economies. Yet beneath its creative vibrancy lies a persistent legal tension. Intellectual property laws across many African jurisdictions formally recognise copyright, trade marks, industrial designs and even patents. On paper, protection exists. In practice, designers frequently experience rapid imitation, weak enforcement and minimal commercial control over their creations. This article argues that the central difficulty is neither the absence of law nor mere ignorance of available protections. Rather, it is the structural friction between formal intellectual property regimes and predominantly informal fashion production systems. Most African fashion markets operate through micro-enterprises, oral agreements, short production cycles and low-margin distribution networks. Intellectual property frameworks, by contrast, presuppose documentation, registration, traceable transactions and affordable litigation. Drawing on statutory analysis from Nigeria, South Africa and Kenya, alongside regional systems administered by the African Regional Intellectual Property Organization (ARIPO) and the Organisation Africaine de la Propriété Intellectuelle (OAPI), this article examines how doctrinal sufficiency coexists with practical weakness. It contends that reform must move beyond blame narratives and instead pursue regulatory alignment. A hybrid model combining simplified protection mechanisms, institutional strengthening and gradual integration of informal actors, offers a more realistic foundation for African fashion law. In doing so, this article contributes to the emerging conceptual architecture of fashion law on the continent.

Keywords: *Fashion Law, Intellectual property, Informal fashion economy, African fashion, Fashion IP*

1 Introduction

African fashion is now an integral part of the world's creative sectors. Designers from Lagos, Nairobi, Johannesburg and Dakar increasingly participate in international fashion weeks, collaborate with global brands and influence digital aesthetics across platforms. Nonetheless, the speed of replication in African fashion markets is not hypothetical. A bridal gown showcased at a Lagos wedding may be reproduced in Balogun Market within days. Ankara print modifications debuting in Accra are quickly adapted in Kumasi or Cotonou. Social media accelerates diffusion. The economic life cycle of a garment may be measured in weeks, sometimes days. The law, by contrast, operates on registration timelines that may extend for months. The core legal question appears simple: who owns a fashion design?

The doctrinal answer seems equally straightforward. Copyright protects artistic works.[1] Industrial design law protects aesthetic features of functional products.[2] Trade mark law protects branding and source identifiers.[3] Patent law protects qualifying technical innovations.[4] It is tempting to locate blame in one direction. Some argue that African intellectual property laws are weak or underdeveloped. Others suggest that designers lack awareness of available protection.

Intellectual property systems across Africa are largely derived from international models embedded in treaties such as the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and administered regionally through organisations such as the African Regional Intellectual Property Organization (ARIPO) and the Organisation Africaine de la Propriété Intellectuelle (OAPI).[5] These frameworks presume formalised markets, traceable authorship and administrative capacity.

According to the International Labour Organization, more than 85 per cent of employment in Africa is informal.[6] The fashion sector reflects this broader economic architecture. Tailoring clusters, textile markets and independent designers frequently operate outside formal registration systems. Documentation is minimal. Record-keeping is inconsistent. Litigation is rare. Enforcement requires financial resources and evidentiary sophistication. The consequence is a formal–informal disconnect. Intellectual property law assumes formality. The market operates informally. Until that friction is addressed, protection will remain partial.

1 Copyright Act 2022 (Nigeria) s 2.

2 Designs Act 195 of 1993 (South Africa) s 14.

3 Trade Marks Act 194 of 1993 (South Africa).

4 Patents and Designs Act (Nigeria) Cap P2 Laws of the Federation of Nigeria 2004.

5 Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299 (TRIPS Agreement); African Regional Intellectual Property Organization (ARIPO), *Harare Protocol on Patents and Industrial Designs* (1982, as amended); Organisation Africaine de la Propriété Intellectuelle (OAPI), *Bangui Agreement Relating to the Creation of an African Intellectual Property Organization* (1977, as revised).

6 International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture* (3rd edn, ILO 2018) 13–18.

2 The Formal Legal Framework

Before diagnosing misalignment, clarity regarding existing protection is essential to show that the narrative that African fashion operates in a legal vacuum is inaccurate.

2.1 Copyright Protection of Fashion-Related Works

Copyright laws across Nigeria, South Africa and Kenya protect original artistic works. The Copyright Act, 2022 (Nigeria) provides that artistic works include graphic works, works of artistic craftsmanship and works expressed in material form have primary automatic protection upon creation.[7] Thus, registration is not mandatory but advisable. Exclusive rights include reproduction, adaptation and distribution.[8] Textile prints, embroidery patterns, sketches and textile prints, and similar surface designs might qualify as original artistic works.

However, copyright protection does not extend easily to the cut or functional shape of garments. In South Africa, for instance, courts have drawn distinctions between artistic works and functional objects in assessing infringement.[9] This boundary is particularly relevant in fashion. Many garments derive aesthetic value from shape and construction rather than surface decoration. The doctrinal sufficiency of copyright therefore coexists with practical limitations. It protects certain elements of fashion design. It does not protect fashion comprehensively.

2.1.1 Judicial Interpretation of Originality and Applied Art in African Courts

The question of whether fashion-related works satisfy originality thresholds has not been extensively litigated in African superior courts. However, existing jurisprudence provides insight into how courts conceptualise artistic labour and protection boundaries. In *Haupt t/a Soft Copy v Brewers Marketing Intelligence (Pty) Ltd*, the Supreme Court of Appeal of South Africa emphasised that originality does not require novelty in the patent sense, but rather the application of skill, labour and judgement.[10] More significantly, in *Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International*, the Constitutional Court of South Africa underscored that intellectual property protection must be balanced against broader constitutional and commercial considerations.[11] Additionally, in *Microsoft Corporation v Franike Associates Ltd*, the Nigerian Federal High Court reaffirmed that copyright subsists upon proof of authorship and originality without registration, and that infringement analysis centres upon substantial reproduction.[12] This reinforces

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[7] Copyright Act 2022 (Nigeria) s 108 (definition of artistic works); Copyright Act 98 of 1978 (South Africa) s 1 (definition of artistic work); Copyright Act 2001 (as amended) (Kenya) s 2.

[8] Ibid ss 9–12.

[9] *Haupt t/a Soft Copy v Brewers Marketing Intelligence (Pty) Ltd* 2006 (4) SA 458 (SCA).

[10] *Haupt t/a Soft Copy v Brewers Marketing Intelligence (Pty) Ltd* 2006 (4) SA 458 (SCA).

[11] Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International 2005 (8) BCLR 743 (CC).

[12] Microsoft Corporation v Franike Associates Ltd (2010) 48 WRN 1 (FHC Nigeria).

the structural thesis. Copyright doctrine is not fundamentally deficient. It is procedurally demanding within environments where documentation culture is limited.

2.2 Industrial Design Law

Industrial design law was developed precisely to address aesthetic features of functional products. South Africa's Designs Act 195 of 1993 provides protection for aesthetic designs that are new and original. Registration grants exclusive rights for up to fifteen years.[13] In theory, this is the appropriate legal pathway for garment design protection. A novel sleeve structure, distinctive silhouette or ornamental stitching pattern integrated into a product's appearance may qualify. Yet registration requires documentation, filing fees and examination processes. In South Africa, for example, while aesthetic design registration is relatively streamlined, processing may still extend beyond the commercial life of fast-moving fashion collections. In Nigeria and Kenya, administrative delays and cost considerations further discourage small designers from filing.

2.2.1 Design Registration and Judicial Enforcement in Practice

Judicial enforcement of industrial design rights in African jurisdictions, though limited in reported fashion cases, provides instructive guidance on how courts approach aesthetic protection. In *R v Kenya Industrial Property Institute ex parte Ashok Doshi*, the High Court affirmed the administrative authority of the Kenya Industrial Property Institute (KIPI) in design matters and reinforced the statutory integrity of registration procedures.[14] While not a fashion dispute, the case demonstrates judicial willingness to uphold design registration structures. However, these cases reveal a practical gap. Litigation typically involves corporate actors with formal registration and documented rights. There is little reported jurisprudence involving micro-enterprise designers from informal markets. This is so because industrial design enforcement requires visual comparison evidence, expert testimony in some instances, and legal representation. Hence, these procedural burdens deter enforcement claims even where rights exist.

2.3 Trade Marks

Trade mark law is comparatively more functional within African fashion contexts. Brand names and logos often become the primary defensible asset. The Trade Marks Act (Nigeria), the Trade Marks Act 194 of 1993 (South Africa) and Kenya's Trade Marks Act provide structured registration systems.[15] Designers who invest in brand identity may enforce against counterfeit use. In South

13 Designs Act 195 of 1993 (South Africa) ss 20–22; similar provision in Industrial Property Act 2001 (Kenya) ss 84–92, and Patents and Designs Act (Nigeria) ss 12–18.

14 *R v Kenya Industrial Property Institute ex parte Ashok Doshi* [2014] eKLR (High Court of Kenya); see also *Caterpillar Inc v Hensley Industries Inc* 2011 (3) SA 409 (GSJ).

15 Trade Marks Act (Nigeria) Cap T13 Laws of the Federation of Nigeria 2004; Trade Marks Act 194 of 1993 (South Africa); Trade Marks Act (Kenya) Cap 506

Africa, courts have demonstrated willingness to protect well-known marks across sectors.[16] However, enforcement against informal market sellers remains uneven. Identifying infringers within decentralised markets is difficult. Seizure operations may occur sporadically, but sustained enforcement requires administrative resources.

Trade marks therefore illustrate partial alignment. They are effective for formalised designers with established brands. They offer limited relief where imitation involves design copying without brand misuse.

2.4 Patent Law

Nigeria's Patents and Designs Act and Kenya's Industrial Property Act provide structured patent systems (novelty, inventive step, and industrial applicability).[17] ARIPO's Harare Protocol facilitates regional filing.[18] OAPI's Bangui Agreement creates unified protection across member states.[19] For instance, moisture-wicking fabric technologies, biodegradable fibre processing, novel dye-fixation, or other textile innovations could meet patent criteria if properly documented. Unfortunately, patent filing costs are substantial for micro-enterprises operating within informal markets. Moreover, in *Ensign-Bickford (South Africa) (Pty) Ltd v AECI Explosives and Chemicals Ltd,*[20] the South African Supreme Court of Appeal emphasised that patent validity depends strictly on statutory criteria, particularly novelty. These thresholds are modelled on global standards articulated under TRIPS. The African fashion environment is therefore disadvantaged because innovation circulates orally and communally before formal filing.

3 Informality as Structural Condition

To understand why formal protection mechanisms remain underused, informality must be examined as economic structure rather than moral failing. The International Labour Organization estimates that informal employment constitutes approximately 85.8 per cent of total employment in Africa.[21] Women are disproportionately represented. The fashion and garment sector, particularly tailoring and textile trading, reflects this demographic pattern. Informality performs important economic functions:

a It absorbs unemployment in contexts of limited formal sector capacity.

b It lowers entry barriers for youth entrepreneurs.

c It enables flexible production and rapid adaptation to market trends.

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16 *Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International* 2005 (8) BCLR 743 (CC).

17 Industrial Property Act 2001 (Kenya) ss 21–34; Patents and Designs Act (Nigeria) ss 1–

18 ARIPO, *Harare Protocol on Patents and Industrial Designs* (n 6).

19 OAPI, *Bangui Agreement* (n 6).

20 Ensign-Bickford (SA) (Pty) Ltd and others v AECI Explosives and Chemicals Ltd [1998] 4 All SA 453 (A)

21 International Labour Organization (n 7) 21–25.

However, this structural reality interacts uneasily with foreign intellectual property doctrine, which presumes:

a Identifiable authors or designers.

b Registered businesses capable of litigation.

c Written contracts governing assignment.

d Reliable enforcement infrastructure.

4 Beyond Awareness: Is this Merely an Informational Problem?

One frequently advanced explanation is that African fashion designers simply lack awareness of intellectual property protection mechanisms. On this account, the problem is educational rather than structural. If designers were trained on registration procedures, evidentiary standards and enforcement mechanisms, protection levels would improve. There is empirical support for partial informational gaps. Surveys conducted among small and medium-sized enterprises in sub-Saharan Africa have indicated low familiarity with industrial design registration processes and limited understanding of cross-border protection mechanisms.[22]

Even where awareness exists, utilisation remains low. The reasons are established. Registration fees, though modest by global standards, may represent significant proportions of monthly earnings for micro-enterprises.[23] Processing timelines frequently exceed fashion's commercial cycles. Enforcement requires litigation budgets that exceed potential recovery. Moreover, tracing infringement within informal clusters is administratively complex. Sellers may operate without fixed addresses. Production may occur in dispersed workshops. Identifying the source of copying is evidentially burdensome. Therefore, while awareness campaigns are valuable, they cannot resolve this systemic mismatch. Education increases capacity only where institutions are functionally responsive.

5 Should Existing Policies be Blamed?

It is tempting to criticise African intellectual property statutes as outdated or inadequate. Nigeria's Copyright Act, 2022 modernised several aspects of digital enforcement.[24] South Africa's design regime offers comparatively strong protection terms. Kenya's Industrial Property Act aligns with international standards. Regional systems under ARIPO and OAPI provide mechanisms for multi-state protection.[25] The prevailing intellectual property frameworks domesticated within African

22 World Intellectual Property Organization, *SMEs and Intellectual Property in Africa* (WIPO 2019).

23 African Fashion International Industry Roundtable Report (2021).

24 Copyright Act 2022 (Nigeria).

25 ARIPO, Harare Protocol on Patents and Industrial Designs (1982, as amended); OAPI, Bangui Agreement Relating to the Creation of an African Intellectual Property Organization (1977, as revised).

jurisdictions were largely shaped by global trade agreements and international harmonisation processes. These systems presuppose:

b. Formal business registration.

c. Documented authorship and assignment.

d. Centralised administrative capacity.

e. Predictable judicial enforcement.

Yet much of African fashion production operates through micro-enterprises, family workshops and decentralised tailoring networks. Oral agreements dominate. Written contracts are rare. Business registration may be partial or absent. This misalignment reflects what comparative scholars describe as 'legal transplantation without contextual recalibration'.[26] When legal norms developed in highly formalised economies are transplanted into predominantly informal markets without structural adaptation, enforcement gaps emerge. Therefore, the deeper issue is not doctrinal absence or insufficiency. It is institutional mismatch. This is not uniquely African. Similar patterns have been observed in parts of South Asia and Latin America. However, the scale of informality in Africa intensifies the challenge.

5.1 Doctrinal Limits of Formalism in African IP Adjudication

A recurring tension within African intellectual property adjudication is the judicial preference for formal thresholds of protection over contextual recognition of industry realities. Courts often interpret copyright, trademark, patent, and industrial design statutes through rigid doctrinal lenses inherited from common law or civil law traditions. While doctrinal certainty is necessary, excessive formalism can render entire sectors structurally invisible.

In *Laugh It Off Promotions CC v South African Breweries International (Finance) BV,*[27] the South African Constitutional Court adopted a more context-sensitive approach in trademark dilution analysis, recognising constitutional values such as freedom of expression. Although not a fashion case, the decision illustrates that African apex courts are capable of doctrinal flexibility when broader socio-economic realities are at stake. This elasticity, however, has not been systematically extended to informal creative industries.

Similarly, in *Juma & 4 Others v Kenya Copyright Board & 2 Others,*[28] the Kenyan High Court engaged critically with administrative enforcement of copyright regulation, affirming that regulatory bodies must act within statutory boundaries. The case signals judicial awareness of regulatory overreach, yet it also reveals the gap between formal enforcement frameworks and actual market practice.

26 Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn, University of Georgia Press 1993).

27 [2005] (8) BCLR 743 (CC).

28 [2018] KEHC 5729 (KLR)

In *Ferodo Ltd v Ibeto Industries Ltd,*[29] the Nigerian the Supreme Court decision reinforced the importance of registration and evidentiary proof in trademark protection. The Court insisted on documentary compliance and strict statutory interpretation. While doctrinally sound, such insistence illustrates how protection mechanisms assume sophisticated record-keeping infrastructure, an assumption often absent in informal fashion clusters.

These decisions collectively demonstrate that the problem is not judicial hostility to IP protection. Rather, it is the structural orientation of adjudication towards formal compliance. Informality therefore clearly brings about juridical invisibility.

6 Informality: Constraint or Creative Engine?

It is important not to frame informality solely as a deficit. The fashion industry globally has long been characterised by cycles of imitation and adaptation. In their influential work '*The Knockoff Economy*', Kal Raustiala and Christopher Sprigman argue that copying can stimulate innovation in fashion by accelerating trend turnover and encouraging continual design evolution.[30] While the United States fashion industry operates within a highly formalised commercial environment with robust brand protection, contractual sophistication and capital access, African fashion markets differ structurally. Imitation within informal contexts may erode fragile entrepreneurial margins more severely.

In addition, the 'piracy paradox' described by Raustiala and Sprigman presupposes rapid scaling, media amplification and global brand monetisation.[31] Many African designers operate at micro scale. Repeated imitation without compensatory scale may suppress reinvestment capacity. Nevertheless, the counterargument highlights a caution. Overly rigid enforcement models that criminalise informal production without integration may generate economic harm. Therefore, reform must avoid both romanticisation of informality and punitive overreach. The objective is calibrated integration.

6.1 Comparative Enforcement Realities: Supreme and Appellate Authorities

A deeper examination of appellate jurisprudence further clarifies the enforcement landscape. In *Nintendo Co Ltd v Golden China TV-Game Centre*, the South African Supreme Court of Appeal emphasised that intellectual property enforcement must reflect both statutory rights and proportionality in remedies.[32] The Court scrutinised infringement claims carefully and required precise evidentiary demonstration of violation.

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29 (2004) 5 NWLR (Pt. 866) 317

30 Kal Raustiala and Christopher Sprigman, *The Knockoff Economy: How Imitation Sparks Innovation* (OUP 2012).

31 Ibid 8–12.

32 *Nintendo Co Ltd v Golden China TV-Game Centre* 1995 (1) SA 229 (A).

Similarly, in *Adenuga v Ilesanmi Press Ltd*, the Nigerian Supreme Court reiterated that copyright infringement requires proof of substantial reproduction rather than mere similarity.[33] This distinction is critical in fashion disputes where trends naturally generate overlapping aesthetic features.

Kenyan courts have likewise reinforced procedural rigour. In *Bidco Oil Refineries Ltd v Unicorn Organics Ltd*, the High Court carefully evaluated trade mark confusion and evidentiary sufficiency.[34] Although not a fashion dispute, the reasoning underscores judicial insistence on structured proof.

These authorities illustrate a broader pattern. African superior courts are doctrinally competent and legally rigorous in intellectual property adjudication. They are not dismissive of rights. However, enforcement presupposes litigation readiness, documentary evidence and financial resilience. Thus, the structural problem re-emerges. Where fashion designers operate within informal networks without documentary trails, appellate-level enforcement standards though doctrinally sound become practically difficult to satisfy.

6.1.1 Comparative Judicial Evolution: Emerging African Sensitivity to Creative Economies

There are early signs of doctrinal recalibration. In *Westinghouse Electric Corporation v. Gibrin Ibrahim Adam,*[35] the Ghanaian High Court recognised the economic implications of intellectual property disputes beyond narrow statutory interpretation, acknowledging commercial realities in assessing infringement claims. The Court's reasoning reflects growing judicial sensitivity to industry context.

Likewise in *Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others,*[36] the Kenyan Supreme Court underscored the constitutional protection of intellectual and creative enterprise within the broader framework of economic rights. This constitutionalisation of creative protection suggests potential doctrinal space for more responsive IP interpretation.

South Africa again provides a constitutional dimension. In *Phumelela Gaming and Leisure Ltd v Gründlingh* [37] , the Constitutional Court balanced intellectual property enforcement against competition principles, demonstrating that IP is not absolute but embedded within broader socio-economic objectives.

The implication is significant: African apex courts are not incapable of doctrinal innovation. The absence of fashion-sensitive jurisprudence reflects litigation patterns and access barriers rather than doctrinal impossibility.

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33 *Adenuga v Ilesanmi Press Ltd* (1991) 5 NWLR (Pt 189) 82 (SC Nigeria).

34 *Bidco Oil Refineries Ltd v Unicorn Organics Ltd* [2005] eKLR (High Court of Kenya).

35 (Suit No. CCC02/05) High Court (2006)

36 [2014] KESC 53 (KLR)

37 2007 6 SA 350 (CC) at 361–36

7 Enforcement in Practice: The Institutional Test

Intellectual property protection is ultimately measured not by statutory elegance but by enforceability. Litigation across many African jurisdictions is slow and costly relative to micro-enterprise turnover. Judicial capacity constraints, procedural delays and evidentiary burdens shape outcomes. According to World Bank enterprise surveys, businesses across sub-Saharan Africa frequently cite court inefficiency as a major constraint.[38]

To illustrate the enforcement gap, consider industrial design infringement. A designer alleging copying must demonstrate validity of registration, similarity and commercial damage. In informal contexts, obtaining documentary evidence of production scale or profit margins is challenging. Even where enforcement succeeds, remedies may be limited. Small-scale infringers may lack attachable assets. Damage awards may be modest. Consequently, rational designers often choose market adaptation over litigation. This reality does not imply judicial failure alone. It reflects broader official resource allocation constraints within developing economies prioritising criminal justice, land disputes and constitutional matters. Thus, enforcement reform must include procedural innovation, not merely substantive amendment.

8 Regional Systems: ARIPO and OAPI

Regional intellectual property organisations offer mechanisms for cross-border protection. The Harare Protocol administered by ARIPO enables applicants to designate multiple member states in a single filing for patents and industrial designs.[39] The Bangui Agreement under OAPI establishes a unified filing system across its member states.[40] In theory, regional harmonisation reduces transaction costs and simplifies cross-border protection for designers seeking broader markets.

However, regional systems still presuppose formal filing, fee payment and procedural literacy. Micro-enterprises operating within informal clusters may not access these systems without intermediary support. Therefore, while ARIPO and OAPI strengthen doctrinal infrastructure, they do not by themselves resolve this incompatibility at grassroots levels.

9 Towards a Hybrid Regulatory Model

Because the challenge is fundamentally structural rather than merely doctrinal, any meaningful response must combine legal reform with institutional and economic adaptation. The proposed hybrid regulatory model rests on three pillars: simplification, institutional strengthening and incremental integration.

9.1 Simplified Protection Mechanisms

38 World Bank, *Enterprise Surveys: Sub-Saharan Africa* (2020).

39 OAPI (n26).

40 Ibid.

Short-term unregistered design protection could be introduced or strengthened in national systems. Automatic protection lasting between six and twelve months from first public disclosure would better align with the commercial life cycle of fashion collections. Reduced filing fees for micro-enterprises could lower entry barriers. Collective registration mechanisms administered through accredited designer associations could reduce filing costs and administrative barriers for small designers.

9.2 Institutional Strengthening

Specialised small-claims intellectual property courts or tribunals with simplified procedures and capped filing costs could provide expedited resolution for low-value disputes. In the same vein, simplified evidentiary standards tailored to informal production realities may improve accessibility. Digital filing platforms, where effectively implemented, reduce geographic barriers and enhance traceability.

9.3 Gradual Integration of Informal Actors

Formalisation should not be coercive. Incentive-based mechanisms such as access to government procurement, export facilitation or tax benefits may encourage gradual registration. As the International Labour Organization emphasizes, 'the transition from the informal to the formal economy should be facilitated through inclusive policy frameworks that recognise the diversity of informal workers and enterprises rather than imposing punitive measures'.[41] Integration, not eradication, is the objective.

10 Conclusion and Regulatory Reform Agenda

African fashion law stands at a foundational stage of doctrinal consolidation and regulatory maturation. Copyright, industrial design, trade mark and patent statutes exist across major jurisdictions. The problem is not legislative emptiness. It is structural friction. The misalignment between formal intellectual property systems and predominantly informal production environments generates partial protection. Reform must therefore proceed along coordinated tracks.

First, doctrinal calibration through simplified and time-sensitive protection mechanisms. Institutional strengthening through affordable and expedited dispute resolution. In addition, incremental integration of informal actors through incentive-based formalisation and collective enforcement strategies.

The objective is neither to romanticise informality nor to criminalise it indiscriminately. It is to design legal protection that functions within existing economic realities while encouraging structured growth. A hybrid regulatory model anchored in alignment rather than blame offers the most coherent and sustainable foundation for the evolution of fashion law in Africa.

41 International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture* (3rd edn, ILO 2018).

Fast Fashion and the Transboundary Movement of Textile Waste: The Regulatory Gap in Africa and the Way Forward

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Abstract

For decades, the global fashion industry has externalised the environmental consequences of overproduction into African states through the transboundary movement of textile waste, frequently disguised as trade, resale, or charity. Rivers, drainage systems, landfills, and informal waste sites across African communities increasingly bear the burden of post-consumer textile waste generated elsewhere. In Nigeria, Ghana, and South Africa, these waste streams have become culturally recognisable under names such as Okrika, Obroni Wawu, and Madunusa. This article argues that legal silence and weak regulatory enforcements have enabled the continued influx of textile waste into African markets. It advances three principal legal anchors for reform: a broader interpretation of the Bamako Convention to include post-consumer textile waste within hazardous waste regulation; stronger invocation of Article 24 of the African Charter on Human and Peoples' Rights as a basis for environmental accountability; and the wider adoption of Extended Producer Responsibility (EPR) schemes modelled on South Africa's textile regulatory framework. The article further argues that textile waste is not an accidental consequence of fashion production but a foreseeable structural outcome of modern fast-fashion systems. Consequently, responsibility for waste management should remain with those who profit from the production and circulation of garments. Through the Polluter Pays principle, EPR mechanisms, and rights-based environmental protection, African states may strengthen regulatory sovereignty while addressing the environmental and human consequences of textile waste. The article concludes that tightening the regulation of textile waste is not anti-investment, but rather an assertion of lawful environmental governance and African sovereignty.

Keywords: *Fast fashion, Transboundary movement, Textile waste, Extended producer responsibility*

1 Introduction

Fashion is often discussed through the language of creativity, commerce, and cultural expression. Yet behind the global expansion of the fashion industry lies an environmental problem that has increasingly attracted international concern: the growing movement of textile waste across borders. The rise of fast fashion, characterised by rapid production cycles, low-cost garments, and accelerated consumer consumption, has significantly increased the volume of discarded clothing generated worldwide. As garments are produced and discarded at faster rates, the question of where textile waste eventually goes has become impossible to ignore.

One major consequence of this production model is the transboundary movement of post-consumer textile waste from high-consumption economies into developing regions, particularly Africa. Although these movements are frequently framed as second-hand trade, donation, reuse, or charitable circulation, substantial quantities of imported clothing ultimately become waste shortly after entering African markets. In many cases, receiving states are left to manage the environmental consequences of garments produced and consumed elsewhere.

Across several African countries, second-hand clothing has become deeply embedded within local commercial and cultural systems. In Nigeria, such clothing is commonly referred to as *Okrika*; in Ghana, *Obroni Wawu*; and in South Africa, *Madunusa*. While the trade provides livelihoods for traders, retailers, transport workers, and consumers seeking affordable clothing, growing concerns have emerged regarding the environmental burden created by low-grade, damaged, synthetic, and unsellable textile imports. Rivers, drainage systems, informal dump sites, and landfills increasingly absorb the afterlife of global fashion consumption.

The environmental effects associated with textile waste extend beyond visual pollution. Synthetic garments release microplastics into water systems and soil, while discarded clothing contributes to blocked drainage channels, flooding, open-air burning, and landfill pressure. Despite these consequences, textile waste continues to occupy an uncertain position within existing legal and regulatory frameworks. International and regional environmental instruments have historically focused more directly on conventional hazardous waste streams, leaving significant ambiguity regarding the regulation of post-consumer textile waste.

This article argues that the continued influx of textile waste into African markets reflects a broader regulatory gap within environmental governance, fashion law, and transboundary waste regulation. The problem is not merely one of waste management, but also one of environmental accountability and regulatory sovereignty. Where fashion corporations and exporting economies continue to externalise the environmental costs of overproduction onto receiving states with weaker infrastructure and enforcement systems, important legal questions arise concerning responsibility, liability, and environmental justice.

To address these concerns, this article advances three central arguments. First, it argues that the Bamako Convention should be interpreted more broadly, or where necessary expanded, to accommodate certain forms of post-consumer textile waste within hazardous waste regulation. Second, it contends that Article 24 of the African Charter on Human and Peoples' Rights provides a viable human rights framework for addressing environmental harm linked to textile waste pollution. Third, it examines the role of Extended Producer Responsibility (EPR) schemes, particularly South Africa's developing textile-related framework, as a model for strengthening producer accountability within African waste governance systems.

The article adopts a doctrinal and comparative legal methodology, drawing upon regional environmental instruments, human rights frameworks, and emerging waste-governance models within selected African jurisdictions, particularly Nigeria, Ghana, and South Africa. It further considers the relationship between environmental regulation and economic development within the framework of the African Continental Free Trade Area (AfCFTA), arguing that stronger environmental governance should not be viewed as anti-investment, but rather as part of a sustainable and sovereign African regulatory future.

2 The Problem: Why Regulatory Tightening is Needed?

The regulatory framework governing waste management in many African states has historically focused on domestic production and disposal systems, while paying insufficient attention to the transboundary movement of post-consumer textile waste generated outside the continent. As a result, fast-fashion waste continues to enter African markets through channels framed as trade, resale, or charitable circulation, despite the growing environmental consequences attached to these imports.[1]

This article argues that the existing regulatory gap has enabled African states to become recipients of textile waste generated by high-volume fashion producers in the global North.[2] In response, the article advances three central legal arguments. First, the Bamako Convention should be interpreted, or where necessary expanded authoritatively, to include post-consumer textile waste within hazardous waste regulation. Second, Article 24 of the African Charter on Human and Peoples' Rights should be invoked more forcefully to frame textile waste pollution as a human rights issue. Third, African states should adopt broader Extended Producer Responsibility (EPR) schemes capable of imposing continuing environmental obligations on producers, importers, and fashion corporations.[3]

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1 United Nations Environment Programme, 'Sustainability and Circularity in the Textile Value Chain' (UNEP 2020) 38–41 <https://www.unep.org/resources/publication/sustainability-and-circularity-textile-value-chain-global-roadmap> accessed 7 February 2026.

2 Ellen MacArthur Foundation, 'A New Textiles Economy: Redesigning Fashion's Future' (2017) 19–23 <https://www.ellenmacarthurfoundation.org/a-new-textiles-economy-redesigning-fashions-future> accessed 7 February 2026

3 Greenpeace Africa, 'How Fast Fashion Is Fuelling the Fashion Waste Crisis in Africa' (2023) <https://www.greenpeace.org/africa/en/blog/54589/how-fast-fashion-is-fuelling-the-fashion-waste-crisis-in-africa/> accessed 6 February 2026.

What Africa needs is a legal bulldog to take the reins and fill this lacuna by introducing an assertive legal framework capable of addressing the existing regulatory lacuna in the governance of fashion law and the transboundary movement of textile waste.

Africa's growing visibility within the global fashion industry reflects the resilience and expansion of its creative economy. Yet alongside this visibility lies a less celebrated reality: African states continue to receive substantial quantities of post-consumer textile waste exported from Europe, North America, and other high-consumption economies.[4]

Post-consumer textile waste has become so embedded within African commercial life that it now carries local names across the continent. In Nigeria, it is commonly referred to as Okrika. In Ghana, it is known as Obroni Wawu, while in South Africa it is called Madunusa. Although the second-hand clothing trade provides economic opportunities and livelihoods for many individuals, the environmental consequences associated with low-grade and unsellable imports have become increasingly severe.[5]

The environmental burden created by discarded textile imports includes blocked drainage systems, rising landfill pressure, soil degradation, and the spread of microplastics from synthetic fibres. In Ghana, discarded garments have reportedly formed dense accumulations within waterways, sometimes described locally as "tentacles" because of the way tied textiles stretch across rivers and drainage channels.

Despite these consequences, the transboundary movement of textile waste frequently escapes direct regulation because textile waste itself is rarely classified as hazardous waste within applicable regional frameworks. This regulatory omission has enabled exporting states and corporations to continue shifting waste burdens onto jurisdictions with weaker infrastructure and enforcement capacity.

Africa presently lacks sufficient recycling infrastructure to absorb the volume of textile waste entering its borders. Although circularity, recycling, and upcycling are frequently promoted as sustainability solutions, African states are often expected to finance and manage environmental consequences generated elsewhere. The burden of waste management has therefore become detached from the location of production.

The Kantamanto Market in Ghana illustrates this contradiction clearly. Although the market has historically functioned as a centre for second-hand clothing commerce, increasing volumes of low-quality fast-fashion imports have intensified environmental and waste-management pressures[6].

4 Time, 'The Race to Upcycle Africa's Fast Fashion Dumping Ground' (2025) <https://time.com/7307662/ghana-africa-fast-fashion-waste-pollution/> accessed 6 February 2026.

5 Ibid.

6 OR Foundation, 'Extended Producer Responsibility for Textiles in Ghana: Policy Proposal' (The OR Foundation 2022) <https://stopwastecolonialism.org/stopwastecolonialism.pdf> accessed 7 February 2026.

Many imported garments contain synthetic fibres that release microplastics into rivers, soil systems, and marine ecosystems.[7]

The central argument advanced in this article is that textile waste should be legally recognised as a foreseeable outcome of fashion production rather than an accidental after-effect. Consequently, producers and importers should bear continuing legal responsibility for the environmental lifecycle of garments. To address this regulatory gap, this article relies on several legal anchors:

a the Bamako Convention;

b Article 24 of the African Charter on Human and Peoples' Rights;

c extended Producer Responsibility frameworks;

d the Polluter Pays principle; and

e sovereignty-based environmental governance.

2.1 The Bamako Convention

African states currently lack the infrastructure necessary to absorb the growing volume of post-consumer textile waste entering their borders. In light of this reality, stronger regulation of imported textile waste is necessary. One possible legal route is the reinterpretation, or where necessary amendment, of the Bamako Convention to recognise certain forms of post-consumer textile waste as hazardous waste, particularly low-grade, contaminated, plastic-heavy, or unsellable textile imports.[8]

The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa was adopted specifically to prevent African states from becoming destinations for hazardous waste generated elsewhere. The Convention's preamble emphasises that hazardous waste should, as far as possible, be disposed of in the state where it is generated.

This principle is highly relevant to textile waste regulation. Modern fast-fashion systems generate significant quantities of discarded garments as a foreseeable consequence of overproduction and rapid consumption cycles. Where textile waste creates environmental and public health risks comparable to other regulated waste streams, there is a credible legal argument that certain categories of textile waste may fall within the protective purpose of the Convention.[9]

7 MacArthur Foundation (n 2).

8 The preamble, Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (adopted 30 January 1991, entered into force 22 April 1998).

9 Bamako Convention 1991, art 4(1) & (3).

Research shows how weaker regulatory regimes have been shaped to receive and absorb waste that exporting states prefer not to manage domestically. The findings made include that despite the existence of the Bamako Conventions at global and regional levels, waste trade has continued in different forms in Africa, where waste merchants exploit the low-cost facilities, cheap labour and weak regulatory frameworks.

A clearer legal pathway is necessary. At present, the Bamako Convention does not expressly classify post-consumer textile waste as hazardous waste under Annex I. Consequently, two legal possibilities emerge. First, African states may adopt an authoritative interpretative approach that treats environmentally harmful textile waste as falling within existing hazardous categories where contamination, toxicity, or environmental harm can be demonstrated. Second, state parties may pursue formal amendment or supplementary protocols capable of expressly incorporating specified categories of textile waste into the Convention's regulatory framework[10]. Either approach would strengthen the legal basis upon which African states may regulate or prohibit harmful textile imports.

The Convention also reinforces the principle that generators of waste should bear responsibility for its management and disposal in a manner consistent with environmental and human health protection. This aligns closely with Article 24 of the African Charter on Human and Peoples' Rights, which guarantees the right to a satisfactory environment favourable to development.

Importantly, the Bamako Convention recognises the sovereignty of states to prohibit the importation or transit of hazardous waste for environmental and public health reasons. If environmentally harmful textile waste is brought within the Convention's scope, African states would possess stronger legal authority to restrict imports that threaten ecological systems and public welfare. Stronger regulation may also create indirect incentives for exporting states and fashion corporations to reduce overproduction and improve domestic waste-management systems. Where transboundary disposal routes become legally restricted, producers may be compelled to internalise environmental costs previously transferred abroad.

Concerns may nevertheless arise that restrictive regulation could be framed as anti-investment or inconsistent with free trade objectives under AfCFTA, but investment narratives have often obscured the extent to which weak regulatory environments facilitate the relocation of environmental burdens to African markets. Research on global waste trade demonstrates that weaker regulatory systems are frequently targeted precisely because waste disposal becomes cheaper and easier in those jurisdictions.

Despite the existence of both the Basel and Bamako Conventions, hazardous waste trade continues across parts of Africa through exploitative regulatory gaps, low-cost disposal systems, and weak enforcement structures; textile waste increasingly reflects this same pattern. Accordingly, a stronger

10 Nature Portfolio, 'Africa's Fast Fashion Waste Crisis' (2025) <https://www.nature.com/articles/d44148-025-00203-4> accessed 6 February 2026.

interpretation of the Bamako Convention offers one viable legal route through which African states may reclaim regulatory authority over environmentally harmful textile imports.[11]

2.2 Making Textile Waste a Human Rights Issue through the African Charter on Human and People's Rights.

The African Charter on Human and Peoples' Rights provides an additional legal foundation for addressing the environmental consequences of textile waste. Article 24 guarantees the right to a satisfactory environment.[12] That right is meaningless if Africa remains a dumping ground. The Charter must be used as a weapon, not a decoration. Where there is a duty, there must be a responsibility. Where there is a wrong, there must be a remedy - Ubi jus Ubi remedium. This provision may provide a doctrinal basis for framing textile waste pollution as a human rights issue rather than merely a commercial or environmental inconvenience.

The environmental effects of textile waste are not abstract. Communities situated near dumping grounds, waterways, and informal landfill sites experience direct consequences through blocked drainage systems, polluted rivers, deteriorating sanitation conditions, and exposure to microplastics and chemical residues. These conditions affect public health, environmental quality, and community wellbeing.

African states, affected communities, civil society organisations, and environmental advocacy groups may therefore invoke Article 24 of the ACHPR where the state's failure to regulate harmful textile waste imports contributes to environmental harm.

Such claims could potentially be brought:

a by affected communities or public-interest organisations;

b against states that fail to regulate environmentally harmful textile imports adequately; and

c through regional human rights mechanisms such as communications before the African Commission.

While obligations flowing from Article 24 formally bind states rather than private corporations directly, states retain a duty to regulate harmful commercial activity within their jurisdiction. Consequently, where foreign producers and importers contribute to large-scale environmental degradation through textile waste flows, state inaction may itself raise human rights concerns. Sadly, local regulatory systems in countries such as Nigeria and Ghana remain largely reactive. Environmental laws frequently regulate domestic facilities and localised waste management, while

11 Nnamdi Stanislaus Umenze, 'The Trajectory of Illicit Waste Trade in Africa: Implications for Human Rights and Sustainable Development' (2020) Journal of Law, Society and Development <https://unisapressjournals.co.za/index.php/JLSD/article/view/6318> accessed 31 January 2026.

12 African Charter on Human and Peoples' Rights 1981, art 24.

foreign producers and exporters remain insulated from the environmental afterlife of garments placed into African markets.

The Polluter Pays principle therefore becomes significant within the Article 24 framework. Environmental harm caused by transboundary textile waste should not remain financially and socially externalised onto receiving communities alone. Rather, states should develop mechanisms capable of reconnecting environmental accountability to production systems.

The African Charter's anti-colonial commitments also raise broader normative questions regarding what scholars increasingly describe as "waste colonialism." Although contemporary waste trade operates through commercial rather than formal colonial structures, the continued transfer of environmental burdens from wealthier economies to weaker regulatory jurisdictions reflects persistent inequalities in global environmental governance. Accordingly, Article 24 provides more than symbolic language. Properly invoked, it may function as a legal basis for stronger environmental regulation, state accountability, and rights-based responses to textile waste pollution.

2.3 South Africa's Extended Producer Responsibility Scheme.

South Africa has adopted one of the more developed textile-related EPR frameworks on the continent through the National Environmental Management: Waste Act 2008 and the Extended Producer Responsibility Regulations 2021.[13] Under this framework, producers, importers, and fashion-related businesses may bear continuing obligations regarding the post-consumer management of textile products placed within the market. These obligations include participation in approved Producer Responsibility Organisations (PROs), financial contributions toward waste management systems, reporting obligations, and broader lifecycle accountability measures.[14]

2.4 Polluter Pays principle.

The Polluter Pays principle remains one of the clearest normative foundations for textile waste accountability.[15] Textile waste does not emerge spontaneously. Garments are designed, produced, marketed, transported, consumed, discarded, and eventually displaced into secondary markets and waste streams. The movement of discarded textiles into African states therefore represents the final stage of a global production process.

The Polluter Pays principle requires that those who generate pollution bear the cost of preventing, managing, or remedying environmental harm. Applied to fast fashion, this principle suggests that producers should not be permitted to externalise the environmental costs of overproduction onto receiving states with weaker waste-management capacity; yet the present fashion system frequently

13 National Environmental Management: Waste Act 59 of 2008 (South Africa); Extended Producer Responsibility Regulations, GN 400 in GG 44539 of 5 May 2021.

14 Department of Forestry, Fisheries and the Environment (South Africa), 'Guideline and Toolkit for the Determination of Extended Producer Responsibility Fees' (Government Gazette No 51534, 11 November 2024) <https://www.gov.za/sites/default/files/gcis_document/202411/51534gon5535.pdf> accessed 7 February 2026.

15 Organisation for Economic Co-operation and Development, 'Guiding Principles on Environmental Policy' (1972) <https://legalinstruments.oecd.org/public/doc/4/4.en.pdf> accessed 7 February 2026

reverses this logic. Production profits remain concentrated within exporting economies, while the environmental and financial burden of waste management shifts toward African communities.

The circulation of second-hand clothing is not inherently unlawful or environmentally harmful in every instance. However, where large quantities of low-quality, unsellable, or environmentally damaging textile waste enter African markets without accountability mechanisms, the Polluter Pays principle becomes particularly relevant. If corporations profit from high-volume garment production, then responsibility for the environmental afterlife of those garments should not disappear once products leave primary consumer markets. Producers using synthetic fibres should reasonably anticipate the environmental consequences associated with microplastic release and waste accumulation.

Article 24 of the African Charter strengthens this argument by framing severe environmental degradation as a matter capable of affecting legally protected rights. Where textile waste contributes to pollution, blocked waterways, and environmental decline, the issue moves beyond aesthetics or commercial inconvenience into questions of environmental justice.[16] Similarly, the Bamako Convention's emphasis on managing hazardous waste within the state of generation reflects the broader principle that environmental burdens should not simply be transferred to jurisdictions with weaker regulatory systems. The Polluter Pays principle is therefore not radical. Rather, it reflects an attempt to reconnect environmental accountability to the systems of production.

2.5 The EPR model and sovereignty.

The significance of the South African model lies in its recognition that textile waste is not an accidental by-product but a foreseeable structural outcome of fashion production systems. Rather than placing the environmental burden solely on municipalities or receiving communities, the framework attempts to internalise environmental costs within the industry itself.[17]

Several aspects of South Africa's EPR model may realistically be adapted by states such as Nigeria and Ghana. These include:

a mandatory producer registration systems;

b reporting obligations regarding imported or produced textile volumes;

c financial contributions toward textile collection, sorting, recycling, and disposal;

d the establishment of Producer Responsibility Organisations; and

16 *Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria* (2001) AHRLR 60 (ACHPR 2001).

17 'Textile Waste in Africa: The Numbers Behind the Fashion Crisis' Ethical Business Africa (28 October 2025) <https://ethicalbusiness.africa/2025/10/28/textile-waste-in-africa-the-numbers-behind-the-fashion-crisis/> accessed 27 January 2026.

e lifecycle-based waste management obligations.[18]

Responsibility under such schemes may extend to both local importers and foreign-affiliated fashion brands operating within African markets. Importers who place textile products into circulation may be required to contribute financially to waste management systems, while multinational brands may also bear obligations through local subsidiaries, licensing structures, or market-access conditions. The South African model is particularly important because it transforms environmental responsibility from a voluntary sustainability narrative into a legally enforceable obligation.

At a broader level, EPR frameworks also raise questions of sovereignty. By requiring producers and importers to account for the environmental consequences of their products, states reclaim regulatory authority over waste flows that have historically escaped meaningful control.[19]

3 Recommendations

Africa does not need anymore symbolic sustainability rhetoric. What it requires is a coherent legal and regulatory framework capable of addressing the transboundary movement of textile waste as an environmental, economic, and human rights issue. The persistence of the problem is not due to a lack of awareness, but to inadequate legal enforcement and regulatory coordination. The response, therefore, must be firmly grounded in law and policy.

First, African states should move toward the formal classification of low-grade and unsellable textile waste as hazardous waste under applicable regional instruments, particularly the Bamako Convention. This is especially necessary for synthetic, plastic-heavy, contaminated, or non-reusable garments that routinely enter African markets under the guise of second-hand clothing. Such classification would strengthen the legal basis for restricting imports, imposing liability on exporters, and preventing the continued externalisation of waste onto African states.

Second, Article 24 of the African Charter on Human and Peoples' Rights should be interpreted and enforced more robustly in the context of textile waste pollution. Communities exposed to contaminated dumping grounds, blocked drainage systems, air pollution from textile burning, and related environmental harm should have access to effective legal remedies. National courts, environmental agencies, and regional human rights bodies must begin to treat severe textile waste pollution as a violation of the right to a satisfactory environment favourable to human dignity and development.

Third, African states, particularly major import markets such as Nigeria and Ghana, should adopt textile-specific Extended Producer Responsibility (EPR) frameworks similar to the developing regulatory model in South Africa. These frameworks should impose binding obligations on

18 The OR Foundation, 'Work' (The Or Foundation) < https://theor.org/work> accessed 31 January 2026.

19 'Greenpeace Africa, Fashion at the Crossroads: Kantamanto and Textile Waste in Ghana' (Greenpeace Africa 2021) <https://www.greenpeace.org/africa/publications/6757/fashion-at-the-crossroads-kantamanto-and-textile-waste-in-ghana/> accessed 31 January 2026.

producers, importers, and distributors operating within the textile and fashion sector. At a minimum, such obligations should include mandatory registration, transparent reporting requirements, financial contributions toward waste management systems, and enforceable compliance mechanisms. Market access should be conditional upon compliance with these regulatory obligations.

Fourth, Producer Responsibility Organisations (PROs) operating within Africa should remain locally accountable and subject to transparent regulatory oversight. Funds generated through EPR schemes should be directed toward collection infrastructure, recycling systems, worker protection, environmental remediation, and safe disposal practices within the communities most affected by textile waste. Regulatory structures must ensure that financial responsibility remains connected to the location where environmental harm occurs.

Finally, the African Continental Free Trade Area (AfCFTA) framework should incorporate stronger environmental safeguards within its trade objectives. Trade liberalisation cannot be pursued at the expense of environmental protection and public health. Sustainable economic development within Africa requires regulatory systems that protect both commerce and ecological integrity. Environmental regulation should therefore be understood not as a barrier to development, but as a necessary condition for equitable and sustainable trade.

4 Conclusion

For decades, the global movement of second-hand clothing into Africa has been framed as charity, trade, or economic opportunity. Yet the environmental realities visible across many African states tell a different story. Flooded drainage systems filled with textile debris, open dumping sites, and the routine burning of synthetic garments reveal the extent to which the continent has become a destination for the excesses of the global fast fashion industry. What is often presented as reuse increasingly functions as waste displacement.

The environmental consequences of fast fashion are not accidental. Waste generation is structurally embedded within the contemporary fashion production model. The critical issue is therefore not whether waste exists, but where its burdens are transferred and who is expected to absorb its consequences. For many years, those consequences have fallen on African communities due in part to weak regulatory enforcement, fragmented waste governance systems, and gaps within international and regional legal frameworks.

However, the law also provides pathways for resistance and reform. Instruments such as the Bamako Convention, the African Charter on Human and Peoples' Rights, and emerging Extended Producer Responsibility frameworks collectively establish important legal principles capable of addressing the crisis. These frameworks recognise that environmental responsibility should not end at the point of production or profit, and that affected communities possess enforceable rights to environmental protection, public health, and human dignity.

The broader question ultimately concerns sovereignty, accountability, and environmental justice. If African states are to exercise meaningful regulatory autonomy within the global economy, then the continued transfer of textile waste to the continent cannot continue. A more effective legal response to fast fashion waste is therefore not merely an environmental necessity, but an assertion of Africa's right to determine the conditions under which trade, sustainability, and development occur.

WASTE OR WEALTH? REFRAMING THE LEGALITY OF SECOND-HAND CLOTHING IN EAST AFRICA

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Abstract

Second-hand clothing (SHC) occupies a contested space at the intersection of international trade law, environmental governance and industrial policy. In East Africa, it is frequently framed either as a circular economic opportunity or as a vehicle for textile waste dumping. These competing narratives rely on sharply divergent waste estimates, ranging from approximately 1–2% of imports to figures exceeding 40%. This paper argues that the contradiction is not primarily empirical but conceptual. It reflects a foundational regulatory gap which is highlighted by the absence of a coherent legal framework capable of distinguishing reusable garments, repairable goods, downcyclable textile inputs, and actual waste within transboundary textile flows. The paper demonstrates that existing trade classifications are quality-blind and that prevailing methodologies conflate distinct waste phenomena such as waste on arrival, unsellable goods at first market entry, and end-of-life disposal, thereby sustaining a misleading binary between waste and opportunity. Using East Africa as its primary analytical focus, the paper recommends a governance architecture to render quality visible, shipment-level traceability mechanisms, and shared-responsibility financing aligned with circular economy principles. It concludes that sustainable governance of SHC depends on definitional clarity, evidentiary integrity, and cross-border allocation of responsibility.

Keywords: *Second-hand clothing, Circular economy, Mitumba, Textile waste*

1 Introduction

In East Africa, second-hand clothing increasingly appears in environmental narratives as waste colonialism or dumping. The controversy is typically framed around competing estimates of how much imported second-hand clothing is in fact waste but the deeper difficulty is not statistical. It reflects the absence of a shared legal vocabulary for classifying second-hand clothing flows. Widely circulated estimates do not converge. A May 2025 report by the Institute of Economic Affairs (IEA) Kenya, commissioned by the Mitumba Consortium Association of Kenya (MCAK), describes waste as roughly 1–2% of each imported bale, based on interviews with importers and industry-commissioned research.[1] On the other hand, investigative and advocacy reporting in the region has historically reported higher proportions of unsellable clothing, often in the 20–50% range, linked to declining garment quality and the rise of cheap synthetics.[2]

Given how vital the mitumba industry has become for livelihoods across East Africa, a blanket ban would be neither suitable nor politically viable. For example, as of January 2026, the Kenyan government has instead ruled out such a prohibition, advocating for a "market balance" approach that allows the trade to coexist alongside the country's growing textile industrialisation agenda[3]. This paper's starting point is that these numbers cannot be interpreted without first resolving what 'waste' means in this context. A bale can contain items unusable on arrival, items wearable but not sellable in a specific market, items sellable after repair, and items worn and only later discarded.[4] Different studies select different waste levels, leading to a regulatory gap where African fashion governance lacks a shared doctrinal framework that distinguishes grades of value within the imported used textile stream. The central challenge for African fashion law is not to arbitrate between harm and opportunity in the second-hand clothing trade, but to reframe the debate altogether by clarifying legal classifications and distributing responsibility along the transnational value chain.

2 Conceptual Definitions of Waste

2.1 Legal definitions

Internationally, the Basel Convention is the key regime associated with transboundary movements of waste. In practice, used textiles occupy an uneasy space. Basel's Annex IX (List B) includes entry B3030, which explicitly lists 'worn clothing' among materials generally considered non-hazardous when not mixed with other wastes.[5] This listing illustrates why disputes arise as actors treat used textiles as secondary material rather than 'waste shipments' requiring strict control.

1 Mitumba Consortium Association of Kenya, *The Quality of Second-Hand Clothes Imported to Kenya and the Associated Environmental Impacts* (Report, November 2023)

2 IEA Kenya, *A Future Look at the Apparel and Footwear Industry in Kenya (2022–2037)* (Report, May 2025).

3 YeiYo Media, *President Ruto Addresses Mitumba Ban and Its Impact on Kenyans* (February 2026)

4 WasteAid, *A Study of Textile Waste at Owino Market, Kampala, 2024* (Report, February 2025)

5 *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* (adopted 22 March 1989, entered into force 5 May 1992) Annex IX (List B), entry B3030.

Significant legal shifts occurred in October 2025 when the revised EU Waste Framework Directive (Directive (EU) 2025/1892) entered into force.[6] Within EU law, waste is defined by the 'intent to discard.' The new directive targets the textile sector by introducing mandatory Extended Producer Responsibility (EPR) schemes, requiring producers to finance collection and sorting. Crucially, the directive stipulates that all separately collected textiles be considered waste until they undergo sorting for reuse.[7] This shift changes the legal character across jurisdictions given that what is 'discarded' in the EU is intended as a commodity in East Africa until it becomes waste again at the far end of its lifecycle.

2.2 Operational definitions in the SHC context

To move beyond the statistical stand-off, fashion law needs a vocabulary distinguishing when textiles become waste. Three operational categories seem to occur

- **a** **Waste on arrival (port-of-entry waste):** Items unfit for any reuse or repair. A 2025 study by the Swedish Environmental Research Institute (IVL) found that rigorous sorting centers, such as those in Lithuania, result in almost zero unusable items arriving in Kenya.[8]
- **b** **Unsellable at first sale (market waste risk):** Wearable items that fail economically due to style mismatch, climate unsuitability, or low durability. Traders in Kenya describe this as a 'lottery'. particularly for low-grade 'fagia' streams.
- **c** **Eventually discarded after circulation (end-of-life shifting):** Items worn for long periods but ultimately discarded in systems lacking recycling infrastructure. This shifts end-of-life costs southward, even if the item was not waste at import.[9]

3 The structural data gap

3.1 Trade Coding Failures: HS 6309 Cannot Measure Quality

Most SHC enters East Africa under HS code 6309 ('worn clothing and other worn articles'). By design, this is a trade classification, not a quality grading system given that it does not encode garment durability, fiber composition, or the proportion of unusable goods in a bale.[10] Because customs data tracks volumes and values rather than quality attributes, the data ecosystem is structurally unable to answer the question of how much is waste with precision.

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6 Directive (EU) 2025/1892 of the European Parliament and of the Council of 10 September 2025 amending Directive 2008/98/EC on waste OJ L1892.

7 Ibid.

8 IVL Swedish Environmental Research Institute, *Sustainability Assessment of Textile Reuse and Recycling In and Outside of Europe* (Report B2497, January 2025).

9 Hållbar Handel & FairWertung, *Sorting Criteria for Second-Hand Clothes to Kenya (2024)*

10 World Customs Organization, Harmonized System Heading 6309 (Worn Clothing and Other Worn Articles).

3.2 Methodological Divergence: Interviews versus Bale Audits

Waste-volume estimates also diverge because of sampling differences:

a Industry surveys often generate low figures (1–2%) when defining waste narrowly as unusable on arrival.

b Bale-content audits and trader-reported unsellable shares report higher fractions (20–50%) for low-grade bales.

c Waste-stream sampling (dumpsites) shows textile presence but cannot back-calculate import proportions since local discards also contribute.

3.3 Political economy incentives

Arguably, the gap persists because different actors gain from different narratives. Export-side sorters benefit from reuse framing to sustain donation flows. Import-side traders benefit from low-waste narratives to protect livelihoods. Meanwhile, environmental groups emphasize high waste fractions to push for upstream production restraint.[11]The system benefits from ambiguity because the export chain functions as a pressure valve for overproduction, externalizing disposal costs.

4 Historical Embedding of Second-Hand Clothing in East Africa

A historical lens is necessary here, as the current regulatory ambiguity cannot be understood without recognising that SHC became structurally embedded through liberalisation, deindustrialisation, and global overproduction which are dynamics that still inform the political incentives driving today's waste narratives.

During the 1960s and 70s, countries across East Africa including Kenya, Uganda, and Tanzania had thriving domestic textile sectors protected by high tariffs. Nigeria, though not an East African state, is referenced here as a comparative illustration: it underwent structurally identical conditions and its trajectory closely mirrors the regional experience. The 1980s and 90s saw the imposition of Structural Adjustment Programmes (SAPs) by the IMF and World Bank. These required the removal of subsidies and the dismantling of trade barriers. Flooded with cheap SHC and new imports from Asia, local manufacturers, already hampered by high energy costs and aging equipment, collapsed.[12]

Initially, SHC was a form of 'aid' or missionary donation. As fast fashion led to massive overproduction in the Global North, SHC transformed into a multi-billion dollar commercial value chain. The trade became a 'pressure valve' for Western overconsumption, while becoming an 'alternative economy' in Africa that completely displaced local manufacturing. Today, the industry

11 Andrew Brooks, *The International Second-Hand Clothing Trade, Sustainability and the Circular Economy* (MDPI 2025).

12 Africa Cotton, Textile and Apparel Centre, 'Deindustrialisation and the Structural Adjustment Era' (Africa CTA Centre Report 2025).

has become an integral part of the economy and a ban would potentially lead to catastrophic economic consequences.[13]

5 SHCs as an Economic Opportunity for East Africa

SHC Second-hand markets can extend garment life and reduce demand for new production. They also enable affordability in high cost-of-living contexts and create micro-entrepreneurship. Contemporary policy-oriented research commissioned by Humana People to People and Sympany frames the SHC industry as generating significant socio-economic activity across value chains, including in Kenya.[14] In Kenya, mitumba employs an estimated 2 million people and contributes at least Ksh 12 billion in annual revenue. It provides high-quality, durable garments to the poorest 40% of the population, subsidizing the cost of living in an era of eroded purchasing power. Further, the 2025 Economic Survey in Kenya revealed that 91.5% of *mitumba* shoppers spend less than 1,000 KES quarterly, highlighting its necessity for low-income households.[15]

The picture is broadly consistent across the wider East African region. In Uganda, the second-hand clothing market, known locally as *mivumba*, is deeply embedded in urban and peri-urban commerce, with Owino Market in Kampala functioning as one of the continent's largest SHC trading hubs and a primary source of affordable clothing for low-income households.[16] Tanzania's *mitumba* trade similarly sustains large numbers of informal traders and constitutes the primary clothing source for low-income households in Dar es Salaam and beyond, with used textile imports recorded consistently under HS 6309 in EAC trade data.[17] Rwanda offers a distinct and instructive counterpoint: following the East African Community's 2016 decision to raise tariffs on second-hand clothing imports as part of a textile industrialisation drive, Rwanda imposed substantially higher levies, leading to a dramatic collapse in formal SHC imports and a threatened suspension from the African Growth and Opportunity Act (AGOA) by the United States government in 2018. This illustrates both the depth of regional import dependency and the acute political economic tensions that any regulatory intervention generates.[18] Ethiopia, though not a full EAC member, similarly relies on second-hand clothing imports alongside its growing industrial garment sector, and has been

13 Ibid

14 Oxford Economics, *The Socioeconomic Impact of Second-Hand Clothes: Final Report* (Humana People to People/USAID/Other Sponsors, 2024)

15 *Mitumba imports surge, wear down textile revival strategy* (Business Daily Africa, 13 September 2024)

16 WasteAid, *A Study of Textile Waste at Owino Market, Kampala, 2024* (Report, February 2025); Oxford Economics, *The Socioeconomic Impact of Second-Hand Clothes: Final Report* (2024), which includes Uganda-specific findings on the mivumba sector.

17 East African Community Secretariat, *EAC Trade and Investment Report 2023* (EAC Secretariat 2024), recording HS 6309 import flows across partner states including Tanzania.

18 Reuters, 'Rwanda sticks with used-clothing ban despite US trade threat' (24 June 2018); United States International Trade Commission, *The Impact of the AGOA Tariff Preference on U.S. Trade with Sub-Saharan Africa* (USITC Publication 4819, 2018).

identified as a case study in the complex coexistence of informal SHC flows with state-led textile industrialisation agendas.[19]

The regulatory error lies in construing opportunity and environmental harm as mutually exclusive categories. In practice, the mitumba trade functions simultaneously as a significant source of employment and economic access, while also generating environmental externalities associated with low-grade and unusable textile streams. The task of law, therefore, is not to privilege one characterisation over the other, but to construct a coherent governance framework that safeguards legitimate circular economic value while systematically identifying, allocating, and financing the costs arising from actual waste and substandard imports.

6 Recommendations

6.1 Classification

A foundational reform would be the adoption of a four-tier classification model that introduces doctrinal clarity into the regulation of second-hand clothing imports. Rather than treating all imported used textiles as a homogenous category, the law should distinguish between reusable apparel goods, repairable or repurposable garments, downcyclable textile inputs such as rags or insulation materials, and textile waste that is soiled, contaminated, or otherwise unsuitable for circulation and therefore rejectable at entry. The principal advantage of such a model lies in its ability to prevent conceptual overreach. It preserves legitimate circular economic value within the first three tiers while clearly identifying the fourth tier as subject to stricter control or refusal.

This approach aligns with emerging international efforts to differentiate used textiles from textile waste, including UNEP's 2025 Circularity and Used Textile Trade Project in Nairobi, which explicitly seeks to develop criteria for distinguishing suitable used textiles from waste in transboundary trade contexts.[20] It is also consistent with discussions under the Basel Convention regarding the classification of used textiles and textile waste.

6.2 Measurement

Closing the data gap requires institutionalising measurement rather than relying on stakeholder testimony. East African states should prioritise randomised bale audits at ports of entry, port-of-entry quality reporting as a condition of customs clearance, and national textile flow mapping to track garments from import through circulation to disposal. Such reforms respond directly to documented methodological divergence in existing studies, which often rely on interviews rather than systematic bale inspections.[21]

19 International Labour Organization, *Garment Industry in Ethiopia: Transition to Formality and Industrial Policy Dynamics* (ILO Report, Geneva, 2023).

20 United Nations Environment Programme, 'Circularity and Used Textile Trade Project' (2025)

21 Judit Kiss, 'Mitumba: Second-Hand Clothing Industry in Kenya: A Blessing or a Curse' (2024) 25 Hungarian Journal of African Studies 25.

By generating statistically defensible data on grade distribution and waste on arrival, regulators would be able to distinguish between immediate unusable waste and downstream market failure. This approach is consistent with broader calls in academic and policy literature for evidence-based differentiation between reusable clothing and textile waste streams.[22]

6.3 Trade Coding and Customs Classification

The persistence of ambiguity is reinforced by the limitations of HS Code 6309, which classifies "worn clothing and other worn articles" without regard to fibre composition, durability, or grade.[23] Governments should therefore advocate for granular sub-classifications for used textiles, including fibre composition (natural versus synthetic blends) and grade declarations aligned to regulatory tiers. Critically, East African states need not await consensus at the World Customs Organization to begin this process. States may adopt national sub-classifications or tariff schedule annotations that operationalise quality tiers domestically as an interim measure pending international harmonisation; several EAC members already maintain nationally specific tariff schedules that could accommodate such annotations without violating WCO obligations.[24]

Recent policy analysis by the Cambridge Centre for Resilience and Sustainable Development has highlighted the inadequacy of existing textile trade codes for sustainability governance and called for reform to make textile quality and end-use distinctions more transparent.[25] Reforming or supplementing HS reporting would not eliminate waste, but it would reduce the structural invisibility that currently undermines regulatory oversight.

6.4 Traceability

While item-level tracing is impractical within predominantly informal markets, shipment-level traceability linked to bale identifiers and exporter certifications is a defensible regulatory tool.[26]Such a model would require exporters to declare grade distributions and sorting outcomes prior to shipment, with documentation linked to customs inspection systems at entry points.

This approach aligns with broader regulatory developments under the EU Ecodesign for Sustainable Products Regulation (ESPR), whose 2025–2030 Working Plan prioritises textiles for Digital Product Passports. However, the legal value of traceability lies not in digitisation alone, but in linking documentation to enforceable standards and sanctions for misclassification.

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22 Andrew Brooks, *The International Second-Hand Clothing Trade, Sustainability and the Circular Economy* (MDPI 2025).

23 World Customs Organization, Harmonized System Heading 6309 (Worn Clothing and Other Worn Articles).

24 The WCO Harmonized System permits member states to introduce national sub-headings at the 7–8 digit level for statistical and regulatory purposes, provided they remain consistent with the 6-digit international nomenclature: World Customs Organization, *Harmonized System Convention*, Art. 3(3) (WCO, Brussels, 1983, as amended).

25 Cambridge Centre for Resilience and Sustainable Development, 'Reforming Textile Trade Code for a Sustainable Future' (Policy Briefing, January 2025)

26 Sokame, Wamalwa and Tonnang, 'Mobile-Based Digital Traceability in Informal Markets' (2023) International Journal of Supply Chain Management.

6.5 Financing

Across all five recommendation areas, implementation would realistically fall to a coordinated set of state actors: customs authorities and port health regulators for bale inspection and quality reporting; national standards agencies for certifying grade declarations and auditing sorting documentation; and trade ministries for coordination within the EAC and with the African Union. This division of institutional responsibility is not a hypothetical construct — each of these agencies already exercises relevant powers; what is missing is a shared regulatory framework that activates them coherently across the textile value chain.

Effective governance requires financing mechanisms that allocate responsibility across borders. The African Union's Continental Circular Economy Action Plan (2024–2034) emphasises coordinated continental action to transform waste into resources and strengthen circular systems.[27] In the context of second-hand clothing, this implies investment in sorting hubs, repair enterprises, and safe disposal infrastructure to prevent environmental leakage.

Evidence from Ghana and Kenya demonstrates that textile waste burdens often fall on informal waste systems and marginalised communities, reinforcing the need for resource-backed governance rather than declaratory standards alone. A "follow-the-product" financing model, where extended producer responsibility contributions are linked to the destinations of textile flows, would align economic incentives with environmental accountability.

7 Conclusion

Second-hand clothing in East Africa cannot be reduced to either a dumping crisis or a development success story. The persistence of the binary obscures the real regulatory problem: the absence of doctrinal clarity, reliable measurement, and coordinated responsibility across borders. Without a shared legal vocabulary distinguishing reusable goods from repairable streams, downcyclable inputs, and true waste, governance remains reactive and politically charged rather than evidence-based. The definitional ambiguity embedded in trade codes, data collection practices, and cross-jurisdictional waste classifications sustains the controversy more than any single percentage ever could.

Reframing the legality of second-hand clothing therefore requires moving beyond prohibition debates toward institutional design. A governance framework that renders quality visible, formalises measurement, integrates shipment-level traceability, and aligns financing with transboundary textile flows offers a path that preserves legitimate circular value while addressing environmental externalities. The future of African fashion law lies not in choosing between waste and wealth, but in constructing the regulatory architecture that makes the distinction legally intelligible and economically accountable.

[27] African Union, *Continental Circular Economy Action Plan (2024–2034)* (2025).

AI, AESTHETICS & AGENCY: A SOCIAL POLICY FRAMEWORK FOR ETHICAL AI GOVERNANCE IN AFRICAN FASHION ECOSYSTEMS

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Abstract

Artificial intelligence (AI) is rapidly transforming the global fashion industry, reshaping design, marketing, consumer engagement, and supply chain management. In Africa, where fashion production is increasingly driven by digital platforms and informal creative economies, AI presents both unprecedented opportunities and significant regulatory challenges. This article argues that existing legal discourse has focused disproportionately on copyright and intellectual property, overlooking the broader governance concerns arising from AI's integration into African fashion ecosystems. Drawing on the African Union Data Policy Framework, the African Union Convention on Cyber Security and Personal Data Protection, and relevant international governance frameworks, the article examines the implications of AI for creative labour, algorithmic visibility, cultural data extraction, psychological identity formation, and digital sovereignty. It contends that AI governance in African fashion must move beyond narrow questions of ownership to address structural inequalities embedded within digital infrastructures and algorithmic systems. The article proposes a four-pillar governance framework centred on cultural data equity, creative labour protection, algorithmic accountability, and psychological sovereignty as a foundation for ethical and inclusive AI integration. It concludes that the future of African fashion law depends not only on protecting creative outputs but also on safeguarding the agency, cultural dignity, and digital autonomy of African designers and communities in an increasingly algorithmic fashion economy.

Keywords: *Artificial intelligence; Fashion law; Data governance; Algorithmic accountability; Digital sovereignty.*

1 Introduction

Artificial Intelligence is no longer merely a productivity tool in fashion; it is becoming infrastructure. Generative systems assist in textile design, styling, trend forecasting, copywriting, and consumer analytics.[1] As AI integrates into global fashion workflows, it restructures how value is created and distributed. African creatives are increasingly adopting AI through mobile-first platforms and informal economies.[2] AI lowers barriers to entry by reducing technical thresholds and production costs. Yet it also escalates saturation, shifting value from production toward curation and algorithmic visibility.[3]

The legal question is therefore not whether AI will be adopted in African fashion, but under what governance conditions. Absent intervention, AI risks reproducing extractive digital dynamics. Yilmaz characterises digital colonialism as the unequal power relations embedded within digital infrastructures.[4] In fashion, this manifests through the scraping and monetisation of African cultural datasets, including textile archives, runway imagery, indigenous motifs, and street-style content circulated through digital platforms, often without equitable return.

The African Union's Data Policy Framework recognises the need for equitable data value chains and African ownership of digital resources.[5] However, fashion law discourse has not sufficiently translated these macro-level data governance principles into creative industry regulation. AI governance in African fashion must therefore expand beyond copyright disputes to address structural political economy concerns. To trace these implications more clearly, this paper moves from questions of education and cognitive formation to labour priority, cultural data extraction, identity formation, and finally, toward a proposed governance framework for ethical AI integration within African fashion ecosystems.

2 Education, Cognitive Delegation and Creative Formation

Public debates on generative AI frequently focus on academic cheating. This framing obscures a deeper transformation. Education performs two critical functions: cultivating critical citizens and preparing workers. Generative AI disrupts both. When generative systems routinely summarise, generate and refine ideas, the risk is not only efficiency but epistemic passivity. Critical discernment (the ability to interrogate assumptions, bias and context) becomes even more essential in an AI-mediated environment. An education system that fails to cultivate critical AI literacy increases collective vulnerability.

1 Nantheera Anantrasirichai and David Bull, 'Artificial Intelligence in the Creative Industries: A Review' (2021) 55(1) Artificial Intelligence Review 589–656. https://doi.org/10.1007/s10462-021-10039-7

2 Albert Ato Kwamena Koomson, 'AI's Influence on African Creativity in 2026 and Beyond' (2025) SSRN Electronic Journal 1–5. https://dx.doi.org/10.2139/ssrn.5989657

3 Ibid.

4 Özgür Yilmaz, 'The Origins of Colonialism' (2025) 16 *İmgelem* 321–344. https://doi.org/10.53791/imgelem.1636282

5 African Union, *Data Policy Framework* (African Union Commission 2022).

Yet the challenge is not whether AI should be resisted, but whether creatives are being equipped to engage it critically, ethically and contextually. This tension is particularly salient for African fashion education. If design institutions prohibit AI, they risk graduating students unprepared for hybrid creative-technologist roles. If they integrate AI uncritically, they risk producing designers who replicate aesthetic templates drawn from dominant global datasets.

Diffusion of innovation theory suggests that technology adoption depends on contextual integration and perceived usefulness.[6] African fashion education must therefore deliberately cultivate critical AI literacy, bias detection, contextual storytelling, and aesthetic intentionality. The deeper question is not technological but human: which distinctly human capacities should African fashion systems deliberately cultivate alongside AI, rather than outsource to it?

3 Algorithmic Visibility and Creative Labour Precarity

AI-driven algorithms increasingly mediate visibility within digital fashion ecosystems. Ranking systems determine which brands are amplified or marginalized. African designers already navigate limited funding and global platform dependency. AI-driven discoverability mechanisms may intensify precarity by privileging those who understand optimisation.

As content volume increases through generative tools, value shifts from production to curation and visibility.[7] This risks producing a two-tier creative economy in which designers fluent in AI-assisted content optimization are repeatedly surface through Instagram or TikTok recommendation algorithms, while traditional artisans producing culturally rich work without digital optimization tools remain comparatively invisible online. This is not merely market competition; it is a labour equity issue.

The African Union's Convention on Cyber Security and Personal Data Protection underscores the importance of protecting digital ecosystems from inequitable practices.[8] While not fashion-specific, its principles highlight the need for regulatory oversight where digital infrastructures shape economic opportunity.

African fashion law should therefore consider:

- algorithmic transparency requirements for platforms;
- bias auditing of AI styling tools;
- public reporting standards on ranking criteria.

Without such measures, AI may entrench structural inequality under technological neutrality.

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6 Fred D Davis, 'Perceived Usefulness, Perceived Ease of Use, and User Acceptance of Information Technology' (1989) 13(3) MIS Quarterly 319–340. https://doi.org/10.2307/249008

7 Koomson (n2).

8 African Union, Convention on Cyber Security and Personal Data Protection (adopted 27 June 2014, entered into force 8 June 2023).

4 Cultural Data Extraction and Sovereignty

Generative AI systems depend on extensive training datasets. In fashion, these include textile motifs, silhouette libraries, and visual archives. Weak IP enforcement across several African jurisdictions complicates ownership claims over AI-generated outputs and training inputs.[9] The risk of style appropriation and cultural plagiarism increases in the absence of structured licensing regimes. The AU Data Policy Framework emphasises equitable benefit-sharing within data value chains.[10] This principle should extend to fashion datasets. Community-based licensing models, collective intellectual property recognition, and royalty-sharing mechanisms are viable regulatory tools.

5 Fashion Psychology and Algorithmic Identity

Fashion functions as psychological architecture. It shapes identity formation, belonging, and self-concept.[11] Research demonstrates that dress influences both self-perception and social evaluation.[12] AI systems trained predominantly on Western aesthetic norms risk reinforcing Eurocentric beauty standards and stylistic hierarchies. If generative tools privilege certain silhouettes, skin tones, and visual codes, subtle psychosocial effects may follow:

a Internalised aesthetic hierarchies;

b Aspirational identity drift;

c Erosion of indigenous fashion codes.

Algorithmic aesthetics influence what is deemed 'premium' or 'global'. When African designers adapt outputs to align with foreign dataset biases, aesthetic homogenisation may occur. From a governance perspective, this raises a novel question: should AI systems deployed within African fashion markets undergo cultural representational audits?

Psychological sovereignty (the capacity of communities to see themselves reflected authentically) is a legitimate regulatory concern. In practice, this could translate into cultural impact assessments, representational auditing standards for generative systems, or disclosure obligations regarding the datasets used to train fashion-oriented AI tools.

6 A Four-Pillar Governance Framework

A social policy–informed approach to AI in African fashion ecosystems should include four pillars

9 Koomson (n2).
10 AU Data Policy Framework 2022.
11 Mukarugwiza Xavera and Joyzy Pius Egunjobi, 'Exploring the Relationship Between Fashion Choices and Self-Identity among Female Students at Marist International University College' (2025) 6(6) International Journal of Research Publication and Reviews 10281–86. https://doi.org/10.55248/gengpi.6.0625.22125
12 C Jansson-Boyd, 'Fashion, Self and Identity' in Carolyn Mair (ed), *The Psychology of Fashion* (1st edn, Routledge 2018), 55–74.

6.1 Cultural Data Equity

a Dataset transparency requirements;

b Community consent and licensing frameworks;

c Royalty-sharing mechanisms for traditional motifs.

6.2 Creative Labour Protection

a AI literacy integration within fashion curricula;

b Public investment in hybrid creative-technologist training;

c Algorithmic transparency standards.

6.3 Algorithmic Accountability

a Bias testing requirements for skin tone and body diversity;

b Independent auditing mechanisms for generative tools;

c Public reporting obligations.

6.4 Psychological Sovereignty

a Cultural impact assessments;

b Incentives for locally trained AI systems;

c Protections for indigenous aesthetic ecosystems.

This framework reframes AI regulation as legal, economic, cultural, and psychological.

7 Conclusion: Governing Agency in an Algorithmic Age

AI is neither inherently emancipatory nor inherently extractive. It reflects governance choices. African fashion law stands at a foundational moment. As AI becomes infrastructural, regulatory inertia risks embedding extractive dynamics. Proactive governance, however, could position Africa as a global leader in culturally grounded AI integration. Protecting garments without protecting agency would be insufficient. The future of African fashion law must therefore encompass data sovereignty, labour equity, cognitive resilience, psychological integrity and cultural dignity. The question is not whether AI will shape African fashion. It is whether African fashion will shape AI.

Regulating Nigeria's Stones: An Appraisal of Nigeria's Extractive Legal Framework and Global Supply Chain Ethics

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Abstract

Fashion companies face intensifying regulatory and reputational pressures to ensure ethical supply chains, and gemstone sourcing from informal and conflict-affected contexts presents acute compliance challenges. This article examines Nigeria—a country with substantial gemstone reserves including gold, sapphire, and tourmaline, yet limited integration into ethical fashion supply chains. It analyses the intersection between governance failures in Nigeria's extractive sector and the due diligence obligations imposed on fashion companies. Drawing on the European Union Corporate Sustainability Due Diligence Directive (2024), the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, and other international frameworks, the article demonstrates that Nigerian gemstones, predominantly extracted through informal artisanal mining characterised by child labour, environmental degradation, and conflict financing risks, trigger heightened due diligence obligations. An analysis of the Minerals and Mining Act 2007 reveals structural barriers to the formalisation required for integration into ethical global supply chains. The article proposes reform pathways, including adapted artisanal licensing, traceability systems, the elimination of child labour, and enhanced transparency mechanisms. It argues that legal innovation within Nigeria's extractive governance framework is essential to positioning the country's gemstone sector as a credible and sustainable participant in twenty-first-century ethical fashion supply chains.

Keywords: *Fashion law, Ethical supply chains, Mines and minerals extractions, Gemstone sourcing, Extractive governance*

1 Introduction

Nigeria's geological wealth is the foundation upon which a fashion industry supply chain could, in principle, be built. Her soil contains an estimated $700 billion in commercially viable mineral reserves, among them gold, sapphire, tourmaline, lithium, rare-earth metals and other raw materials that underpin some of the most coveted products in the global luxury and fashion industries. Yet this promise sits in stark contrast to reality: the sector contributes under 1% of the national GDP, a diagnostic marker of what economists have long called the resource curse, the paradox in which natural resource wealth yields mismanagement and underdevelopment, rather than wealth.

For luxury brands and the ethically conscious consumer whose purchasing decisions increasingly shape the industry, the origins of materials matter. The global supply chain is now governed by an expanding architecture of due diligence obligations including the EU Corporate Sustainability Due Diligence Directive (CSDDD) and the OECD Guidance for Responsible Mineral Supply Chains, that treat failures to prohibit forced labour imports as actionable trade violations.[1] Nigeria's extractive sector, characterised by chronic informality and an estimated 95% of activities conducted by artisanal and small-scale miners (ASM) operating outside formal oversight, is structurally misaligned with every one of these requirements.

The consequences are compounded by a security crisis. Between 2019 and 2025, dozens of violent incidents linked to illegal extraction resulted in hundreds of deaths, particularly in gold and lithium-rich regions. Mining sites have become nodes in conflict-financing networks and the opacity of informal supply chains means that a gemstone purchased in a European boutique may carry within it a chain of violence and dispossession entirely invisible to the buyer. This article scrutinises the Minerals and Mining Act (MMA), 2007 and associated regulations through legal analysis, with particular attention to the framework's adequacy against the demands of contemporary global supply chain ethics.[2]

2 The Nigerian Statutory Regime

2.1 Constitutional Foundations and the Exclusive List

The legal bedrock of mineral governance in Nigeria is the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which vests the entire property and control of all mineral resources in the Government of the Federation, pursuant to section 44(3) and Item 39 of the Exclusive Legislative List.[3]

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1 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L, 5.7.2024; Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L, 5.7.2024.

2 Minerals and Mining Act (MMA) 2007.

3 Cap. C23, LFN 2004, s 44(3) and Item 39, Part I of the Second Schedule.

This centralised model creates a structural tension. While state and local governments bear the immediate social, environmental and public health costs of mining, they lack the legislative competence to regulate it. Crucially, because mining sits on the Exclusive List, states cannot advance their own legislation on mine closures, environmental standards or community protection, even where federal enforcement has demonstrably failed (Adelana, 2023). This "lopsided federalism" is not only a constitutional curiosity but births a structural barrier to the community-level oversight that responsible mining demands.

2.2 The Nigerian Minerals and Mining Act (MMA) 2007

The MMA 2007 is the principal statute, designed to promote private investment through a structured licensing regime.[4] The Act establishes several classes of title:

a Reconnaissance Permits: Non-exclusive rights to prospect without sub-surface techniques.[5]

b Exploration Licences: Exclusive rights to explore within an area of up to 200 square kilometres.[6]

c Mining Leases: Rights to extract minerals for 25 years.[7]

d Small-scale Mining Leases: For operations between 5 acres and 3 square kilometres using low-level technology.[8]

The framework appears designed for industrialised, large-scale actors. Small-scale and artisanal miners—who account for over 90% of solid mineral extraction nationally—find requirements to demonstrate technical competence and financial capability through formal certificates and bank statements to be insurmountable.[9] The statutory effect is to exclude the overwhelming majority of operators from the regime nominally designed to govern them, driving them into illegality as a structural outcome rather than a moral failure. Section 154, which criminalises illegal mining with penalties of up to N5 million or five-years imprisonment, penalises the very informality that the Act's own design produces.[10]

2.3 The Nigerian Minerals and Mining Regulations 2011

The 2011 Regulations provide procedural substance to the MMA's framework, establishing requirements for mine safety and environmental management.[11] Regulation 151 requires protective

4 MMA 2007.

5 Ibid, s 56.

6 Ibid, s 59.

7 Ibid, s 65.

8 Ibid, s 90.

9 Olajide Adelana, 'Abandoned Mines: A Danger to Communities Across Nigeria' Results for Development (January 2023). https://r4d.org/wp-content/uploads/R4D-Leveraging-Transparency-to-Reduce-Corruption-Abandoned-Mines-in-Nigeria.pdf accessed 10 January 2026.

10 MMA 2007, s 154.

11 Nigerian Minerals and Mining Regulations (NMMR) 2011.

equipment for worker,[12] and Regulation 184 establishes the Environmental Protection and Rehabilitation Fund (EPRF) to guarantee the environmental obligations of mineral titleholders.[13] On paper, this is a credible environmental framework but in practice, compliance in the ASM sector is negligible, most artisanal miners lack basic protective gear, and the EPRF itself is not fully operational. As of 2019, only 32 mine sites had been reclaimed under the MMA regime against a ministerial target of 100 annually. While Nigeria carried an estimated 1,200 identified abandoned mining sites whose remediation obligations remain effectively unenforced.[14]

2.4 The Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007 and the Transparency Architecture

The Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007 established the Nigeria Extractive Industries Transparency Initiative as Nigeria's national chapter of the global Extractive Industries Transparency Initiative (EITI), mandating the reconciliation and publication of financial flows between extractive companies and government agencies.[15] NEITI's audit reports provide the most empirically grounded picture of the gap between stated legal obligations and actual practice.

The NEITI 2023 solid minerals industry audit report disclosed that the sector contributed only N401 billion in revenue – accounting for 0.72% of GDP.[16] NEITI's earlier audit covering 2007 to 2010 found that only 30% of companies holding mining titles were engaged in active quarrying, mining, or exploration, a finding that exposes the gap between licensed rights and actual regulatory oversight.[17] More recently, NEITI's 2025 policy brief on illicit financial flows identified that licences are frequently held through shell companies and layered corporate structures that obscure beneficial ownership—enabling politically exposed persons and criminal actors to conceal control over mining operations, facilitating money laundering and regulatory capture.[18] NEITI estimates that Nigeria loses approximately $9 billion annually to illegal mining and gold smuggling alone.[19] Despite the strength of NEITI's diagnostic function, it lacks direct enforcement powers; its findings trigger no mandatory prosecutorial referral. This gap between diagnosis and remedy is a significant institutional failure that legal reform should address.

12 Ibid, r 151.

13 Ibid, r 184

14 Adelana (n9).

15 Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007, s 1.

16 NEITI, *2023 Solid Minerals Industry Report* (NEITI 2023). https://ngfrepository.org.ng:8443/jspui/bitstream/123456789/6661/1/NEITI-SMA-REPORT-2023%20%281%29.pdf accessed 11 January 2026.

17 NEITI, *An Independent Report of Physical and Process Audit of Nigeria's Solid Minerals Industry 2007–2010* (NEITI 2011). https://nairametrics.com/wp-content/uploads/2013/01/Neiti-non-core-eiti-reportphysicalprocess-auditneiti-report.pdf accessed 11 January 2026.

18 NEITI, *Stemming the Scourge of Illicit Financial Flows in Nigeria's Mining Sector* (NEITI 2025).

19 Ibid.

3 Environmental Toxicity and the Failure of Mine Restoration

The environmental legacy of Nigeria's extractive sector constitutes a public health emergency that the legal framework has consistently failed to address. Mining activities cause air pollution through particulate emissions, water contamination through acid mine drainage (AMD), soil degradation, vegetation loss, and radiation exposure–with long-term effects that persist across generations.[20] The solid minerals sector is recognised as the second-largest source of environmental pollution in Nigeria after crude oil. When sulphide-containing rock waste is exposed to air and water, it oxidises to produce sulphuric acid and releases heavy metal complexes, including copper, lead, arsenic, and cadmium, into surrounding water sources and soil, a process whose effects are neither biodegradable nor reversible.[21]

These are not abstract risks. Field research in Ebonyi State found lead concentrations of 408 parts per million in water samples from artisanal mining communities –compared to the US EPA limit of 0.015 ppm –with copper and zinc concentrations in surrounding agricultural soil measuring at levels multiple times above safe thresholds (Adelana, 2023). In Ijeshaland, South-Western Nigeria, a recent study on gold rewashing at abandoned mine sites found significant cyanide and heavy metal contamination, including Lead concentrations exceeding WHO maximum limits, persisting because no restoration occurred. The contamination of the Osun River, a UNESCO World Heritage Site, by mining-driven heavy metals further illustrates the cross-sectoral reach of this failure.

These outcomes reflect an explicit regulatory failure. Neither the EPRF under Regulation 184 nor the progressive reclamation requirement of the MMA, 2007 has produced meaningful restoration: the fund is non-operational, and state governments who might otherwise act are constitutionally excluded from the regulatory domain. Critically, a gap also exists between occupational safety provisions focused on licensed workers and the absence of any enforceable community health framework covering off-site residents. Section 17(2d) of the Constitution provides that a community's natural resources must not be exploited except for the good of the community, yet no operative legal mechanism gives communities standing to enforce this provision against mining-related harm. [22] This legal silence provides structural features that insulates operators from accountability.

4 The Human Capital Crisis: Child Labour in the Extractive Sector

Field assessments document children as young as six years old working in lithium and gemstone mines for wages reportedly below $1 daily. In Kaduna and other northern states, pre-teen and teenage boys regularly perform the heavy labour of digging and hauling ore, tasks involving sustained exposure to lead-contaminated dust. Lead exposure in childhood causes cognitive

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20 Odoh C Kenneth, Akpi Uchenna Kalu, and Anyah Francis, 'Environmental Impacts of Mineral Exploration in Nigeria and their Phytoremediation Strategies for Sustainable Ecosystem' (2017) 17(3) Global Journal of Science Frontier Research: Environment and Earth Science 19–28.

21 Ibid.

22 Cap. C23, LFN 2004, s 17(2)(d).

impairment, stunted development, learning disabilities and behavioural disorders, many of which are irreversible.[23]

Nigeria's legislation on child labour comprises three instruments: the Child Rights Act (CRA), 2003 which explicitly prohibits exploitative labour under section 28;[24] the Labour Act, 1971 setting minimum working ages at 12 for light work and 18 for hazardous work under section 59;[25] and the MMA, 2007 which is entirely silent on child labour.[26] This silence and lack of enforcement is practically permission to continue unregulated. Lease conditions contain no child labour prohibition and enforcement authorities have no mining-specific mandate. The Labour Act's definition of "hazardous work" also predates modern understanding of mining-specific risks, lacking any reference to heavy metal exposure.

Comparative frameworks demonstrate that specificity is achievable. South Africa's Mine Health and Safety Act, 1996 explicitly prohibits persons under 18 from working underground,[27] while Ghana's Children's Act, 1998 lists mining among prohibited hazardous occupations.[28] Nigeria's framework requires the same targeted anchoring within the MMA itself.

The international supply chain consequences are now acutely concrete. The EU CSDDD requires companies to identify, prevent, and mitigate child labour in supply chains.[29] More pressingly, in 2026, the United States Trade Representative (USTR) made investigations into Nigeria and 59 other economies for failure to prohibit the importation of goods produced with forced labour (USTR, 2026) and found that these nations had failed to meet the required standards.[30] Consequently, the USTR proposed additional tariffs of between 10% and 12.5% on covered goods, including minerals, ores, and base metals.[31] Nigerian gemstones lacking verifiable labour-rights provenance now face not just reputational risk but an imminent trade barrier from the world's largest consumer market.

23 Casey Bartrem and others 'Climate Change, Conflict, and Resource Extraction: Analyses of Nigerian Artisanal Mining Communities and Ominous Global Trends' (2022) 88(1) Annals of Global Health 17. https://doi.org/10.5334/aogh.3547

24 CRA 2003, s 28

25 Cap. L1, LFN 2004, s 59.

26 MMA 2007.

27 Mine Health and Safety Act 1996, s 45 (SA).

28 Children's Act 1998, sch 2 (GH).

29 Directive (EU) 2024/1760, arts 7 & 8.

30 USTR, 'USTR Initiates 60 Section 301 Investigations Relating to Failures to Take Action on Forced Labour' Office of the USTR (Washington, 12 March 2026). https://ustr.gov/about/policy-offices/press-office/press-releases/2026/march/ustr-initiates-60-section-301-investigations-relating-failures-take-action-forced-labor accessed 9 June 2026.

31 USTR, 'USTR Makes Findings and Proposes Action in 60 Section 301 Investigations Relating to Failures to Take Action on Trade in Forced Labor Goods' Office of the USTR (Washington, 2 June 2026). https://ustr.gov/about/policy-offices/press-office/press-releases/2026/june/ustr-makes-findings-and-proposes-action-60-section-301-investigations-relating-failures-take-action accessed 9 June 2026.

5 Integration into Global Value Chains

Nigeria's position in the global value chain is almost exclusively at the extractive base, that is, providing raw, rough materials for processing elsewhere. Economic upgrading requires movement along three pathways: process upgrading through mechanisation; functional upgrading through domestic beneficiation (cutting and polishing); and chain upgrading into jewellery manufacturing and branding.[32] Nigeria has made negligible progress on any of these fronts. Beneficiation hubs in Thailand, India, and China dominate the midstream, adding between 50% and 150% in value to a rough stone. This structural positioning reinforces Nigeria's exclusion from ethical luxury value chains: without domestic processing capacity, there is no chain of custody, and without chain of custody, there is no compliance with the OECD Guidance or EU Regulation 2017/821.

NEITI estimates annual losses of approximately $9 billion to illegal mining and gold smuggling, revenue that, properly captured, could fund the beneficiation infrastructure that would make GVC integration possible.

6 The Deadly Intersection: Illegal Mining, Banditry, and Terrorism

Evidence indicates that mineral extraction has increasingly become intertwined with violent non-state actor financing. Security research identifies a pattern whereby armed groups establish territorial control over extractive sites, creating de facto governance zones. In the North West and North Central zones, operators have been known to systematically attack and displace local populations from resource-rich lands, enabling illegal actors to take over sites. These incidents are frequently under-reported due to lack of journalistic coverage and political bias, which obscures the severity of what is, in effect, resource-driven terrorism.

The involvement of foreign nationals—most notably from Asia—in illegal networks points to a regulatory failure with transnational dimensions. NEITI and ECOWAS data indicate that minerals extracted from illegal pits are routinely blended with legally sourced minerals, making verification extremely difficult and creating a direct channel for laundering illicit flows into formal supply chains. The smuggling of gold to international hubs such as Dubai illustrates how local conflict integrates into a global illicit financial architecture. ECOWAS data further indicates that Nigeria loses approximately 91% of its mining revenue to illicit flows.

From a legal governance perspective, this implicates specific failures. For instance, section 154 of the MMA 2007 criminalises illegal mining but enforcement in remote areas is severely constrained by resource limitations and corruption vulnerabilities.[33] Also, the Nigeria's Customs Service (NSC) Act, 2023 governs mineral export controls, but systematic border evasion through porous frontiers with Niger, Benin, and Cameroon continues.[34] Furthermore, while the UN Convention against

[32] Isabelle Ramdoo, 'Extractives and Global Value Chains: Where Does Africa Stand?' (2015) 4(6) GREAT Insights 1–5.

[33] MMA 2007, s 154.

[34] NSC Act 2023.

Transnational Organized Crime, 2000 provides a framework for international cooperation, its application to illicit mining networks remains underutilised.[35]

This conflict nexus carries direct implications for fashion supply chain compliance. EU Regulation 2017/821 on conflict minerals, while targeting tin, tantalum, tungsten, and gold, establishes principles applicable to gemstones: companies must conduct supply chain due diligence and avoid sourcing from conflict-affected areas absent robust risk mitigation.[36] Nigerian gemstones from Zamfara, Kaduna, and Niger States would trigger these requirements. Establishing traceability systems capable of distinguishing conflict-free production is simultaneously a human rights imperative and a commercial necessity.

7 Recommendations for Institutional and Legal Re-ordering

The following reforms address the systemic misalignment identified throughout this article.

7.1 Tailored Artisanal Mining Formalisation Framework:

The MMA's Small-scale Mining Lease effectively excludes the majority of operators. A distinct Artisanal Mining Permit regime should provide: literacy-appropriate application processes with reduced fees and cooperative licensing; simplified Environmental Management Plans in place of full Environmental Impact Assessments; government-supported technical training tied to licensing; and designated Artisanal Mining Zones similar to [but more functional than] the DRC's Zones d'Exploitation Artisanale model, concentrating support services and reducing conflict with industrial leaseholders.

7.2 Community Health and Environmental Liability Framework:

Mining leaseholders should be required to fund baseline health assessments of surrounding communities prior to operations, with mandatory periodic assessments throughout the mine's life. Critically, statute must clarify that affected community members possess enforceable rights to compensation for documented health impacts. Section 17(2d) of the Constitution which already provides that resources must not be exploited except for the good of the community should be given operative effect through specific legislative implementation.[37] Phytoremediation techniques, demonstrated to be effective and cost-efficient for heavy metal contamination, should be recognised in statute as an acceptable reclamation method for artisanal mining zones, lowering the cost barrier to compliance.

35 United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

36 Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas [2017] OJ L130/1, arts 4–6.

37 Cap. C23, LFN 2004, S 17(2)(d).

7.3 Mandatory Human Rights and Labour Clauses:

Explicit child labour prohibitions and community health protections must be incorporated into all mining leases as conditions of grant, anchored in the MMA itself. The MMA's current silence on child labour is indefensible given both the documented prevalence of the practice and the trade consequences it now generates.

7.4 Operationalising the EPRF and Upfront Reclamation Obligations:

The EPRF, non-operational since the MMA's enactment, must be made legally and functionally operative. Foreign mine leaseholders should be required to deposit total estimated reclamation costs upfront upon licence grant, ensuring environmental restoration obligations survive decommissioning or corporate exit.

7.5 NEITI Enforcement Powers:

The NEITI Act should be amended to provide NEITI with a direct referral mechanism to prosecutorial authorities, converting its diagnostic function into actionable enforcement. Mandatory cross-agency reconciliation of beneficial ownership data across the Ministry of Solid Minerals Development, the Mining Cadastre Office, and the Corporate Affairs Commission should be legislatively required.

7.6 Devolution of Monitoring Authority:

The Mineral Resources and Environmental Management Committees (MIREMCOs) provided for under section 19 of the MMA, 2007 have remained largely non-functional.[38] Their activation, with community representation and genuine monitoring mandates, is a low-cost reform with significant practical impact.

7.7 Beneficiation Infrastructure and Traceability Systems:

Special Economic Zones for gemstone cutting and polishing would create the domestic lapidary capacity necessary for chain-of-custody documentation. Without this, compliance with OECD and EU due diligence frameworks remains structurally impossible for Nigerian producers.

8 Conclusion

Nigeria's gemstone industry stands at a critical juncture. The legal framework, while providing a structural skeleton, actively facilitates unsustainable extraction through the systematic exclusion of artisanal actors, the absence of sector-specific child labour protections, and a persistent failure to enforce environmental obligations. The human costs in contaminated water, displaced communities, poisoned children, and disrupted livelihoods, are not the unintended consequences of an otherwise sound system but the predictable outputs of a framework misaligned with the sector it purports to govern.

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38 MMA 2007, s 19

The commercial stakes have now sharpened considerably with the USTR's forced labour investigation naming Nigeria and proposing additional tariffs on minerals and ores, means that the international market exclusion long threatened may begin to materialise. Legal reform is therefore not an aspirational policy choice; it is the condition of continued market access. The path forward requires transitions that are plural and interrelated:

a Informality to formal regulation, making compliance realistic for artisanal miners rather than an unattainable aspiration;
b Extraction-only to beneficiation-inclusive, capturing midstream value that can fund community development and environmental restoration;
c Moving from opacity to traceability, enabling Nigerian gemstones to access ethical supply chains while disrupting conflict financing;
d From fragmented governance to institutional coordination, aligning mining, environmental, health, and security authorities around shared goals.

These transitions are long-term undertakings requiring sustained political will and adequate resource control. Legal reform is necessary but insufficient without the establishment of security and rule of law in conflict-affected regions. Nigeria's gemstone sector can either deepen its path toward informality, environmental degradation, and market exclusion or pursue the deliberate legal and institutional innovation that sustainable, rights-respecting integration demands. The choices are available. What is required is the will to make them.

MUSES, DUPES AND FAKES: THE NECESSITY OF BESPOKE FRAMEWORKS REGULATING IMITATION IN APPAREL AND TEXTILES

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Abstract

In apparel and textiles, just like in the wider fashion industry, the actual existence of originality is much debated upon. Due to the cyclical nature of fashion, trends are constantly recycled, and the scales of similarity often tip between reference and replica, therefore requiring the intervention of intellectual property law. Hence, a pertinent question is how and to what extent the law can balance this scale to ensure that one designer's innovation does not infringe upon another's creation. The aim of this study was to examine the necessity of bespoke frameworks regulating imitation in apparel and textiles. The main objective was to contribute to existing literature on the subject by building an argument upon John Locke's Labour Theory, which posits that creators are entitled to the fruits of their labour. This study adopted a hybrid approach to research, combining both the theoretical and empirical methodologies. The theoretical sources utilised include both Nigerian and international legislation and judicial decisions, as well as a plethora of articles from online repositories. The empirical data, on the other hand, was derived from a survey of purchasing inclinations carried out among Nigerian consumers. This study found that factors necessitating bespoke regulatory frameworks for imitation in apparel and textiles include the fosterage of innovation and creativity, prevention of loss of income, and the protection of local industries, smaller creators and brand reputations, respectively. In its conclusion, the paper made feasible recommendations including but not limited to legislative reforms, international cooperation, and sensitisation programs.

Keywords: *Apparel, Textiles, Counterfeit, Dupe, Imitation, Inspiration*

1 Introduction

The line between inspiration and imitation in fashion is both blurry and contentious, and some argue that the concept of originality does not exist in the fashion industry. Conversely, Coco Chanel, the founder of luxury giant, Chanel,[1] posited that a designer must constantly be unique in order to stay relevant.[2] And by mere virtue of the global apparel industry's valuation at $1.84 trillion and accounting for 1.6% of the global GDP in 2025,[3] it is no surprise that designers are protective of their work. However, legal frameworks governing intellectual property in fashion are quite vague compared to its creative counterparts like music and film,[4] failing to regulate the high rate of imitation in the industry.[5] The prevalence of design replication in apparel and textiles is evidenced by the status of knitted or crocheted clothing and fabrics in the top six industries targeted by counterfeiters, while other textiles and clothing fall within the top fifteen.[6]

Between muses, dupes and fakes, imitation is essentially ingrained in fashion, and this provokes the question of whether the law can protect intellectual property without stifling innovation; hence, the main objective of this study is to highlight the necessity of bespoke frameworks regulating imitation in apparel and textiles. It examines the existing regulatory frameworks in Nigeria and in other jurisdictions, as well as investigates the impediments to and the pertinence of effective regulation. This study focuses on the apparel and textiles segment of the fashion industry, and it is limited by the size and location constraints of the subject pool of the included consumer survey. A hybrid research methodology is utilised in the paper, combining both the theoretical and empirical approaches, and the study's practical significance is its relevance to the academia, policymakers, industry actors, and consumers, which jointly constitute the quadruple helix model of innovation.[7]

This paper comprises 5 sections. The first introduces the discourse, while the second clarifies the subject concepts and establishes the theoretical framework, which is John Locke's Labour Theory. The third section examines the legal frameworks protecting intellectual property in apparel and

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1 Ni Yang, 'The brand analysis of Chanel' (2021) 3(3) The Frontiers of Society, Science and Technology https://francis-press.com/uploads/papers/KZLzoC86240TrOyMFsmiDnfoYsXacsXhy6Qknd5M.pdf accessed 21 December 2025.

2 Magdalena L Willis, 'This is not Gucci: The Intellectual Property and Counterfeit Problems Facing the American Luxury Fashion Industry' (2024) 48(2) Oklahoma City University Law Review https://law.okcu.edu/wp-content/uploads/2024/09/5.-Willis3-2.pdf accessed 16 December 2025.

3 Nancy Cardona, 'Global Apparel Industry Statistics: Market Size and Trends (2025)' (*UniformMarket*, 2025) https://www.uniformmarket.com/statistics/global-apparel-industry-statistics accessed 21 December 2025.

4 Elizabeth Verklan, 'Review of "Why We Can't Have Nice Things: Social Media's Influence on Fashion, Ethics, and Property" by Minh-ha T Pham' (2024) 13.1 Lateral https://csalateral.org/reviews/why-we-cant-have-nice-things-social-media-fashion-ethics-property-pham-verklan/ accessed 16 December 2025.

5 Kal Raustiala and Christopher Jon Sprigman, 'Faster Fashion: The Piracy Paradox and its Perils' (2021) 39(2) Cardozo Arts & Entertainment Law Journal https://ssrn.com/abstract=3846990 accessed 16 December 2025.

6 OECD/EUIPO, 'Mapping Global Trade in Fakes 2025: Global Trends and Enforcement Challenges' (*OECD Publishing*, 2025) https://doi.org/10.1787/94d3b29f-en accessed 16 December 2025.

7 Yuzhuo Cai and Annina Lattu, 'Triple Helix or Quadruple Helix: Which Model of Innovation to Choose for Empirical Studies?' (2022) 60 Minerva https://doi.org/10.1007/s11024-021-09453-6 accessed 16 December 2025.

textiles in Nigeria, in comparison with other jurisdictions. Next, the fourth interrogates imitation in apparel and textiles, analysing the challenges to its regulation, its relationship to consumer behaviour, and the necessity for its regulation. Finally, the fifth section concludes the research with feasible recommendations.

2 Concepts and Theory

2.1 Conceptual Clarification

Before examining the topic, it is important to provide a definition of the forms of imitation in apparel and textiles on which on the paper centres.

2.1.1 Muse

The term, as used in this context, simply refers to a source of inspiration.[8] Hence, the term, 'inspiration' will be used hereinafter for the purpose of clarity. Inspiration, in fashion, simply refers to the process by which a designer takes one or more elements from the work of other designers and modifies them by infusing their original ideas to create a unique piece. Due to the cyclical nature of fashion, designers consistently take inspiration from existing works, and the continuous reinvention raises questions of when inspiration becomes imitation.[9]

2.1.2 Dupe

In the context of fashion, the term, 'dupe', is short for duplicate, and it usually refers to a product made to look like a more expensive or high-quality product.[10] It is simply a knockoff of another product, but with a different brand appellation.[11] Rather than creating an exact copy bearing the original logo or trademark, dupes merely aim to provide a close recreation.[12] This failure to outrightly infringe intellectual property rights places them in a grey area within the traditional legal system,[13] hence, they are not illegal.[14] However, though a dupe is not an explicit copy, the similarity

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8 Merriam-Webster, 'Muse' (*Merriam-Webster.com Dictionary*, n.d) https://www.merriam-webster.com/dictionary/muse accessed 27 December 2025.

9 Besidone Eyesan, 'The Fashion Paradox: Imitation or Inspiration' (*Style Cartel*, 1 February 2024) https://stylecartel.com/the-fashion-paradox-imitation-or-inspiration/ accessed 27 December 2025.

10 Cambridge Advanced Learner's Dictionary & Thesaurus, 'Dupe' (*Cambridge Dictionary*) https://dictionary.cambridge.org/dictionary/english/dupe accessed 27 December 2025.

11 Ratna Alya Nursafira and others, 'Why do People buy Dupe Cosmetics? A Study of Values behind Dupes Purchase in Indonesia' (2024) 6(1) Kaijan Branding Indonesia https://doi.org/10.21632/kbi.6.1.71-85 accessed 16 December 2025.

12 Emma Goolsby, 'Have you been Duped? Counterfeiting and Contributory have you been Duped? Counterfeiting and Contributory Trademark Infringement in the World of E-Commerce, Social media, and Influencers' (2025) 18(1) The Journal of Business, Entrepreneurship & the Law https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1256&context=jbel accessed 16 December 2025.

13 Alexis Theoharidis, 'The Devil Wears Dupes: Legal Implications of "Dupe Culture" in The Devil Wears Dupes: Legal Implications of "Dupe Culture" in the Fashion Industry and How Trademark Law Should Adapt' (2025) 9(1) The Business, Entrepreneurship & Tax Law Review

between it and another product is considered to be intentional,[15] and in the case of 'risky dupes', producers ensure that the appearances, names and packaging of their products are as close to the original as they could be without violating intellectual property law.[16]

Social media has particularly aided the proliferation of dupes by providing a platform not only for their promotion, but also for the normalisation and glorification of imitation as a means of democratising consumption.

Without a doubt, some of the biggest beneficiaries of this trend are fast-fashion brands, for whom dupes are a major source of income.[17] In 2023, fast-fashion giant, Shein, was sued by Japanese retailer, Uniqlo, who claimed that Shein was selling imitation products that closely resembled its internet-viral shoulder bag.[18] The rise in dupe culture is also illustrated in the growth of direct-to-consumer, knockoff retailer, Quince, to an estimated value of 4.5 billion in mid-2025, doubling its valuation from earlier that year.[19] Dupes are often considered to be less harmful than counterfeits, and a popular argument in support of them is that they increase social inclusivity in fashion by making trends more accessible.[20]

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https://scholarship.law.missouri.edu/betr/vol9/iss1/12?utm_source=scholarship.law.missouri.edu%2Fbetr%2Fvol9%2Fiss1%2F12&utm_medium=PDF&utm_campaign=PDFCoverPages accessed 16 December 2025.

14 Emily Sophie Bresser, 'Dupes versus Original Luxury Products: The Impact of Product Similarity and Opportunity Costs on Consumers' Purchase Behaviors and Perceptions' (MSc thesis, Universidade Católica Portuguesa 2024) https://www.bing.com/ck/a?!&&p=bc3c32fdeaa14a91dda001a7dffc6ac13934854e3ec613bb07619a94e6aeb893JmltdHM9MTc2ODUyMTYwMA&ptn=3&ver=2&hsh=4&fclid=1c87712c-5654-67b5-0fe5-640c570166b2&psq=Dupes+versus+Original+Luxury+Products%3a+The+Impact+of+Product+Similarity+and+Opportunity+Costs+on+Consumers%e2%80%99+Purchase+Behaviors+and+Perceptions+Emily+Sophie+Breser&u=a1aHR0cHM6Ly9yZXBvc2l0b3Jpby51Y3AucHQvYml0c3RyZWFtLzEwNDAwLjE0LzQ1MjI0LzEvMjAzNTg5MzAwLnBkZg accessed 16 December 2025.

15 Alexandra Adwani and Tilde Sinnerdal, 'The Rise of Dupe Culture: A Qualitative Study on the Construction of an Emergent Digital Consumer Culture' (MSc thesis, Lund University 2024) http://lup.lub.lu.se/student-papers/record/9164594 accessed 16 December 2025.

16 Florencia Reagan, Keeya Averielle Tejasukmana and Matthew Toby, 'The Fine Line Between Inspiration and Imitation: Delving into The Intersection of Fashion Dupes, Law and Society' (2025) 3(1) Anthology: Inside Intellectual Property Rights https://ojs.uph.edu/index.php/Anthology/article/view/9333 accessed 16 December 2025.

17 Valeriia Pastushenko, 'Dupes and Desire: The Notion of Imitation Within the Fashion System' (MA thesis, Stockholm University 2025) https://su.diva-portal.org/smash/record.jsf?pid=diva2%3A2001652&dswid=1648 accessed 16 December 2025.

18 Jessie Yeung, 'Uniqlo sues Shein for allegedly copying its viral shoulder bag' *CNN* (Hong Kong, 16 January 2024) https://edition.cnn.com/2024/01/17/business/japan-uniqlo-shein-viral-bag-lawsuit-intl-hnk accessed 16 January 2026.

19 Rachel Wolff, 'Quince more than doubles valuation as dupe culture drives demand' (*EMARKETER*, 29 July 2025) https://www.emarketer.com/content/quince-more-than-doubles-valuation-dupe-culture-drives-demand accessed 16 January 2026.

20 Miranda Nolan, 'How Intellectual Property Laws Allow for Fashion Dupes' (2023) SLU Law Journal Online 124 https://scholarship.law.slu.edu/lawjournalonline/124 accessed 16 December 2025.

2.1.3 Fake

The term, 'fake', is often used to mean 'counterfeit', and it refers to a product which are made to appear like a different, genuine one, with the intention of defrauding purchasers.[21] Hence, the term 'counterfeit' will used hereinafter for clarity's sake. The World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) classifies counterfeit goods into counterfeit trademark goods and pirated copyright goods.[22] However, it can be derived from both definitions that counterfeiting involves making a product in the likeness of another, without the permission of the producer or intellectual property right holder, thereby infringing their rights. It is important to establish that although buyers are sometimes deceived by counterfeits, at other times, they intentionally purchase them, often due to financial factors, and such situations are referred to as 'non-deceptive counterfeiting'.[23]

2.2 Theoretical Framework

This paper will adopt the Labour Theory to examine the necessity of bespoke frameworks regulating imitation in apparel and textiles.

2.2.1 Labour Theory

a Principle

This theory was propounded by philosopher, John Locke in the second treatise of his book, 'Two Treatises of Government', which was published in 1689, and originally, it applied to physical labour on land.[24] It postulates that individuals are entitled to ownership rights over property that they have obtained or produced with their labour. Or simply put, they are entitled to the fruits of their labour.[25]

According to the labour theory, an individual owns themself, and since labour comes from their body, it belongs to them as well. It goes further to posit that since resources cannot be used without human labour, the person who applies their labour converts such resources from common property to private property. Additionally, for such conversion to be legitimate, common property must have

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21 Merriam-Webster, 'Fake' (*Merriam-Webster.com Dictionary*, n.d) https://www.merriam-webster.com/thesaurus/fake accessed 16 January 2026.

22 TRIPS Agreement, article 51.

23 Ratna Alya Nursafira and others, 'Why Do People Buy Dupe Cosmetics? A Study Of Values Behind Dupes Purchase In Indonesia' (2024) 6(1) Kaijan Branding Indonesia https://doi.org/10.21632/kbi.6.1.71-85 accessed 16 December 2025.

24 Hans Morten Haugen, 'Alternative IP Theories: Social Planning and Redistributive Justice Guiding IP Protection' (2024) Available at SSRN https://dx.doi.org/10.2139/ssrn.4751159 accessed 16 January 2026.

25 Abay Magauiya and others, 'The Practices of Advanced Countries in the Legal Regulation of Intellectual Property Objects Created by Artificial Intelligence' (2023) 15(1) The Law, State and Telecommunications Review https://doi.org/10.26512/lstr.v15i1.43935 accessed 16 January 2026.

been converted, and the individual must not have have used so much of the common property that would either remain an insufficient amount for others, or lead to waste.[26]

b Application

It has been argued that the labour theory can be used to justify intellectual property without encountering the issues that arise in its application to physical property.[27] Within the context of intellectual property, the theory simply assumes that since an individual owns their mind and creations of their mind can only be fashioned through their labour, the consequent product is their private property. Regarding the requirement of converting common property, the common resources utilised by creators include public information and prior ideas and creations which provide a foundation for new work. Thus, a creator is able to produce intellectual property without exhausting the common resources and reducing the ability of others to conceive new creations,[28] satisfying the condition of leaving a sufficient amount or resources. Regarding the condition of no waste, intellectual creations do not spoil like farm produce, hence, there are no such concerns.[29]

c Relevance

The labour theory is relevant to the discourse on the regulation of imitation in apparel and textiles because within this context, the implication of the theory is simply that people are entitled to ownership rights over the works and designs of their mind, stemming from their originality, and inventive efforts,[30] as such creations are considered to be their private property. Hence, the imitation of such work without the consent of the creators is a violation of the ownership rights which accrue to them by virtue of their labour, and it renders their efforts wasted.

d Criticism

This study was cautious to adopt the labour theory, as like most other theories, it has been the subject of criticism by scholars. For one, the concept of 'labour' as utilised in the theory has been opposed. The theory accords ownership to an individual simply by virtue of their mixing labour with

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26 Michelle M Wu, 'Defeating the Economic Theory of Copyright: How the Natural Right to Seek Knowledge is the Only Theory Able to Explain the Entirety of Copyright's Balance' (2023) Georgetown Law Faculty Publications and Other Works https://scholarship.law.georgetown.edu/facpub/2495 accessed 16 January 2026.

27 Hans Morten Haugen, 'Alternative IP Theories: Social Planning and Redistributive Justice Guiding IP Protection' (2024) Available at SSRN https://dx.doi.org/10.2139/ssrn.4751159 accessed 16 January 2026.

28 Michelle M Wu, 'Defeating the Economic Theory of Copyright: How the Natural Right to Seek Knowledge is the Only Theory Able to Explain the Entirety of Copyright's Balance' (2023) Georgetown Law Faculty Publications and Other Works https://scholarship.law.georgetown.edu/facpub/2495 accessed 16 January 2026.

29 Ritu Paul, 'Intellectual Property Rights: A Utilitarian Perspective' (2021) Available at SSRN https://dx.doi.org/10.2139/ssrn.3842429 accessed 16 January 2026.

30 Jus Corpus, 'Philosophical and Economic Justification of Intellectual of Intellectual Property Rights' (*Jus Corpus*, 18 February 2022) https://www.juscorpus.com/philosophical-and-economic-justifications-of-intellectual-property-rights/ accessed 16 January 2026.

a given resource,[31] and this has been opposed with the argument that it is impossible to mix actions with objects, and that even if it was not, combining labour with an already existing public resource ought to result in limited rights, rather than full ownership.[32]

Additionally, the true importance of labour has been interrogated since subsequent labour on a product does not grant ownership rights as easily as the initial labour. Scholars have also questioned why the utilisation of labour is considered to result in ownership rights, and not a loss of labour. Further, critics have posited that the notion of using common resources in creating new work undermines individual property.[33]

The position of the theory regarding the duration of ownership rights has also been opposed. It considers such rights to be unlimited, which raises issues when applied to intellectual rather than physical property. This is because in many cases, it is necessary for works or their elements to enter into the public domain, in order for them to be utilised for the sake of public interest. Additionally, such a perpetual term of ownership fosters monopoly, restricting engagement in innovation within the same or similar areas.[34]

3 Legal Frameworks Protecting Intellectual Property in Apparel and Textiles

3.1 Nigeria

The value of the fashion market in Nigeria is estimated to be between 2.5 to 6 billion dollars, with Nigerians' annual expenditure on clothing annually being almost as much as their expenditure on rent.[35] The apparel industry, in particular, is currently experiencing significant growth due to increased patronage from international clients and the emergence of prominent designers. In the wake of this growth, there has also been a rise in design imitation, and this must be regulated in order to ensure a conducive atmosphere for innovation.[36]

Notably, there is no specific Nigerian legislation safeguarding intellectual property rights in apparel and textiles, or in the broader fashion industry, and this study posits that a bespoke legal framework

31 Hans Morten Haugen, 'Alternative IP Theories: Social Planning and Redistributive Justice Guiding IP Protection' (2024) Available at SSRN https://dx.doi.org/10.2139/ssrn.4751159 accessed 16 January 2026.

32 Ritu Paul (n 29).

33 Ibid.

34 Jus Corpus, 'Philosophical and Economic Justification of Intellectual of Intellectual Property Rights' (*Jus Corpus*, 18 February 2022) https://www.juscorpus.com/philosophical-and-economic-justifications-of-intellectual-property-rights/ accessed 16 January 2026.

35 Consonance, 'Who is Dressing 220+ Million Nigerians, and How are They Being Funded?' (*Consonance Investment Managers*, 2025) https://cdn.prod.website-files.com/638fdd60c6a89a99865b30eb/68ada0631fcedb4321e55200_Financing%20Nigeria%27s%20Fashion%20Economy.pdf accessed 16 January 2026.

36 Oluwatosin Jinadu, 'From Muse to Misuse: Legal Perspective on Imitation and Inspiration in Nigerian Ready to Wear Fashion Market' (2025) Available at SSRN https://dx.doi.org/10.2139/ssrn.5394813 accessed 16 December 2025.

be established. However, intellectual property (IP) in apparel and textiles can be protected through IP rights such as copyright, industrial designs and trademarks, and this section will highlight the existing, relevant frameworks.

3.1.1 Copyright

The principal legislation protecting copyright in Nigeria is the *Copyright Act 2022*. The Act covers the protection of new and original artistic works,[37]and it defines 'artistic works' to include drawings, prints, pictorial woven tissues and articles of applied handicraft.[38] Hence, the Act safeguards artistic elements of apparel and textile including sketches, illustrations, and surface patterns. However, it does not protect models and patterns which are intended to be multiplied by an industrial process, as well as other aspects of apparel such as the shape or cut which are considered to be useful articles, as they are considered to be industrial designs.[39] Hence, the patterns of mass-produced textiles and the functional aspects of apparel are exempt from protection under copyright, which lasts for the entirety of an author's life and an additional 70 years after their demise.[40]

3.1.2 Industrial Designs

The legislation regulating industrial designs under Nigerian law is the *Patents and Designs Act 1970*. The term refers to any combination of lines or colours, or both, and any three-dimensional form, whether or not associated with colours, that is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result.[41] Hence, both two and three-dimensional aspects of apparel and textiles that may be ineligible for protection under copyright can be registered as industrial designs and enjoy protection for up to fifteen years, with a renewable, initial period of five years.[42] However, for a design to be registerable under this category, it must be new and not be contrary to public order or morality. A design is new if it had not been publicly available prior to the application, and if it differs considerably from existing work.[43]

3.1.3 Trademarks

In Nigeria, trademarks are regulated by the *Trade Marks Act 1965*, and the term simply refers to a mark used or proposed to be used in relation to goods in order to indicate in the course of trade, the creator of the product.[44] For a trademark to be registerable, it must be distinctive,[45] and the initial registration lasts for a period of seven years, which is indefinitely renewable for terms of fourteen

37 Copyright Act 2022, section 2.
38 Copyright Act, s 108(1).
39 Copyright Act, s 2(6); Patents and Designs Act 1970, s 12.
40 Copyright Act, s 19.
41 Patents and Designs Act, s 12.
42 Patents and Designs Act, s 20.
43 Patents and Designs Act, s 13.
44 Trade Marks Act 1965, s 67.
45 Trade Marks Act, s 9.

years.[46] A mark must be registered for the owner to institute a suit against trademark infringement, however, the Act permits the owner of an unregistered trademark to institute an action in passing off.[47] And while trademarks do not directly protect the designs of apparel and textiles, they protect the brand names, and they are particularly useful for brands whose names are intrinsically part of their prints and designs, such as Nigerian brand, Wanni Fuga, and French luxury house, Louis Vuitton.

3.2 European Union (EU)

3.2.1 Copyright

Although member-states of the European Union (EU) have their separate copyright systems,[48] these systems are harmonised by the *Infosoc Directive*.[49] Also regulating copyright is the theory of Unity of Art which originated from France and considers both pure and applied art eligible for protection. Thus, copyright protection of clothing designs is not prejudiced by the functional elements,[50] as is evidenced by the decision of the Court of Justice of the European Union (CJEU) in *Cofemel v G-Star Raw*,[51] where it established that fashion designs can be protected under copyright. Hence, the adoption of the theory of Unity of Art into Nigerian copyright protection would prevent the preclusion of the functional elements of apparel and textiles.

3.2.2 Industrial Designs

Designs in the European Union are protected by the *EU Design Act*,[52] and they can be protected both as registered and unregistered designs. Unregistered designs are mandated to be disclosed, and, without any fees, they are protected against intentional copying for 3 years, beginning from the date of disclosure. However, if registration is desired, an application must be filed within a year after disclosure.[53] The protection of unregistered designs would be particularly useful in Nigeria, as it would enable designers to observe the market performance of their works before expending resources on registration.

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46 Trade Marks Act, s 23.

47 Trade Marks Act, s 3.

48 Irene Jidemma Moemeke, 'Design Theft in Nigeria's Fashion Industry: Evaluating the Legal and Enforcement Framework for Intellectual Property Protection' (LLB thesis, University of Lagos 2025) https://dx.doi.org/10.2139/ssrn.5776182 accessed 16 December 2025.

49 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

50 Heidi Härkönen, 'Fashion and Copyright: Protection as a Tool to Foster Sustainable Development' (PhD thesis, University of Lapland 2021) http://urn.fi/URN:ISBN:978-952-337-265-8 accessed 16 January 2025.

51 C-683/17.

52 Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024.

53 Olena Moroz, 'EU: Registered vs. Unregistered Designs' (*Mondaq*, 10 April 2025) https://www.mondaq.com/trademark/1609900/eu-registered-vs-unregistered-designs accessed 16 January 2026.

3.2.3 Trademarks

Regulated by the *EU Trademarks Act*,[54] trademarks within the region protect not only traditional brand identifiers like names and logos, but also non-traditional marks like shapes, sounds and colours, as well as placements of designs.[55] This is evident in *Christian Louboutin v Van Haren Schoenen BV*,[56] where the CJEU upheld Louboutin's red soles to be a registered trademark. Thus, the Nigerian legal system can also expand on the parameters for trademark protection in apparel and textiles to include recognisable aspects of designers' works.

3.3 United States of America (USA)

3.3.1 Copyright

Copyright in the United States of America is protected by the *Copyright Act of 1976*,[57] and per the decision of the US Supreme Court in *Star Athletica LLC v Varsity Brands*,[58] only the aesthetic features of useful articles can be protected by copyright. Hence, the legal position is the same as that in Nigeria.

3.3.2 Design Patents

Rather than industrial designs, the US utilises design patents which are regulated by *Title 35 of the US Code*,[59] and unlike the application process for industrial designs in Nigeria which comprises a procedural examination, the US patent design application consists of a substantive examination, however, similar to Nigeria the duration of the maximum protection period is fifteen years. Though design patents are not widely utilised in the US for apparel and textiles due to the length and cost of registration,[60] in order to promote the actual validity of registered designs and prevent design infringement, the Nigerian legal system can adopt the conduct of a substantive examination, without high costs or a prolonged process.

3.3.3 Trademarks

Trademarks in the US are governed by the *Lanham Act*,[61] and in addition to marks, the Act also protects trade dress, which simply refers to product design. It is the commercial feel and appearance of a product that identifies and distinguishes from other products on the market, as well as indicates

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54 Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (codification).

55 Irene Jidemma Moemeke, 'Design Theft in Nigeria's Fashion Industry: Evaluating the Legal and Enforcement Framework for Intellectual Property Protection' (LLB thesis, University of Lagos 2025) https://dx.doi.org/10.2139/ssrn.5776182 accessed 16 December 2025.

56 C-163/16.

57 Title 17 of the United States Code.

58 580 US 405 (2017).

59 35 USC § 171

60 Irene Jidemma Moemeke, 'Design Theft in Nigeria's Fashion Industry: Evaluating the Legal and Enforcement Framework for Intellectual Property Protection' (LLB thesis, University of Lagos 2025) https://dx.doi.org/10.2139/ssrn.5776182 accessed 16 December 2025.

61 Trademark Act of 1946.

its producer, and in *Louis Vuitton Malletier SA v Haute Diggity Dog LLC*,[62] the US Court of Appeal agreed with the appellant's assertion that its 'LV' motif amounted to a trade dress. Generally, the process and criteria to register a trade dress are the same as that of a trademark, requiring novelty and distinctiveness. However, most trade dress is protected without registration.[63] As trade dress is a largely undeveloped area in Nigerian intellectual property law, the judicial system can better safeguard designs of apparel and textiles from imitation through its protection.

4 Imitation in Apparel and Textiles

This section will discuss seriatim, the challenges to regulating imitation in apparel and textiles, the relationship between such imitation and consumer behaviour, as well as the necessity for bespoke frameworks regulating imitation in apparel and textiles.

4.1 Challenges to Regulation

There are various impediments to enforcing IP rights against imitation in apparel and textiles, and this section will highlight some of them.

4.1.1 Inadequacy of Legal Frameworks

As earlier established, there is no sui-generis Nigerian legislation or institution safeguarding intellectual property rights in apparel and textiles, or fashion in general, and they can only be protected through existing general IP frameworks. And though a framework for the protection of IP rights in Nigeria has existed for over 60 years, IP is still largely regarded as an emerging area in Nigerian jurisprudence.[64] This is unsurprising considering the fact that of 28 treaties administered by the World Intellectual Property Organisation (WIPO),[65] only four have been ratified by Nigeria.[66] Also, there is no specific Nigerian legislation for the protection of trade secrets, and the legislature is yet to domesticate article 39 of the TRIPS Agreement which guarantees their confidentiality.[67]

Further, other than the Copyright Act, the existing IP statutes in Nigeria are outdated and do not make provisions for the current digital realities, and since copyright cannot adequately protect apparel and textiles in Nigeria, industrial designs are the major avenue. However, the quick-paced nature of the fashion industry might discourage designers from going through the process of registration. Additionally, there is a lacuna in the existing framework due to the dearth of

62 580 US 405 (2017).

63 Justia, 'Trade Dress Under the Law' (*Justia*, 2025) https://www.justia.com/intellectual-property/trademarks/trade-dress/ accessed 16 January 2026.

64 Mercy Munachimso Nwaogazie, 'Issues and Challenges faced in Intellectual Property Rights in Nigeria' (*IP Bulletin*, 31 March 2022) https://ipbulletin.in/intellectual-property-rights-in-nigeria/ accessed 16 January 2026.

65 WIPO, 'WIPO-Administered Treaties' (*WIPO*) https://www.wipo.int/en/web/treaties accessed 20 January 2026.

66 WIPO, 'Nigeria, WIPO-Administered Treaties' (*WIPO*) https://www.wipo.int/wipolex/en/treaties/ShowResults?code=NG accessed 20 January 2026.

67 SHQ Legal, 'The Legal Framework for the Protection of Trade Secrets as Intellectual Property in Nigeria' (*SHQ Legal*, 3 October 2025) https://www.shqlegal.com/publications/trade-secrets-protection-nigeria accessed 20 January 2026.

comprehensive judicial authorities regarding designs in general,[68] and the length and cost involved in instituting an action against the infringement of IP rights may discourage creators from enforcing their rights.[69]

4.1.2 Registration Process of IP Rights

The length, bureaucracy and cost involved in registering industrial designs and trademarks in Nigeria discourages smaller designers, in particular, from protecting their work, as the cost of filing an application and engaging the services of a legal practitioner may seem needless when the approval of the registration is uncertain. Additionally, as earlier established, Nigeria has failed to ratify most of the WIPO treaties, and that complicates the process of international filing for designers by making them submit separate applications in individual jurisdictions.[70] Further, there is a general lack of awareness about the concept, importance, and enforceability of IP rights, as well as how their registration is carried out, and this not only prevents designers from effectively protecting their work, but also fosters plagiarism of original works.[71] Additionally, IP regulatory agencies in Nigeria have failed to take advantage of technological developments, and the lack of an accessible database of registered marks and designs further complicates the process of registration.[72]

4.1.3 Imitation and Innovation in Fashion

It is commonly believed that imitation is an intrinsic part of fashion, and scholars argue that it stimulates development within the industry, as well as promotes competition and prevents monopoly.[73] A popular argument is also that there is no such thing as originality in fashion. In November 2025, a post by Nigerian designer, Sandrah Tubobereni, founder of luxury brand, Tubo, warning against reproduction of her designs for commercial use, was met with backlash from social media users who pointed out a strong similarity between one of her designs and a vintage Dior

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68 Irene Jidemma Moemeke, 'Design Theft in Nigeria's Fashion Industry: Evaluating the Legal and Enforcement Framework for Intellectual Property Protection' (LLB thesis, University of Lagos 2025) https://dx.doi.org/10.2139/ssrn.5776182 accessed 16 December 2025.

69 Oluyinka Titilope Afolayan, 'Intellectual Property Rights Protection in Nigeria: Issues and Perspectives' (2022) 13(1) Journal of Information and Knowledge Management https://dx.doi.org/10.4314/iijikm.v13i1.1 accessed 20 January 2026.

70 Irene Jidemma Moemeke (n 68).

71 Olaleye Steve Akintububo, 'Emerging Trends in Intellectual Property Rights Protection in Nigeria: An Assessment of Developmental Prospects and Implementation Challenges' (2025) 2(2) Journal of Law and Intellectual Property Rights https://jlipr.in/doc/Vol-2-No-2-2025/2_JLIPR_Vol%202%20%20No%202_Dec%202025.pdf accessed 20 January 2026.

72 Oluyinka Titilope Afolayan, 'Intellectual Property Rights Protection in Nigeria: Issues and Perspectives' (2022) 13(1) Journal of Information and Knowledge Management https://dx.doi.org/10.4314/iijikm.v13i1.1 accessed 20 January 2026.

73 Bianca Lindau, 'Iconic Designs, Icon Status, and Intellectual Property: Discussing Copyright and Fashion and the Ideal Mode of Protection for Fashion Designs and Patterns' (2021) 18 Cornell Law Library Prize for Exemplary Student Research Papers https://scholarship.law.cornell.edu/cllsrp/18 accessed 16 December 2025.

couture design.[74] And this further raises the question of the extent and actual plausibility of the protection of apparel and textiles from imitation.

4.1.4 Non-commercial Use

An exception from intellectual property infringement is use for non-commercial purposes,[75] and while such use is legal, it challenges creators' exclusive rights over their work. A good example of this conundrum is homemade or self-made recreations of designers' work for personal use, and there was a notable occurrence of such in Nigeria in 2024. An emerging designer, Marvey, shared her recreation of a dress by fashion designer, Desiree Iyama, on social media platform, X. Tagging Iyama to the post, Marvey claimed that she drew inspiration from her work, however, Iyama responded by stating that the design had not been inspired, but was an outright copy.[76] The exchange then resulted in a debate among social media users about whether or not private use amounts to sufficient justification for plagiarism.

4.1.5 Affordability

As earlier established in section 2.1.2, imitation products are argued to be a democratising force in fashion that make it more accessible regardless of economic class, as the main reason consumers purchase imitation products is because of lower prices.[77] And other than organised, commercial imitation, a good consideration regarding this subject is client-led replication. The latter is particularly prevalent in the Nigerian market, where customers often contract bespoke tailors to recreate pieces of clothing, rather than purchase them, and in such circumstances where imitation is decentralised, small-scale and widespread, this raises the question of how it can be regulated.

4.1.6 Internet and Digital Age

The internet has added new complexities to imitation in apparel and textiles, not only through the sale of replicas on e-commerce platforms and fast-fashion sites, but also through the promotion and advertisement of imitation products on social media sites.[78] Additionally, the digital space also

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[74] Suliyat Tella, 'Where do we draw the line between original and imitation?' *Guardian Life* (18 November 2025) https://guardian.ng/life/where-do-we-draw-the-line-between-original-and-imitation/ accessed 16 December 2025.

[75] Copyright Act, s 20; Trade Marks Act, ss 5 and 6; Patents and Designs Act, s 19.

[76] Oluwatosin Jinadu, 'From Muse to Misuse: Legal Perspective on Imitation and Inspiration in Nigerian Ready to Wear Fashion Market' (2025) Available at SSRN https://dx.doi.org/10.2139/ssrn.5394813 accessed 16 December 2025.

[77] Emily Sophie Bresser, 'Dupes versus Original Luxury Products: The Impact of Product Similarity and Opportunity Costs on Consumers' Purchase Behaviors and Perceptions' (MSc thesis, Universidade Católica Portuguesa 2024) https://www.bing.com/ck/a?!&&p=bc3c32fdeaa14a91dda001a7dffc6ac13934854e3ec613bb07619a94e6aeb893JmltdHM9MTc2ODUyMTYwMA&ptn=3&ver=2&hsh=4&fclid=1c87712c-5654-67b5-0fe5-640c570166b2&psq=Dupes+versus+Original+Luxury+Products%3a+The+Impact+of+Product+Similarity+and+Opportunity+Costs+on+Consumers%e2%80%99+Purchase+Behaviors+and+Perceptions+Emily+Sophie+Breser&u=a1aHR0cHM6Ly9yZXBvc2l0b3Jpby51Y3AucHQvYml0c3RyZWFtLzEwNDAwLjE0LzQ1MjI0LzEvMjAzNTg5MzAwLnBkZg accessed 16 December 2025.

[78] Emma Goolsby, 'Have You Been Duped? Counterfeiting and Contributory Have You Been Duped? Counterfeiting and Contributory Trademark Infringement in the World of E-Commerce, Social Media, and Influencers' (2025) 18(1) The Journal of Business, Entrepreneurship & the Law

creates unique challenges regarding the protection of IP in apparel and textiles such as the imitation of designs by Artificial Intelligence (AI), as well as the use of existing designs in the digital space for any purpose, including digital art, social media avatars, and the gamification of fashion.

4.1.7 Disability of Smaller Brands to Enforce IP Rights

While imitation negatively affects all brands, the impact might be significantly worse for smaller designers with limited resources,[79] who unlike larger brands, may be hesitant to sue for the infringement of their rights. Additionally, as is often the case with fast fashion sites, smaller creators might be copied by larger companies or corporations with greater access financial and legal resources, thereby discouraging them from pursuing the enforcement of their rights.

4.1.8 Use of False Indications of Source

This is particularly prevalent in the textiles industry. Almost ninety percent of 'Ankara' fabrics in the Nigerian and African markets are imported, primarily from China and India, resulting in a loss of an estimated three billion dollars by Nigeria to foreign manufacturers.[80] China, in particular, utilises its technological, labour and infrastructural advantages to produce imitation versions of Nigerian textiles,[81] and these fabrics fraudulently labeled as 'Made in Nigeria', are purchased by unsuspecting consumers.[82] This discourse provokes considerations of cultural appropriation and the protection of communal IP, raising the question of whether and how IP law can prevent such imitation.

4.2 Imitation and Consumer Behaviour

As there cannot be supply without demand, it is relevant to investigate consumer behaviour. The term simply refers to the study of customers' purchasing choices,[83] and in order to investigate the attitudes of consumers towards imitation in apparel, a survey was conducted among seventy Nigerian adults. Respondents were grouped by their ages, and then asked to qualify their spending habits in relation to their income on a scale of 1-5, with 1 being frugal and 5 being lavish. The following hypothetical scenario was then presented:

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https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1256&context=jbel accessed 16 December 2025.

79 Besidone Eyesan, 'The Fashion Paradox: Imitation or Inspiration' (*Style Cartel*, 1 February 2024) https://stylecartel.com/the-fashion-paradox-imitation-or-inspiration/ accessed 27 December 2025.

80 Consonance, 'Who is Dressing 220+ Million Nigerians, and How are They Being Funded?' (*Consonance Investment Managers*, 2025) https://cdn.prod.website-files.com/638fdd60c6a89a99865b30eb/68ada0631fcedb4321e55200_Financing%20Nigeria%27s%20Fashion%20Economy.pdf accessed 16 January 2026.

81 Josephine Igbekele and Joseph Aihie, 'Nigeria-China Trade Relations, its Impact on Small Scale Businesses: The Tie-Dye Textile Industry Paradigm' (2023) 1(1) Multidisciplinary Journal of Current Research https://journalonline.org/wp-content/uploads/2023/11/1Paper-for-Publication.pdf accessed 16 December 2025.

82 Afolabi Olaleye Toye, 'China-Africa Relations: The Northern Nigeria Textile Industry' (MA thesis, Chapman University 2021) https://doi.org/10.36837/chapman.000202 accessed 16 December 2025.

83 Malvika Mishra, 'Consumer Behaviour – Meaning, Determinants and its Importance' (*Management Study Guide*, 19 January 2026) https://www.managementstudyguide.com/consumer-behaviour.htm accessed 22 January 2026.

You really like the pattern and design of a particular clothing item, and you set some money aside to buy it. However, when you want to make the purchase, the price exceeds your budget by 20%, and you are unable to get it immediately. The next day, in the window of a boutique, you see a piece of clothing which has a similar pattern, design and fabric as the one you originally liked. However, the branding is different. You look at the price tag, and the cost is 75% of your original budget, hence you can afford to purchase it. But since you're running late for a prior commitment, you need to leave. On your way back home, you stop at a neighborhood market to buy some yards of fabric, and walking past a store, you notice the exact item you originally wanted to purchase. The pattern, design and brand name are the same, however, the fabric feels different. You inquire about the price, and it is 45% of your original budget.

Afterwards, respondents were asked to make a hypothetical choice between: purchasing the clothing item above their budget, forgoing the item, purchasing an alternative implied to be a dupe of it, or purchasing an implied counterfeit instead. Individuals who chose either of the first three choices were then asked whether their answers would remain the same if the item which appeared to be a counterfeit was actually made with a licence from the original owner, in order to identify whether their answers were motivated more by personal preference or a critical attitude towards IP theft.

4.2.1 Age distribution

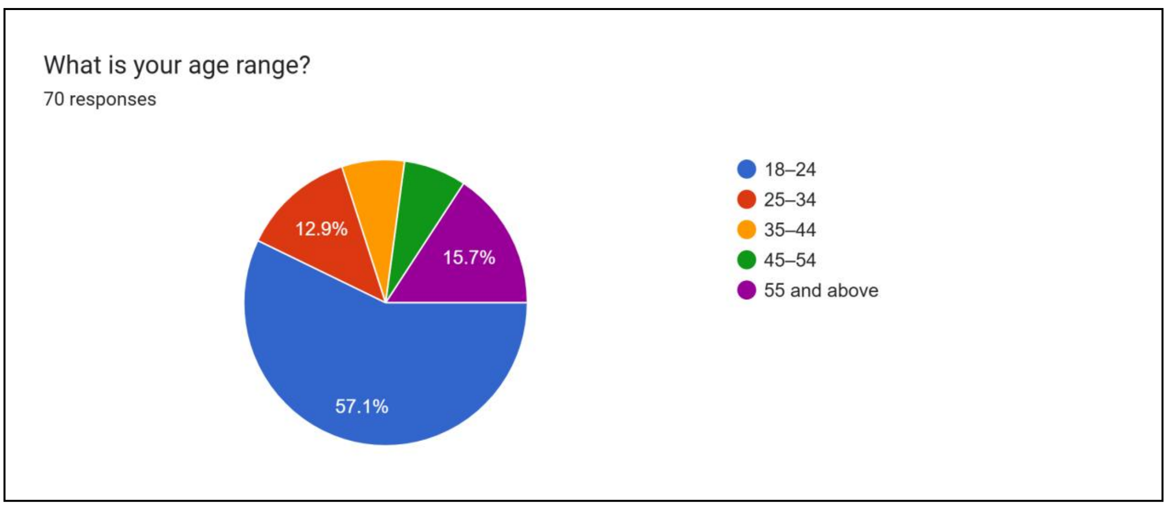

Fig. 1. Age Distribution

Age is an important factor to consider when measuring consumer behaviour, as purchasing attitudes differ with age.

4.2.2 18–24

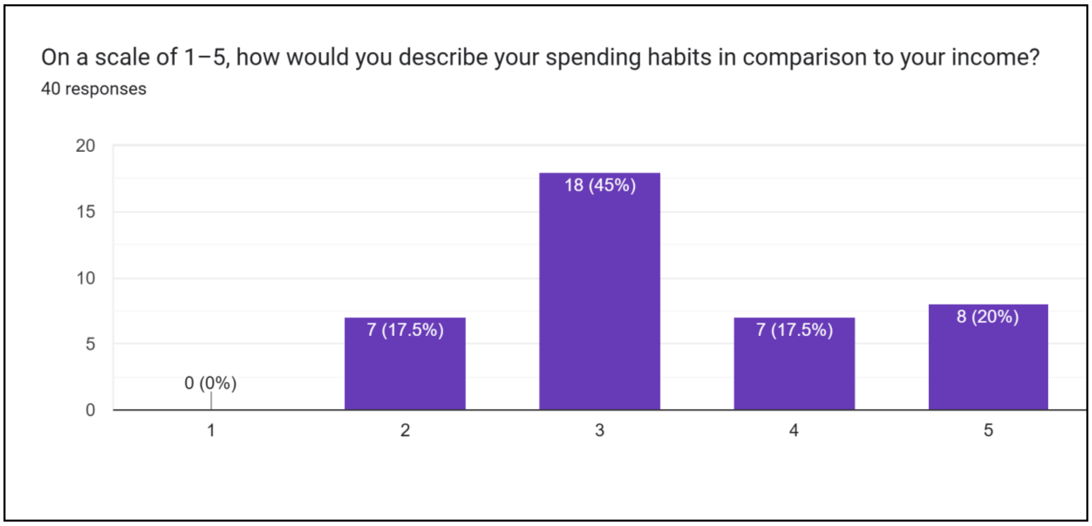

Fig. 2. Spending Habits (18–24)

As majority of the spending habits leaned from moderate to lavish, it would appear that the purchasing decisions were motivated more by preference than financial considerations.

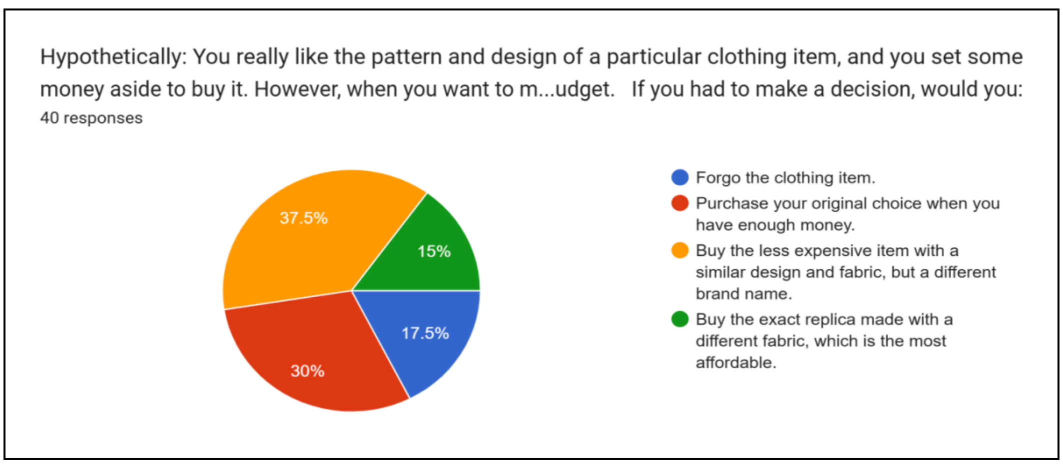

Fig. 3. Purchase decisions (18–24)

The most common choice was to purchase a dupe of the item, and there appears to be a negative inclination towards the counterfeit.

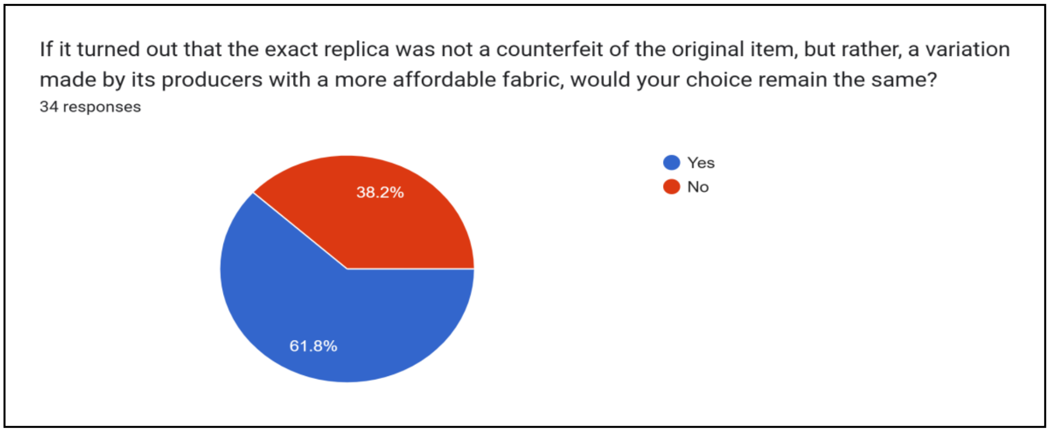

Fig. 4. Additional question for individuals who chose the first three options (18–24)

Over sixty percent of the respondents opted to stick with their choices in the previous section, indicating that their choices likely stemmed more from preference than from concerns about IP infringement.

4.2.3 25–34

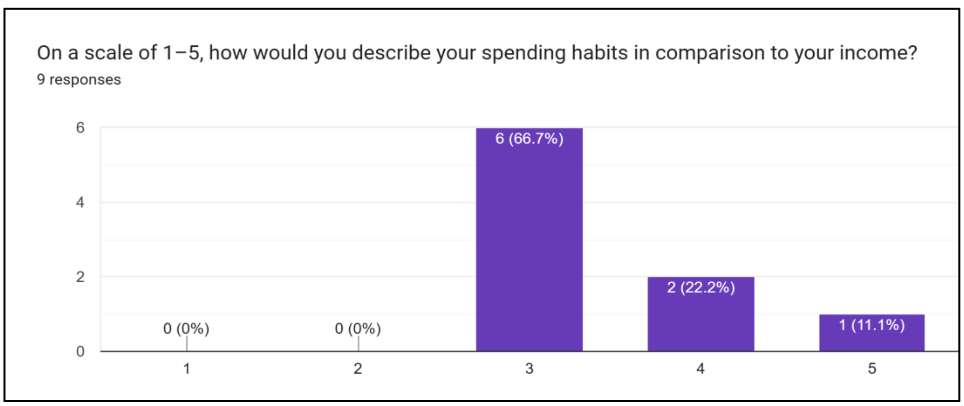

Fig. 5. Spending habits (25–34)

While the sample size was smaller than the previous group, the majority of respondents had moderate spending habits, indicating thattheir purchasing choices would likely be from a balanced perspective.

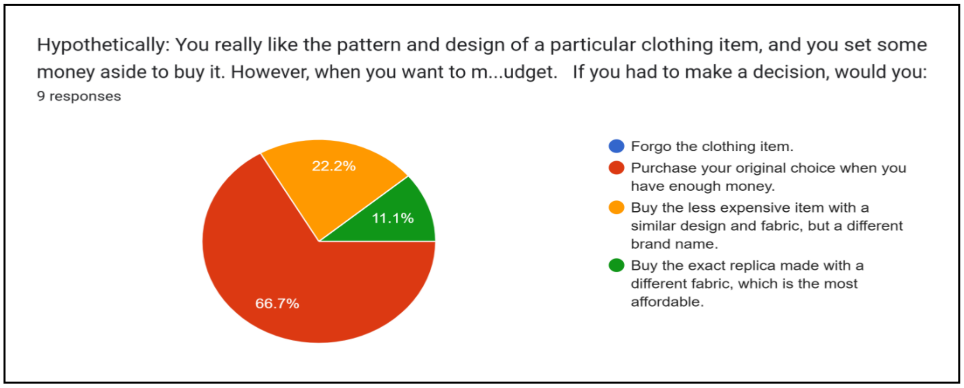

Fig. 6. Purchase decisions (25–34)

Most of the respondents appear unwilling to purchase a dupe or counterfeit.

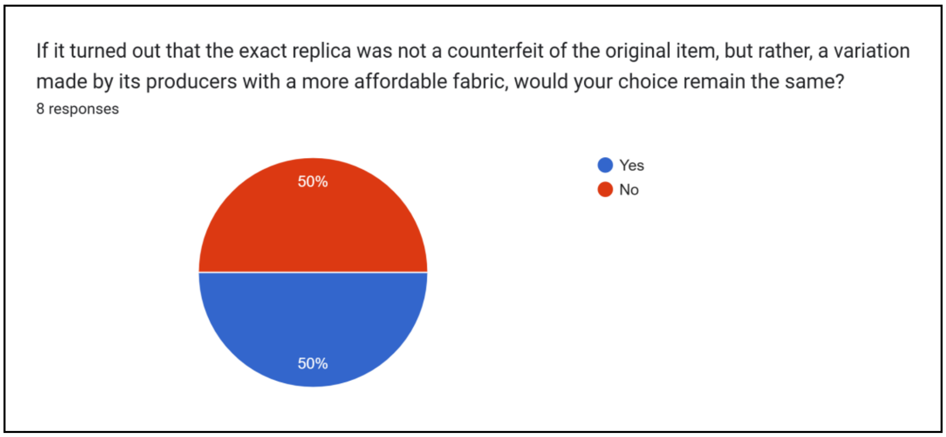

Fig. 7. Additional question for individuals who chose the first three options (25–34)

There was an equal, mixed response between individuals in this group, indicating that both preference and IP considerations may be equal considerations.

4.2.4 35–44

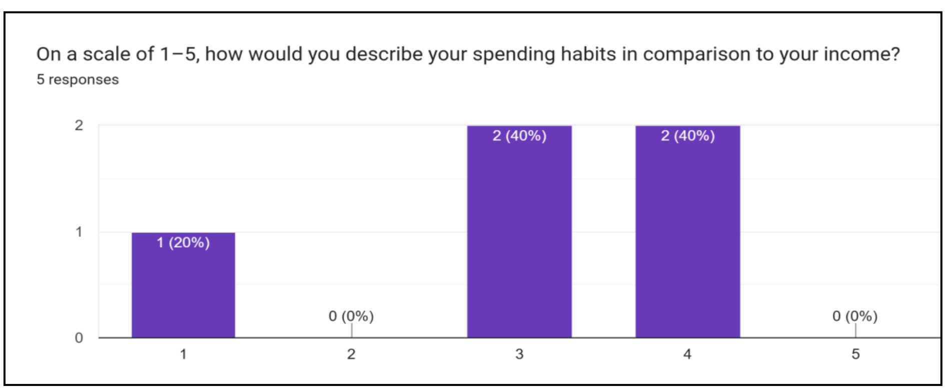

Fig. 8. Spending habits (35–44)

Most respondents in this age group had either moderate or almost lavish spending habits.

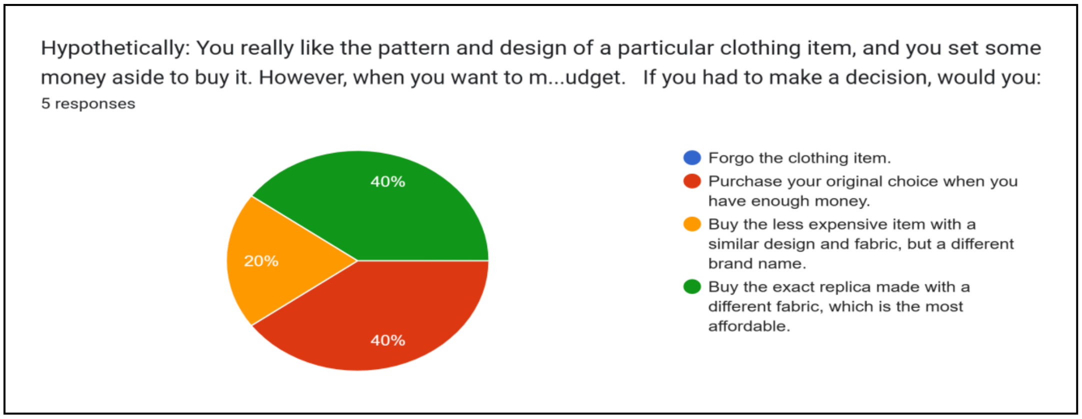

Fig. 9. Purchase decisions (35–44)

The response appears to be mixed, possibly doe to the limited sample size.

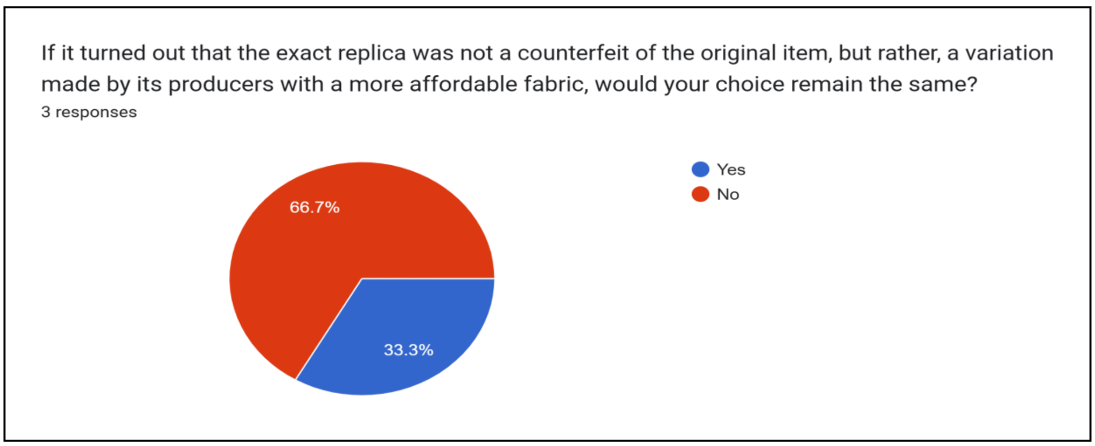

Fig. 10. Additional question for individuals who chose the first three options (35–44)

Most of the respondents opted to purchase the licensed version in place of their previous choices, and this indicates that they might have a critical opinion of counterfeits.

4.2.5 45–54

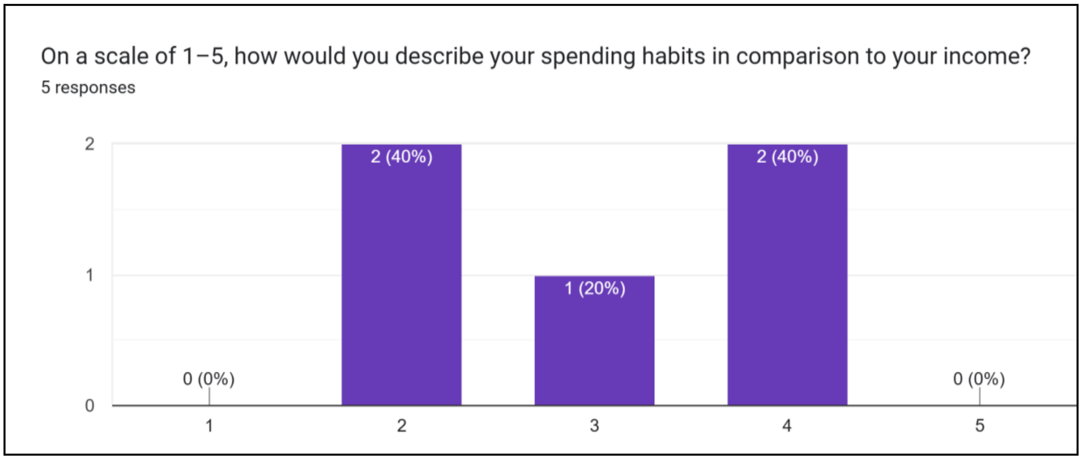

Fig. 11. Spending habits (45–54)

The spending habits of most of the respondents in this group were either almost frugal or almost lavish.

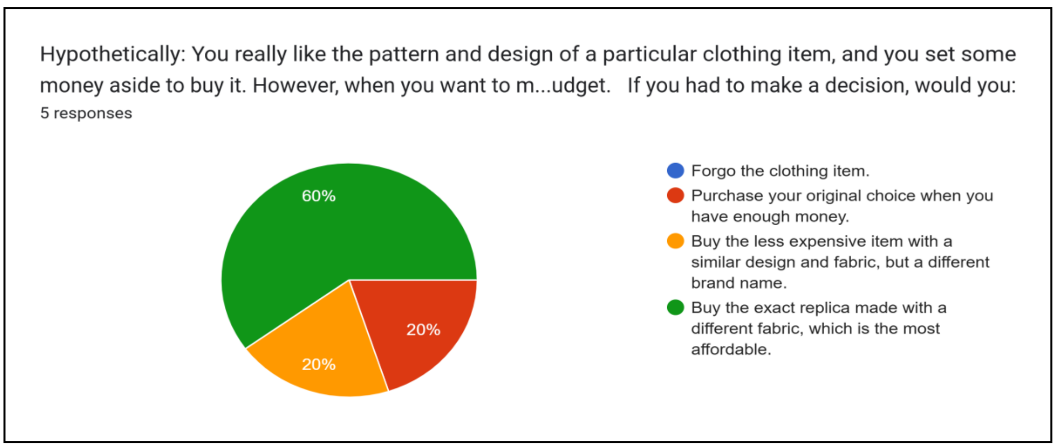

Fig. 12. Purchase decisions (45–54)

A clear majority of individuals in this group chose to purchase the counterfeit, indicating a priority of affordability over IP concerns, as well as possible apathy towards IP infringement.

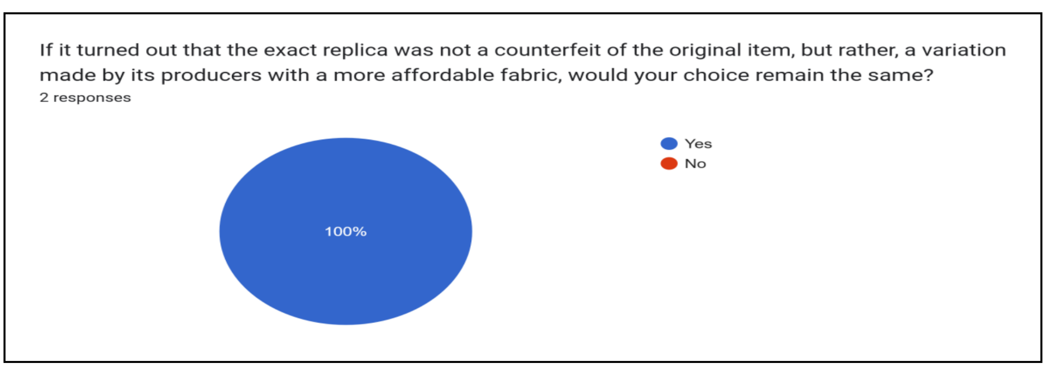

Fig. 13. Additional question for individuals who chose the first three options (45–54)

The individuals who chose to forgo the item and to purchase the dupe, respectively, opted to stick with their choices.

4.2.6 55 and above

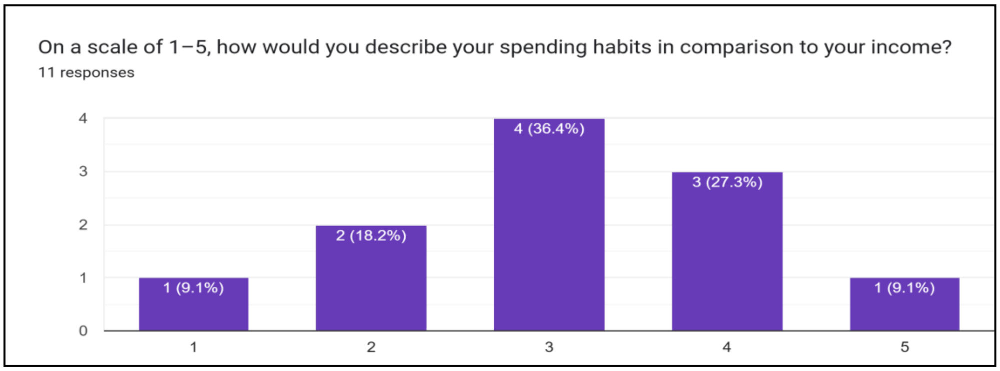

Fig. 14. Spending habits (55 and above)

The was a more diverse distribution of spending habits within this age group compared to the others, and most of the respondents possessed moderate spending habits.

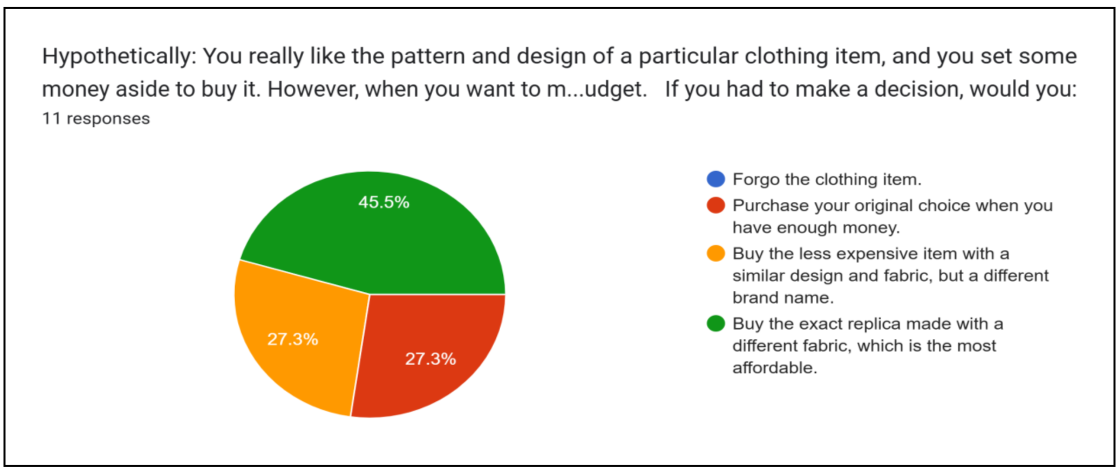

Fig. 15. Purchase decisions (55 and above)

Exactly like the individuals between 45 and 54, most of the respondents in this category opted to purchase the counterfeit, while an equal number opted to either forgo the item or purchase the dupe. This indicates a priority of cost concerns, and a possible apathy towards IP theft.

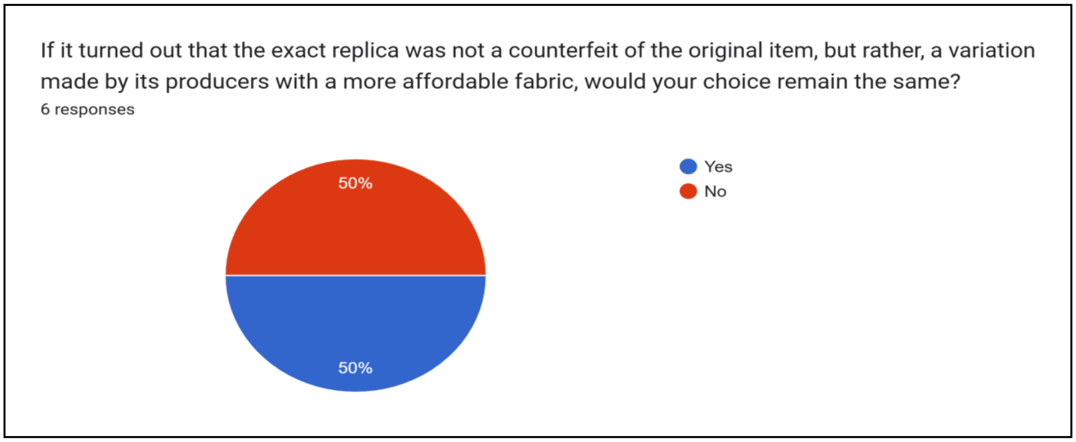

Fig. 16. Additional question for individuals who chose the first three options (55 and above)

An equal number of respondents opted to stick with their previous choices and to purchase the licensed version, respectively.

4.2.7 Summary of Findings

It must be established that the result of this survey cannot be interpreted as a definite representation of the market due to the limited size of the subject pool. Hence, its findings are merely probable, but when assessed in combination with other studies, can help to inform consumer sensitisation efforts against intellectual property infringement in apparel and textiles.

Within this focus group, as evidenced by the results in sections 4.2.5 and 4.2.6, the total number of respondents aged 45–54 and 55 and above amounted to 16 individuals, thereby constituting 22.9% of the sample size when combined. This age range of 45 and above, per fig. 12 and fig.15, appeared most vulnerable to purchasing a counterfeit. While the respondents aged 18–24 comprised 57.1% of the survey pool, as illustrated by fig. 1, and as evidenced by fig. 3, this group had the highest percentage of subjects who opted to purchase a dupe.

4.3 Necessity for Bespoke Regulatory Frameworks

This section will outline arguments in favour of creating a specific, comprehensive legal framework to control imitation in apparel and textiles through improved protection of the IP of their designers.

4.3.1 Fosterage of Innovation and Creativity

A major reason why imitation in apparel and textiles should be better regulated is because ensuring that creators get the exclusive rights accruing from their work will encourage them to invest more of their labour into innovation.[84] IP theft and infringement are a disincentive to creativity, and a good illustration of this in the Nigerian apparel industry occurred in late 2025, when brand, Aligu, had their designs plagiarised by Asian fast-fashion sites. In response, the brand released a collection

[84] Bernice Ofunre Asein, 'Gaps in the Copyright and Design Rights for Nigeria's Fashion Industry' (2021) Available at SSRN https://dx.doi.org/10.2139/ssrn.5541998 accessed 16 December 2025.

called the 'Copycat Collection', with images of Asian pop-culture symbol, Hello Kitty, as a sarcastic remark on the discouraging effect of IP theft on creativity.[85]

4.3.2 Protection of Brand Reputation

Effective regulation is also important to protect the integrity of brands. Imitation products devalue original products, as sometimes, consumers may be unable to tell them apart. This damages the brand's image, as well as invalidates the efforts of its creator.[86] Hence, effective protection of designers' IP helps to protect their brands' equity, as well as protect consumers from sub-standard or poorer quality products.

4.3.3 Protection of Local Industries

It is important to protect local industries and their products from imitation by foreign manufacturers. A good example of the importance of this is illustrated by the case of the Nigerian textile industry. It used to be a large industry in first few decades post-independence, and in 1985, it was the largest employer after the government, directly employing over two hundred and fifty thousand workers, as well as indirectly engaging over a million cotton farmers. However, with the influx of wax-print fabrics from China that were fraudulently labeled, 'Made in Nigeria', the Nigerian textile industry which had already begun to struggle met its demise.[87] Hence, the importance of regulating imitation in apparel and textiles cannot be overemphasised.

4.3.4 Protection of Smaller Creators

The regulation of imitation is also important to protect both the IP and existence of emerging designers and small and medium enterprises (SMEs). While bigger brands may find it easier to cope with plagiarism due to having both an established clientele and more resources at their disposal, it may be more difficult for smaller creators who may lack both an established audience as well as the necessary resources to enforce their IP rights against infringement.[88] Additionally, larger brands or companies such as fast-fashion sites often steal the designs of small creators, leaving them vulnerable and at a loss. Therefore, the existence of clear legal frameworks regarding apparel and textiles would help to defend the IP rights and labour of emerging designers.

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[85] Kartiér Black, 'Today's Fashun Sermon: Here's all you need to know about the Copycat Collection by @aliguofficialmand why we have the Hello Kitty symbol used…' (*TikTok*, 2 December 2025) https://vt.tiktok.com/ZSakMVcNb/ accessed 22 January 2026.

[86] Alexis Theoharidis, 'The Devil Wears Dupes: Legal Implications of "Dupe Culture" in The Devil Wears Dupes: Legal Implications of "Dupe Culture" in the Fashion Industry and How Trademark Law Should Adapt' (2025) 9(1) The Business, Entrepreneurship & Tax Law Review https://scholarship.law.missouri.edu/betr/vol9/iss1/12?utm_source=scholarship.law.missouri.edu%2Fbetr%2Fvol9%2Fiss1%2F12&utm_medium=PDF&utm_campaign=PDFCoverPagesaccessed 16 December 2025.

[87] Afolabi Olaleye Toye, 'China-Africa Relations: The Northern Nigeria Textile Industry' (MA thesis, Chapman University 2021) https://doi.org/10.36837/chapman.000202 accessed 16 December 2025.

[88] Besidone Eyesan, 'The Fashion Paradox: Imitation or Inspiration' (*Style Cartel*, 1 February 2024) https://stylecartel.com/the-fashion-paradox-imitation-or-inspiration/ accessed 27 December 2025.

4.3.5 Prevention of Loss of Income

The existence of frameworks that ensure that designers get the full reward of their labour is paramount. This is because imitation products rob the original creators of their deserved revenue and affects their financial stability, also hindering their ability to create products and maintain their quality.[89] If plagiarism is unregulated, consumers will be free to buy less-expensive alternatives, leaving designers at a loss.[90] Hence, it is important for the law to draw a clear line between imitation and inspiration in apparel and textiles, as well as in fashion at large.

5 Conclusion

Due to the nature of the fashion industry, the conscious or subconscious use of inspiration from references is almost inalienable from the process of creating apparel and textiles. However, it is must be pointed out that there is a difference between creating a piece within a particular style or trend, and outrightly copying another individual's work.[91] There is beyond doubt, a need for bespoke frameworks regulating imitation in apparel and textiles, not just in Nigeria, but across the globe, and the law must set the acceptable standards for what is permissible and what amounts to intellectual property infringement.

5.1 Recommendations

a Legislative Reform

Legislation that specifically and comprehensively regulate IP in apparel and textiles should be enacted both nationally, regionally, and internationally, in order to set the boundaries for imitation in apparel and textiles. The proposed legislation should also provide for the protection of trade dress and unregistered designs, as well as include the functional aspects of clothing under copyright protection. And in addition to forfeiture of goods, stricter penalties should be instituted against manufacturers of dupes and counterfeits, to serve as a deterrent. Further, domestic laws and international treaties that regulate and restrict fast fashion should be passed. The law passed by France in June 2025, though its main rationale was to curb environmental pollution,[92] is undoubtedly a commendable step.

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89 Issra Mehdi, 'The Dupe Effect: Exploring Consumer Motivations Behind Dupe Purchases' (PhD thesis, Temple University 2025) https://static1.squarespace.com/static/6806f2b6c921d62dc7eb0c44/t/6807df17c51b254227fe5535/1745346329230/TheDupeEffect.pdf accessed 20 December 2025.

90 Bernice Ofunre Asein, 'Gaps in the Copyright and Design Rights for Nigeria's Fashion Industry' (2021) Available at SSRN https://dx.doi.org/10.2139/ssrn.5541998 accessed 16 December 2025.

91 Ibid.

92 France 24, 'French Senate adopts bill to regulate fast fashion industry' *France 24* (10 June 2025) https://www.france24.com/en/live-news/20250610-french-senate-to-vote-on-regulating-fast-fashion accessed 20 January 2026.

b Improved IP Right Enforcement Mechanisms

The registration process for IP rights in Nigeria should be streamlined and overhauled to ensure speed, affordability, and efficiency, and a publicly available database containing registered work should be created. Additionally, in order to improve the legal framework regulating imitation and create judicial precedent, it is important to advocate for more designers to pursue the enforcement of their IP rights through litigation.

c International Cooperation

Countries should co-operate both regionally and internationally to curb the trade of imitation goods through seizure, destruction and arrest of their manufacturers. Special attention should also be given to imports from countries with a high rate of counterfeit production.

d Government Initiatives

The government should also implement policies that foster creative businesses and support their growth. Additionally, grants and prizes can be offered to encourage innovation among designers.

e Sensitisation Programs

Consumer sensitisation programs should also be carried out to discourage the deliberate purchase of imitation products, and the active or passive support of IP theft. In addition to this, the government should collaborate with industry stakeholders to organise orientation programs to enlighten designers and other individuals within the apparel and textiles industry on the importance of protecting their IP, as well as the necessary criteria and processes for registration.

f Industrial Initiatives

Producers of apparel and textiles should adopt the use of smart labels. A smart label consists of a unique QR code which traces the origin of the item. This will help both consumers and law enforcement officials such as customs officers to detect whether products are original or not. Additionally, high-end and luxury designers can enter into licensing agreements with producers of more affordable apparel,[93] in order to find a mutually-beneficial solution to dupes and counterfeits. Further, to address the replication for non-commercial use, designers can produce and sell digital and physical patterns of their clothing to home sewists, thereby also promoting sustainability.[94]

93 Copyright Act, s 11; Patents and Designs Act, s 23.

94 Heidi Härkönen, 'Fashion and Copyright: Protection as a Tool to Foster Sustainable Development' (PhD thesis, University of Lapland 2021) http://urn.fi/URN:ISBN:978-952-337-265-8 accessed 16 January 2025.

The Journal of African Fashion Law, Policy & Innovation Volume 1, Issue 1, is a scholarly publication dedicated to advancing legal research and policy discourse on Africa's fashion industry. It brings together legal scholars, policymakers, industry practitioners, and innovators to examine the legal, regulatory, and policy frameworks that protect, govern, and drive the growth of fashion across the continent.

This inaugural issue explores the legal and regulatory frameworks shaping Africa's fashion industry, while examining policy gaps, emerging innovations, and the evolving legal landscape defining the future of the continent's fashion sector.

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