

Geographical Indications (GIs) as Tools for Agricultural Knowledge Governance in Selected East and Southern African Countries

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Abstract

This thematic report looks at geographical indications (GIs) as tools of knowledge governance in agricultural development in selected Eastern and Southern African countries. The author identifies features of GI law in these countries, and concludes that properly-crafted GIs can serve as tools for support of production and marketing of a wide variety of African agricultural resources.

Keywords

intellectual property (IP); geographical indications (GIs); traditional knowledge (TK), agricultural production

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1. Introduction

A geographical indication (GI) is a form of intellectual property (IP) right, European in origin, in which a product carries a sign or name linked to the particular geographical origin of the product. GI-protected products in Europe include cheeses, meats, wines and spirits. A product is given GI protection, i.e., the exclusive right to use the sign or name in question, on the basis of demonstration that the product has unique qualities or reputation linked to the geographical origin signified by the sign or name. (For example, only sparkling wine from the French region of Champagne can bear that geographical name, because Champagne is a registered “controlled designation of origin” regulated by France’s Institut National de l’Origine et de la Qualité.)

In recent times, African countries have begun to pay increased attention to GIs as a potential mode of knowledge governance for African agricultural products drawing on localised traditional knowledge (TK). There have been a number of recent developments regarding GIs – at continental, regional and national levels in Africa – as one of the tools through which the value, identity and earning power of TK-based agricultural activity can be enhanced.

The legal means for the protection of GIs can either be *sui generis* or trademark-based. A *sui generis* system is one whereby a law is provided that is specifically designed to provide GI protection. A trademark-based system protects GIs through trademarking tools such as collective marks, certification marks and ordinary trademarks. In this report, my focus is on (existing or proposed) *sui generis* GI instruments.

In Section 2, I identify recent African continental-level initiatives for introducing and establishing GIs, including the activities of the African Union (AU) Commission, the European Commission for Agriculture and Rural Development, the African Regional Intellectual Property Organisation (ARIPO), and the Organisation Africaine de la Propriété Intellectuelle (OAPI). Section 3 identifies legislation concerning GIs at country level in Ethiopia, Kenya, Mozambique, Uganda, and Zimbabwe, all of which have either existing or proposed European-modelled *sui generis* legal regimes for GI protection. Section 3 also identifies GI-relevant products in each jurisdiction, i.e., products that have the potential to qualify for GI protection. Section 4 offers some observations and recommendations.

2. African continental and regional initiatives

The AU Commission’s Department of Agriculture and Rural Economy (DREA) has positioned GIs as important tools for linking product origin to quality parameters, in line with AU efforts to promote and support intra-African and global trade (DREA, 2012). In its 2014-2017 Strategic and Operational Plan, the DREA identified awareness creation on GIs among its strategies and actions to pursue, with a view to the development of a continental GI policy framework (DREA, 2014).

In 2011, a joint AUC-EU College-to-College Declaration emphasised the need to support African farmers, fishermen and agri-food producers wishing to make use of the GI system, with the Declaration calling for dissemination of knowledge on GIs, sharing of experiences, and addressing the challenges farmers, fishermen and agri-food producers face if seeking to use the GI (AUC & EC, 2011). As a deliverable linked to the Declaration, the AU Commissioner for Rural Economy and Agriculture and the European Commissioner for Agriculture and Rural Development agreed to convene a joint AU-EU workshop at which developments in the area of African GIs would be reviewed and strategies for further progress discussed. Held in Kampala in November 2011, the workshop drew roughly 60 government officials and high-level GI and product development experts from across sub-Saharan Africa and the EU (AUC & EC, 2011).

In December 2012, an AU Member States' consultation on GIs was convened in Abuja, raising awareness on the importance of linking products, and product quality, reputation or other characteristics, to the geographical locations where they originate. In March 2013, the Pan-African Parliament collaborated with the Southern African Development Community (SADC) for a consultation on GIs with participants from Malawi, Namibia, South Africa, Tanzania, Zambia and Zimbabwe (Egbe, 2013). These consultations were conducted as part of formulating appropriate policies to ensure that farmers acquire rights to key products linked to what they produce, and that they obtain premium prices via such rights (DREA, 2014).

Harare-based ARIPO, as an organisation mandated to facilitate African regional harmonisation of IP laws and regulations, has taken a keen interest in assisting its members "to enact appropriate GI laws [and] work towards the adoption of a regional system on GIs" (Appiah, 2011). In December 2011, the 13th Session of the ARIPO Council of Ministers mandated the ARIPO Secretariat to include GIs in its overall mandate on intellectual property. In 2012, ARIPO signed a Memorandum of Understanding with the European Commission Directorate-General for Agriculture and Rural Development, with the MoU calling on ARIPO and the Commission to "cooperate in matters related to GIs" and "to build capacity among the administrators and stakeholders for a development of a harmonised protection system on GIs" (Appiah, 2011).

Since 2010, Yaoundé-based OAPI – ARIPO's counterpart for West and Central Africa – has cooperated with the French Development Agency (AFD) for development of a GI project for six products, with technical assistance from the French Agricultural Research Centre for International Development (CIRAD). Through this collaboration, three of the products covered under the project have been registered with OAPI as GIs: Oku white honey, Penja pepper, and Ziamacenta coffee. Registration with OAPI means that these products enjoy protection in all OAPI member states. Registration was postponed for the other three products

evaluated for GI protection under the project: Dogon shallots, Galmi purple onions, and Korhogo cloth (Chabrol et al., 2015).

3. African national initiatives

There are GI initiatives in a number of African nations, and we now turn to five of those countries: Ethiopia, Kenya, Mozambique, Uganda and Zimbabwe.

Ethiopia

Ethiopia has two pieces of draft legislation that cater to *sui generis* GI instruments: the draft Proclamation for the Registration and Protection of Designation of Origin (FDRE, n.d.1), and the draft Geographical Indications Proclamation (FDRE, n.d.2). Plans are under way to integrate these two pieces of legislation and drive utilisation of GIs for a wide variety of agricultural products. Some of the country's most notable locally specific products are its coffee varieties. Three such varieties – Sidamo, Yigacheffe and Harrar – already enjoy a non-*sui-generis* form of GI protection via their registration as trademarks at international level, including in the EU, the US and Japan (Oguamanam & Dagne, 2014). Other Ethiopian coffee varieties that could potentially qualify for *sui generis* GI protection in accordance with the contemplated Ethiopian legal instruments are Limu, Jimma, Lekempt, Ghimbi and Harena Forest coffees. Meanwhile, in respect of possible GI products outside the coffee sector, Ethiopia's Ambo herbs, grown in the Western Highlands, have a reputation for their unique taste and character (Zuberi et al., 2014).

Kenya

Kenya already registers GI-relevant products as certification marks and collective marks (Bagal et al., 2013). Since 2001, Kenya has worked on a bill that would provide for *sui generis* GIs. A draft bill was published in 2007, but it has not become law. In the eyes of the supporting Kenyan legislators, *sui generis* protection of GIs would serve to protect consumers from deception, would enhance markets, and would ensure Kenya's compliance with the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Njuguna, 2013). Among Kenya's GI-relevant products are specialty tea and coffee varieties, wild silk, Ukambani honey, Yatta and Papaya wines, Echuchuka aloe, and Mount Kenya roses (Ramba, 2013).

Mozambique

Mozambique provides for *sui generis* protection and administration of GIs through its Industrial Property Code (2006) and the Code's Regulations on Appellations of Origin and on Geographical Indications (2009). (An amended Industrial Property Code (2015) came into force in March 2016, but it does not make substantive changes regarding GIs (Abdala & Murrure, 2016).) Mozambique's Industrial Property Institute has been greatly involved in drafting technical specifications in terms of the Industrial Property Code for possible GI protection of Mozambican White Prawns.

Highly regarded due to their quality and unique taste (Jocitala, 2014) and coming predominantly from Mozambique's Sofala Bank, White Prawns are believed to have high export potential.

Uganda

Uganda's Geographical Indications Act of 2013 creates a *sui generis* legal protection system with the following objectives:

- (1) to provide for the protection and registration of geographical indications;
- (2) to provide for the duration of protection of geographical indications;
- (3) to provide for the appointment of a registrar; (4) and to provide for remedies for infringement or prohibited use of geographical indications.

The Uganda Registration Services Bureau has called for implementation of the Act to be fast-tracked in order to prevent other countries from trademarking unique goods from Uganda (URSB, 2013). Chief among Uganda's GI-relevant products is Central Uganda's Bark Cloth textile, made from fig tree bark (Katebalirwe, 2011). Bark Cloth production in Uganda is rooted in ancient culture and tradition, starting in the 13th century. The trees are wrapped in fresh banana leaves to protect the bark from insects and dryness. The UN Education, Scientific and Cultural Organisation (UNESCO) has recognised Bark Cloth as "a masterpiece of oral and intangible heritage of humanity" (UNESCO, 2008). Also having strong GI potential are Uganda's Mukono vanilla, known for having the highest vanillin content of any vanilla in the world (Mpeirwe, 2013); its cotton, with its unique smoothness and brightness (Selleyfan, 2012); and its sesame plants, which is said to have the highest oil content in the world. Other potential GI products are Kasese passion fruit, Kawanda passion fruit, Kavare potato, Bugisu coffee and Katuulo pineapple (URSB, ARIPO & EU, 2013).

Zimbabwe

Zimbabwe's Geographical Indications Act of 2001, which provides for *sui generis* protection and registration of GIs, was primarily a result of pressure on Zimbabwe to fulfill its international obligations under TRIPS (Nyakoty, 2013). However, Zimbabwe does have a number of potential domestic GI products. One such product is Tanganda tea from the Chipinge district, a best-selling brand of tea in Zimbabwe and central Africa. Also notable are Cashel Valley beans from the Chimanimani district, Chipinge and Vumba coffees, Vumba cheese, Nyanga/Inyanga tea, Claremont trout, Mukuyu wine, and Mazoe oranges (Pasipanodya, 2012).

4. Observations and recommendations

Scope of coverage

In comparison with the scope of products covered by GI instruments in the EU, the scope under African existing and draft legislation is broad. For example, Uganda's

Geographical Indications Act defines a GI-relevant “good” as “a natural or agricultural product or animal product or a product of handcraft or industry” (Republic of Uganda, 2013). Under Zimbabwe’s GI law, a GI-relevant “product” is defined as “any natural or agricultural product or any product of handicraft or industry” (Republic of Zimbabwe, 2001). Kenya’s draft Bill covers “natural, agricultural, food, handicraft or industrial products” (Republic of Kenya, 2007). And under Ethiopia’s draft Geographical Indications Proclamation applies to “agricultural products, natural products, handicrafts, [and] industrial products” (FDRE, n.d.2).

In the EU, however, GI protection is mostly applied to processed and manufactured cheese, meat and alcohol products.¹ The EU Regulation on GIs applies to “agricultural products and foodstuffs”, and does not explicitly include natural resources and handicrafts (EU, 2012), thus taking a narrower approach than that found in the enacted or contemplated GI laws of the surveyed African countries. The broader scope of GI protection in African countries can be explained by the fact that African GI-relevant products often are not highly processed or manufactured, and are raw or near-raw materials.

The value chain

In Africa, it has been shown that “only a few percent of the final consumer-cost of an agricultural product normally goes to the farmers. The bulk of the value-added in an agricultural product is absorbed by the marketing chain” (AUC & EC, 2011). Many of the GI-relevant products in Africa are sold in their raw material form, processed (and sometimes combined with other varieties of the same product) somewhere else outside of Africa, and then sold at premium prices outside the continent (e.g., Kenyan tea in Pakistan, which is typically blended with other non-Kenyan tea varieties).

Accordingly, a focus of implementation of GI legislation in African countries needs to be on empowering actors at lower points in the value chain – i.e., at the farmer-producer level – to also become higher-level manufacturers and retailers so as to reduce the number of participants (particularly participants outside the product’s country of origin) in the value chain.

Geography versus culture-tradition

Implementation of GIs in the EU involves strict geographical demarcations, and monitoring and enforcement of these geographical boundaries of production. The EU distinguishes its GI protection according to three categories, depending on the

1 Currently in the EU, there are 2,945 GIs registered for wines and 327 for spirits. The combined number of registered GIs and pending applications for other agricultural products and foodstuffs is 1,289, of which 240 are for cheese. For the list of wines and spirits, see the EC’s DOOR and E-Spirit-Drinks databases at <http://ec.europa.eu/agriculture/quality/door/list.html> and <http://ec.europa.eu/agriculture/spirits> For agricultural products and foodstuffs, see the EC’s E-Bacchus database at <http://ec.europa.eu/agriculture/markets/wine/e-bacchus/indexcfm?&language=EN>

degree of geographical connection of a product:

- *protected designation of origin* (if all stages of production of a product are restricted to a particular geographical area)
- *protected geographical indication* (if at least one stage of the production and processing of the product has a geographical connection); and
- *traditional specialty guaranteed (TSG)* (where the product's quality arises from the culture and tradition of production in a region, and not necessarily from the geographical connection) (EU, 2012).

Given that defining, monitoring and enforcing a geographical production zone can be costly, it is my view that implementation of GIs in African countries should, in the short to medium term, focus primarily on identifying, and enforcing, characteristics of the type denoted by the third EU GI type outlined above: the TSG variety of *sui generis* GI. This variety would appear to be less costly to regulate, and would at the same time often be highly suitable to the TK-based attributes of African products (i.e., the TK-based customary, unique agricultural practices from which the raw materials and products emerge).

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