



Intellectual Property, SMEs, and Economic Recovery in Nigeria

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In industrialized nations, SMEs account for over 90% of the company population, 60-70 percent of employment, and 55 percent of GDP, according to the World Trade Organization (WTO).¹ In biotechnology-related disciplines in Europe, SMEs accounted for roughly 20% of patents, one measure of innovation.² In emerging economies, formal SMEs account for up to 40% of national income (GDP).³ As the global economy continues to encounter headwinds, SMEs are increasingly seen as a key component of long-term, inclusive economic growth.⁴ Although there is no universal

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¹ WTO, 2016. World Trade Report 2016. Leveling the trading field for SMEs. https://www.wto.org/english/res_e/publications_e/wtr16_e.htm. Accessed May 7, 2021

² "PWC's MSME Survey 2020: Building to Last Nigeria's Report" <https://www.pwc.com/ng/en/assets/pdf/pwc-msme-survey-2020-final.pdf> accessed May 7, 2021

³ *Ibid*

⁴ Murat Bayraktar and Dr. NeşeAlgan "The Importance of SMEs on World Economies" <<https://www.avekon.org/papers/2265.pdf>> accessed May 7, 2021

definition of SMEs, they can be described as non-subsidiary, independent firms or organizations with fewer employees. The National Policy on Micro, Small, and Medium Enterprises (MSMEs) distinguishes businesses based on their size.⁵SMEs are best defined by their capital, scope, project costs, annual turnover, financial strength, and personnel count, among other factors.⁶ SMEs are widely acknowledged to have an essential role in the economy.⁷ They are referred to as the global economy's lifeblood.⁸

The National Bureau of Statistics estimates that SMEs contribute 48 percent of the gross domestic product, accounts for 96% of businesses, and 84% of employment in Nigeria.⁹ With a total number of 17.4 million, they account for over half of industrial jobs and nearly 90% of the manufacturing sector regarding the number of enterprises.¹⁰

Nigeria is in a precarious economic situation, and the country is particularly vulnerable to the worldwide economic upheaval produced by the COVID-19 epidemic, which the drop in global oil prices has compounded.¹¹ This situation resulted in the worst recession in four decades in 2020, reversing three years of economic recovery.¹² Nigeria's economy contracted by 6% in the second

⁵ Micro Enterprises – less than 10 employees, and less than N5,000,000 (excluding land and buildings); Small Enterprises – between 10-49 employees, and N5,000,000 to N50,000,000 (excluding land and buildings); Medium Enterprises – between 50 -199 employees, and N50,000,000 to N500,000,000 (excluding land and buildings) – Small and Medium Enterprises Development Agency (SMEDAN) 2007.

⁶ Uche Mekwunye, "Nigeria: Small and Medium Scale Enterprises in Nigeria- An Overview of Initial Set-Up" *Mondaq* 22 November 2018 [https://www.mondaq.com/nigeria/directors-and-officers/757432/small-and-medium-scale-enterprises-in-nigeria-an-overview-of-initial-set-up#:~:text=Nigeria%3A%20Small%20And%20Medium%20Scale,Overview%20Of%20Initial%20Set%20Up&text=22%20of%201988%20defined%20SMEs,Naira%20\(N500%2C000\)](https://www.mondaq.com/nigeria/directors-and-officers/757432/small-and-medium-scale-enterprises-in-nigeria-an-overview-of-initial-set-up#:~:text=Nigeria%3A%20Small%20And%20Medium%20Scale,Overview%20Of%20Initial%20Set%20Up&text=22%20of%201988%20defined%20SMEs,Naira%20(N500%2C000).). Accessed May 7, 2021

⁷ *Ibid*

⁸ "Global SME Statistics in 2020" *Allianz Care* March 9, 2021, <https://www.allianzcare.com/en/employers/employer-blogs/2021/03/global-sme-statistics.html> accessed May 7, 2021

⁹ "Nigeria SME Survey" *PWC* <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html> accessed May 7, 2021

¹⁰ *Ibid*

¹¹ "The World Bank in Nigeria" *The World Bank* <https://www.worldbank.org/en/country/nigeria/overview> accessed May 7, 2021

¹² *Ibid*

quarter of 2020, the first drop since the first quarter of 2017 and the steepest since the first quarter of 2004.¹³ The government introduced the Economic Sustainability Plan,¹⁴ which includes a National Medium, Small, and Micro Enterprises (MSMEs) Survival Fund, to cushion the effect of COVID-19 on the economy and establish an atmosphere that allows small businesses to thrive.¹⁵ Undoubtedly, this reveals the government's commitment to leveraging SMEs to drive economic recovery and economic growth.

Despite the pandemic's harrowing impact, it brought SMEs' innovativeness to the fore.¹⁶ It provided a unique opportunity to boost SMEs' growth, thereby creating jobs and stimulating the economy. Young entrepreneurs and SMEs, for example, have been at the forefront of developments to tackle the spread of COVID-19 in Africa.¹⁷ To name a few, there's the solar wash in Ghana, a solar-powered, touch-free water dispenser in Nigeria, triage tools in Nigeria, and the "DiagnoseMe" COVID-19 remote screening platform in Burkina Faso.¹⁸ We cannot overlook the critical role that intellectual property (IP) plays in achieving the goals of SMEs in the economy when exploiting the potential that this pandemic offers for their development.

Patents, utility models, and trade secrets, for example, are all ways that IP protects creativity.¹⁹ It encourages growth by disseminating and transferring information and technological know-how.

¹³ "Nigeria Moves Toward a Sustainable COVID-19 Recovery" *World Resources Institute* January 14, 2021, <https://www.wri.org/insights/nigeria-moves-toward-sustainable-covid-19-recovery> accessed May 7, 2021

¹⁴ "What You Need to Know About the Nigeria Economic Sustainability Plan" June 25, 2020 <https://statehouse.gov.ng/news/what-you-need-to-know-about-the-nigeria-economic-sustainability-plan/> accessed May 19, 2021

¹⁵ *Ibid*

¹⁶ Assia Sadibe, "In Post-Pandemic Africa, Small businesses could be key to recovery" *World Economic Forum* June 24, 2020, <https://www.weforum.org/agenda/2020/06/strengthening-africa-s-best-pandemic-defense/> accessed May 7, 2021.

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ Similoluwa Oyelude and Fidelis Oguche "How intellectual property can help SMEs grow" *The Nation* May 4, 2021, <https://thenationonlineng.net/how-intellectual-property-can-help-smes-grow/> accessed May 7, 2021

More jobs will be created if a conducive atmosphere were created for creativity to flourish.²⁰It is worth noting that a third of Africa's 69.7 million labor force is unemployed, with another 15.9 million underemployed.²¹ In a nutshell, improving labor statistics requires the government to promote creativity by favorable intellectual property policies. IP rights are so critical that the WTO has made it a requirement for state parties to implement strong IP security regimes and follow the minimum guidelines in the TRIPS agreement.²²

According to World Intellectual Property Organization (WIPO), patents, patented works, industrial designs, trade secrets, and geographical indications (all of which can be considered IP assets), like other forms of property, can be created, purchased, controlled, and commercialized to produce an economic return.²³ It's no wonder that both developed and developing countries are becoming increasingly concerned about securing IP assets, which are widely recognized as the world's most valuable asset class.²⁴In today's world, intellectual property assets account for 80% of a company's worth. This truism is exemplified by the operations of companies like Alibaba and Uber.²⁵ It is critical to emphasize that human capital and intellectual property complement one another and that the combination of the two is a powerful economic force in a knowledge economy, given that IP is an economic asset that can be owned, given its legal status, and used

²⁰ Supra (n 16)

²¹ Ruth Olorounbi, "Nigeria Unemployment Rate Rises to 33%, Second Highest on Global List" *Bloomberg* March 15, 2021, <https://www.bloomberg.com/news/articles/2021-03-15/nigeria-unemployment-rate-rises-to-second-highest-on-global-list> accessed May 7, 2021

²² "Intellectual Property in the World Trade Organization: Turning it into Developing Countries' Real Property" *UNCTAD* 2010 https://unctad.org/system/files/official-document/ditctncd20068_en.pdf accessed May 19, 2021; "Overview: the TRIPS Agreement" https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm accessed May 19, 2021

²³ "IP Asset Development and Management: A Key Strategy for Economic Development" <https://www.wipo.int/edocs/pubdocs/en/intproperty/896/wipo_pub_896.pdf> accessed May 7, 2021

²⁴ John P Ogier, "Intellectual Property, Finance and Economic development" *WIPO Magazine* February 2016 https://www.wipo.int/wipo_magazine/en/2016/01/article_0002.html accessed May 7, 2021

²⁵ *Ibid*

as a driver of economic development. This is critical if Nigeria's government wants to move beyond short-term economic growth to long-term economic sustainability.

Since IP assets can be valued and classified as part of an SME's assets, they increase a company's valuation and make it more appealing to investors. Also, it promotes creativity because inventors know they will be fully compensated for their efforts.²⁶ Because of their innovations, Nigerian tech startups raised \$219 million in the first quarter of 2021.²⁷ IP adds value at any step of the innovation and commercialization phase when SMEs properly leverage it. IP, according to the WIPO, helps SMEs promote and build their innovations, place themselves competitively for trading in global markets (for example, a business with patents can enter new markets and enjoy exclusive rights in a market by licensing), and gain access to information, networks, investors, and new commercial pathways.²⁸ IP can also be used to generate revenue, and businesses can earn royalties by licensing their intellectual properties. For example, patents can be considered a corporate asset that is taken into account during revenue-generating joint ventures, mergers, and acquisitions. Dell used its patent portfolio as collateral in a cross-licensing deal with IBM in 1999, resulting in lower-cost computer products and, as a result, increased its profitability. Another example is the use of IP for economic growth in ASEAN countries.^{29,30}

²⁶ Oyebola Coker, "IP as a tool for economic growth in Nigeria" <https://inventa.com/en/ng/news/article/616/ip-as-a-tool-for-economic-growth-in-nigeria> accessed May 16, 2021

²⁷ Yinka Awosanya, "Report: Nigeria startups raised \$219m in Q1 2021, higher than the figures of the last three Q1s combined" available at <https://techpoint.africa/2021/05/04/nigerian-startups-funding-report-q1-2021/> accessed May 16, 2021

²⁸ Supra (n 19)

²⁹ For example, in Malaysia, trademarks were leveraged to promote the success of their entertainment, the filming industry in particular. Through this, Les' Copaque has become the most popular Malaysian animation studio. This led to revenue generation and even carved a niche for the Malaysian animation industry in the global market.

³⁰ "IP Successes in the ASEAN Region" *WIPO* 2014 https://www.wipo.int/edocs/pubdocs/en/intproperty/asean_studies/asean_region_ip_successes.pdf accessed May 15, 2021

Nigeria is working to transition away from its dependence on oil and other natural resources to a knowledge economy. This is an ideal situation for SMEs to capitalize on their IP assets to develop their businesses. It then raises why SMEs in Nigeria have yet to leverage IP assets for economic development completely. To begin with, SMEs have difficulty obtaining the capital required to fund research and development, which is critical to innovation and the development of intellectual property rights.³¹ In addition, there is a lack of understanding among SME owners about the value of IP rights security for economic growth.

Furthermore, IP infringement, such as piracy, is a major threat to IP rights in Nigeria, and it has developed as a result of the country's lack of effective compliance mechanisms. Due to its inability to domesticate applicable IP treaties such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Patent Cooperation Treaty (PCT),³² the government has also contributed to the status quo. Despite this, Nigerian IP laws are outdated, and there are no robust national IP policies in place, nor is there a body specifically established to administer IP regimes.

WIPO has laid good precedent by establishing Technology and Innovation Support Centers in Nigeria to provide innovators with the knowledge they need to leverage their intellectual property rights fully.³³ The government then has the duty to design an IP framework that encourages creativity by offering incentives such as tax cuts, IP rights education (which the Lagos State Employment Trust Fund is doing well)³⁴ and research. Nigerian IP laws and regulations, such as

³¹ *Ibid*

³² Patent Cooperation Treaty <https://www.wipo.int/pct/en/> accessed May 27, 2021

³³ "Technology and Innovation Support Centers" <https://sustainabledevelopment.un.org/partnership/?p=7654> accessed May 15, 2021

³⁴ "Intellectual Property for MSMEs in Nigeria" *LSETF* October 9, 2018, <https://lsetf.ng/content/intellectual-property-protection-msmes-nigeria> accessed May 16, 2021

Patent³⁵ and Trademark laws,³⁶ must be revised to reflect current realities and provide effective compliance mechanisms, and the legislature must domesticate applicable IP laws to make enforcement easier.

The African Continental Free Trade Area (AfCFTA) bears prospects. Hence, it is important to leverage Phase II of negotiations on, among many others, IP rights that can help MSMEs in Nigeria develop.³⁷ The government should use the system to promote IP rules and standards that are responsive to Africa's economic and development needs and aid the continent's post-pandemic recovery.

WIPO's National IP Strategy becomes important to be pursued by the government in leveraging IP for SMEs towards economic recovery.³⁸ According to a report, the SME sector in Nigeria is well-positioned to provide up to 80% of jobs, boost per capita income, and unlock economic expansion and GDP growth with adequate funding.³⁹ As a result, the government should bolster the capacity of SME Development Institutions and special financial institutions for MSMEs, such as the Bank of Industry,⁴⁰ and retail banking, to provide capital at a concessionary rate to MSMEs to boost their competitiveness using the resources of the IP system (patents, trademarks, copyrights) through public-private partnerships.

³⁵ Patents and Designs Act, 1970

³⁶ Trade Marks Act, Cap T 13, Laws of the Federation of Nigeria 2004

³⁷ Marumo Nkomo, Jabulani Mthombeni and Trod Lehong "The African Continental Free Trade Area: a significant role for IP" *WIPO Magazine* December 2020

https://www.wipo.int/wipo_magazine/en/2020/04/article_0005.html accessed May 16, 2021

³⁸ "Innovation, Intellectual Property and SMEs- WIPO"

http://www.wipo.int/edocs/mdocs/sme/en/wipo_kipo_myipo_smes_kul_08/wipo_kipo_myipo_smes_kul_08_wvw_109138.ppt accessed May 16, 2021

³⁹ "The role of retail banks in SMEs development, sustainability and growth" *The Guardian*

<https://www.google.com/amp/s/guardian.ng/business-services/the-role-of-retail-banks-in-smes-development-sustainability-growth/> accessed May 19, 2021

⁴⁰ "Bank of Industry" <https://www.boi.ng/> accessed May 19, 2021

In conclusion, the government must embark on IP rights sensitization programs, improve access to capital to encourage research and development through favorable policies and regulatory climate, comprehensively revamp its IP laws and policies and improve their enforcement, leverage the IP protocol in the AfCFTA, and look to public-private partnerships to achieve economic recovery in Nigeria through SMEs leveraging IP tools.