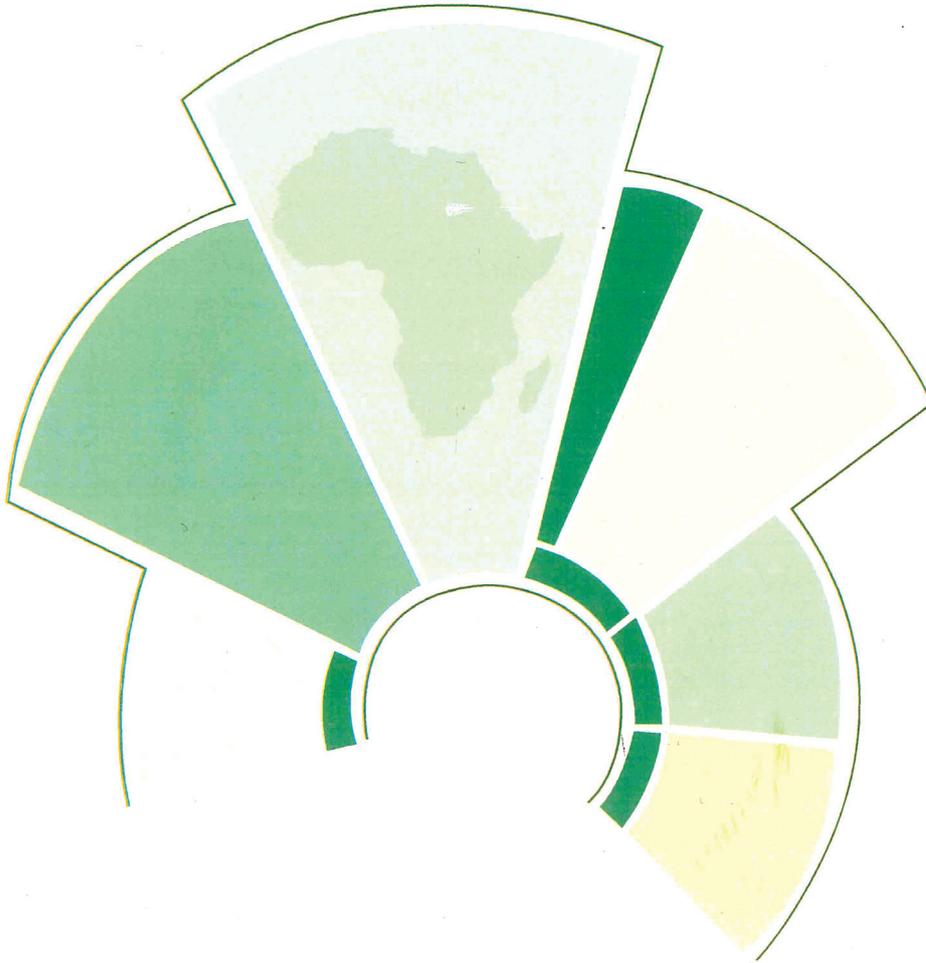




# African Union

a United and Strong Africa



## CONTINENTAL STRATEGY FOR GEOGRAPHICAL INDICATIONS IN AFRICA 2018 - 2023







**African Union**  
a United and Strong Africa

**AFRICAN UNION**

**DEPARTMENT OF RURAL ECONOMY AND AGRICULTURE**

**CONTINENTAL STRATEGY FOR  
GEOGRAPHICAL INDICATIONS  
IN AFRICA**

**2018-2023**



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## FOREWORD



I am pleased to introduce the Continental Strategy for the Geographical Indications (GIs) in Africa for the period 2018 to 2023. It was developed by the Department of Rural Economy and Agriculture (DREA) in collaboration with the African Union Member States, Regional Economic Communities (RECs), and technical and development partners. The strategy is a result of extensive consultations that began in 2012 with awareness training on the subject of GIs. The process was informed by previous experiences of developing continental strategies and policy frameworks by DREA. Most importantly, the strategy aligned with DREA's Strategic and Operational Plan, 2014-2017 which has been proceeded, in part, by the African Union Business Plan for Implementation of the CAADP-Malabo Declaration, 2017-2021.

This Continental Strategy for Geographical Indications in Africa was formulated at a significant time when African Union (AU) made progressive efforts towards continental integration. Moreover, the AU has increasingly grown in stature, representing a major force in international affairs including trade. Furthermore, the continental Strategy for the Development of Geographical Indications comes at a time when DREA is on course with the implementation of the Comprehensive Africa Agriculture Development Programme (CAADP), the Ten-Year Implementation Plan of Agenda 2063 which is "A Shared Strategic Framework for Inclusive Growth and Sustainable Development".

The Department of Rural Economy and Agriculture re-commits itself to enhancing collaboration with other Pan African Institutions and promoting partnerships with regional and international agencies, in support of AU Member States in our key strategic areas of intervention, namely: food and nutrition security, and environment and sustainable development through the advancement of GIs. By so doing we will contribute to the vision of an integrated and prosperous Africa.

**Mrs. Josefa Leonel Correia Sacko**

**Commissioner for Rural Economy and Agriculture**



## NOTE FROM THE DIRECTOR



This Continental Strategy for Geographic Indications (GIs) in Africa is formulated to facilitate sustainable rural development in line with the vision of African leaders of a prosperous Africa based on inclusive growth and sustainable development. Operationalization of the strategy will be through a comprehensive Action Plan that accompanies it. Its Action Plan is expected to provide depth and clarity to the contextual landscape of agricultural growth, rural development, and environmental management.

The Strategy outlines why a continental strategy for geographic indications is necessary; it provides a comprehensive background and the issues to be addressed; and defines the policy framework for Geographic Indications, detailing its vision, mission, values, guiding principles, scope, focus, objectives and outcomes.

Through stocktaking of the emerging regional and global opportunities, it has for example become apparent for DREA to capitalize on the growing attention that agriculture and sustainable environmental management have been receiving and prioritize protection of unique African agricultural and other commodities within the framework and context of GIs and intellectual property.

The Strategy and its Action Plan present a transition in approach towards articulation of key result areas that are inter-dependent, and mutually reinforcing; that is, strategic issues of production & productivity, agri-business & agro-industries, agricultural markets, and sustainable environmental management.

The strategy also provides an excellent working and collaborative opportunity with other AU departments and units, AU Member States, RECs, and technical and development partners. The proposed implementation arrangements and modalities of partnerships will contribute to and facilitate effective implementation and delivery on expectations.

The formulation process has benefited from the leadership of H.E. Mrs. Josefa Leonel Correia Sacko, Commissioner for Rural Economy and Agriculture, and from a very active engagement and valuable contribution of the Heads of Divisions and Directors/Coordinators of DREA Technical Specialized Offices. Ms. Diana Akullo, Policy Officer in DREA, coordinated the development of the strategy. They all deserve utmost appreciation for being instrumental in refining the strategy and action plan. The consultations with partners helped to enhance the quality of the initial draft, and I wish to acknowledge their respective contributions.

**Godfrey Bahigwa**

**Director, Department of Rural Economy and Agriculture**

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## ACKNOWLEDGMENTS

The African Union Department of Rural Economy and Agriculture wishes to thank its partners in elaborating a Continental Strategy for Geographical Indications in Africa.

The technical support provided by FAO headquarters and its geographical indications (GI) team, Emilie Vandecandelaere, Catherine Teyssier and Florence Tartanac, has been much appreciated. Help from Monique Bagal regarding legal issues has also been extremely important.

The involvement of the Directorate-General for Agriculture and Rural Development (DG AGRI) (Cristina Miranda Gozalvez) and the World Intellectual Property Organization (WIPO) (Alexandra Grazioli) in supporting the process has been key.

The comments and advice from a number of experts involved in the e-consultation process have also been most fruitful and constructive. Although it is not possible to mention here all those who provided inputs to the strategy, all responded positively at every level, from international level (the International Cooperation Centre of Agricultural Research for Development [CIRAD], the Research and Technology Exchange Group [*Groupe de recherche et d'échanges technologiques* – GRET] and various universities; to regional level (Regional Economic Communities [RECs], in particular the Economic Community of West African States [ECOWAS] and the Common Market for Eastern and Southern Africa [COMESA]); and national level – researchers, agriculture and intellectual property (IP) ministers/representatives, Non-governmental Organizations (NGOs), producers' representatives, extensionists and practitioners.

## EXECUTIVE SUMMARY

This document provides a background to geographical indications (GIs) in Africa and their implementation, with a view to supporting food security and sustainable rural development, as well as encouraging trade (not only in the region but also in third countries) and the consequent economic development of the continent. The document acknowledges the pioneer work carried out in the field by the African Intellectual Property Organization (OAPI) in both the legal and operational domains. The unified legal system with shared roles and intellectual property (IP) registration services for 17 countries has proved to be a great advantage. The experimental results obtained in the framework of the project supporting the establishment of GIs (PAMPIG) provide important lessons for the continental strategy.

Based on recommendations that emerged from the legal and operational development of GIs in Africa, a policy framework has been designed, based on six main outcomes, with emphasis on the design and promotion of an African approach, capacity building of all stakeholders as a transversal element, piloting process and harmonization of legal approaches to enhance international and regional markets.

This GI strategy for Africa provides the roadmap for the African Union Commission (AUC) and provides a collaborative opportunity with African Intellectual Property Organization (OAPI), the African Regional Intellectual Property Organization (ARIPO), RECs, member states and key stakeholders of the strategy, to facilitate development, promotion and protection of GIs in Africa. The document will be completed by the African GI Action Plan that will define further activities and products, and establish the final logical framework with time line, priorities and resources.

## LIST OF ABBREVIATIONS AND ACRONYMS

ACP	African, Caribbean and Pacific Group of States
AFD	French Development Agency [ <i>Agence française de développement</i> ]
AO	Appellation of origin
ARIPO	African Regional Intellectual Property Organization
AU	African Union
AUC	African Union Commission
CAADP	Comprehensive Africa Agriculture Development Programme
CIRAD	International Cooperation Centre of Agricultural Research for Development
COMESA	Common Market for Eastern and Southern Africa
CoP	Code of practice
CTA	Technical Centre for Agricultural and Rural Cooperation
DREA	Department of Rural Economy and Agriculture
EPA	Economic Partnership Agreement
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GI	Geographical indication
GIAHS	Globally Important Agricultural Heritage Systems
GRET	Research and Technology Exchange Group [ <i>Groupe de recherche et d'échanges technologiques</i> ]
IFAD	International Fund for Agricultural Development
IFOAM	International Federation of Organic Agriculture Movements
IP	Intellectual property
IPR	Intellectual Property Right(s)
ITC	International Trade Centre
NGO	Non-governmental Organization
OAPI	African Intellectual Property Organization [ <i>Organisation africaine de la propriété intellectuelle</i> ]
OriGIn	Organization for an International Geographical Indications Network
PAMPIG	Project supporting the establishment of geographical indications [ <i>Projet d'appui à la mise en place d'indications géographiques</i> ]
PGS	Participatory guarantee system
R&D	Research and development
RECs	Regional Economic Communities
REDD	Reducing Emissions from Deforestation and Forest Degradation (UN)
ROPPA	Network of Farmers' Organizations and Agricultural Producers in West Africa [ <i>Réseau des organisations paysannes et de producteurs de l'Afrique de l'Ouest</i> ]

SADC	Southern African Development Community
SMEs	Small and medium enterprises
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNIDO	United Nations Industrial Development Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

## KEY DEFINITIONS

### Appellation of origin

The geographical name of a country, region or locality that serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

### Certification trademark

A certification trademark may be a word, name, symbol or device that signals certification by a third party of the characteristics of a product, which may include geographical origin. It conforms to specifications laid out by the owner, which can apply to place of origin and/or methods of production. Use of the mark requires some verification by the owner that prescribed attributes have been met or are presented. Certification marks differ from trademarks in three important ways. First, a certification mark is not used by its owner. Second, any entity that meets the standards set by the owner and undergoes the certification process is entitled to use the certification mark. Third, a certification mark cannot be used for purposes other than to certify the product or service for which it is registered (except to advertise the certification programme services).

### Code of practice

In *sui generis* systems, the registration of a GI requires local producers to draw up a code of practice (CoP) containing the criteria and requirements that allow the specific quality to be achieved. Therefore, the CoP is a document establishing the rules for use of a GI. Depending on the jurisdiction, it may be called “book of requirements”, “product specifications”, “disciplinary document”, code of conduct or regulations.

### Collective trademarks

Collective trademarks indicate that given products or services were produced or commercialized by the members of an identified group. Collective marks serve to indicate that the person who uses the collective mark is a member of that collective body. Membership in the association that owns the collective mark is, generally speaking, subject to compliance with certain rules, such as the geographical area of production of the goods for which the collective mark is used, or standards of production of such goods.

### Ex officio

This Latin expression means literally “from the office”, by virtue of office or position, “by right of office”. It refers to the kind of protection where the state or public authorities are responsible for policing and ensuring GI protection.

### Ex parte

This is a Latin legal term meaning “from (by or for) one party”. *Ex parte* protection is the kind of protection given at the request of an interested party (i.e. the producers themselves). In *ex parte* protection systems (the majority in Africa), the burden of protection is shouldered entirely by the producers or rights holders (association of producers, etc.)

## Generic

A term or sign is considered “generic” when it is so widely used that consumers see it as designating a class or category name for all goods or services of the same type, rather than as referring to a specific geographical origin.

In the context of GIs, generic terms are names that, although they denote the place from which a product originates, have become the term customary for such a product. An example of a GI that has become a generic term is Camembert for cheese. This name can now be used to designate any camembert-type cheese.

The transformation of a GI into a generic term may occur in different countries and at different times. This may lead to situations where a specific indication is considered to constitute a GI in some countries, whereas the same indication may be regarded as a generic term in other countries.

## Geographical indications

The World Trade Organization (WTO) 1994 Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement states: “Geographical indications [...] identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin” (Art. 22.1).

## GI process

This concept is used in the present strategy to refer to the series of actions that are designed and implemented by local actors with the objective of preserving and promoting an origin-linked product through identification of its link to origin and formalization of related rules on production and processing methods (the GI rules that will be the basis for the official CoP once it is registered).

## Indication of source

Any expression or sign used to indicate that a product or service originates in a specific country, region or locality, without any other element of quality or reputation (Madrid Agreement, 1891, Art. 1.1; Paris Convention, 1883). Indication of source may also be called “indication of provenance”.

## Intellectual property

This refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. IP is divided into two categories: (i) copyright covers literary works and (ii) industrial property includes patents for inventions, trademarks, industrial designs and GIs.

## Label

Any tag, brand, mark, pictorial or other descriptive matter, written, printed, marked, embossed or impressed on, or attached to, a container of food.

## Reputation

Term referring to the recognition acquired by the GI product on the market and in society as the outcome of consumption history and traditions. In terms of trade, reputation denotes the renowned and/or recognizable character of an enterprise and/or a product produced by this enterprise.

**Rules of origin**

Rules of origin are the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports.

**Rules on production and processing methods**

The GI rules represent the production/processing methods (and other specific aspects of the product, for example the packaging in some cases) that can be formalized or not, and shared among local producers.

***Sui generis***

Latin legal term meaning “of its own kind” and used to describe something that is unique or different. In law, it is a term used to describe a legal situation so unique as to preclude any classification into existing categories and require the creation of specific texts.

**Terroir**

This is a delimited geographical area where a human community has developed, over the course of history, a collective production method and expertise. A terroir is based on a system of interactions between the physical and biological environment (*milieu*) and a set of human factors involved to convey originality, confer typicality and engender reputation for a product.

**Trademark**

Any sign that serves to distinguish the goods of one company from those of another. The term “company” is to be understood broadly as referring to all corporations engaged in commercial activity, including associations and producers’ organizations.



## 1. INTRODUCTION: WHY A CONTINENTAL STRATEGY FOR GEOGRAPHICAL INDICATIONS IN AFRICA?

The African continent is blessed with rich natural resources and biocultural diversity. These represent so many assets to preserve and promote against persistent food insecurity and poverty, especially in a context of climate change.

A continental strategy for the development of geographical indications (GIs) in Africa is therefore particularly relevant. GIs refer to products with specific characteristics, qualities or a reputation resulting essentially from their geographical origin. This differentiation can be attributed to the unique local features of the product, its history or its distinctive characteristics linked to natural or human factors, such as soil, climate, local expertise and traditions.

GIs can be used as a tool for sustainable and rural development, as a result of their locally tailored standard and multifaceted development approach, combining a market dimension (in relation to intellectual property rights [IPRs]) with linkages to public goods (heritage, food diversity, local expertise and local genetic resources, sociocultural identity, etc.).

GIs for food and non-food products represent an answer to enhance exchanges among stakeholders at infra-national levels and thus to preserve and promote traditional products on local markets, as well as to position African export products better on international markets. In African countries, GIs can be used as a tool for the organization and promotion of agricultural value chains. They can create incomes for farmers and other stakeholders in the value chain, such as small processing units and petty traders, and therefore help them to face food lean periods and food and nutrition insecurity.

In this strategy, GIs do not refer to a particular legal protection measure, but encompass both *sui generis* and trademark legal approaches.

The African Union Commission (AUC), together with Regional Economic Communities (RECs) and supported by partners at international level (FAO, European Union [EU]), has recognized the importance and need for a continental strategy on GIs, as a way of contributing to the different agendas and programmes for Africa with regard to agricultural sector development, in particular to the United Nations (UN) sustainable development goals. The GI African strategy will also contribute definitively to the Comprehensive Africa Agriculture Development Programme (CAADP) and to the Malabo Declaration endorsed by the AU Assembly. The aspirations of Agenda 2063, adopted by the 24th African Union Assembly in 2015 as a continental plan for the next 50 years, represent inspiring guidance for the GI African strategy, in order to ensure the transformation and sustainable development of the African continent for future generations.

The draft strategy for GIs in Africa is work in progress. It includes a policy framework, as well as some first outputs and activities to be the basis for a more detailed action plan. At the end of the process, the final document *A continental strategy for geographical indications in Africa* will combine the background and the policy framework, to be endorsed by AUC. The action plan for the development of GIs in Africa will be developed in a separate and complementary document.

### 1.1 GROWING INTEREST IN GEOGRAPHICAL INDICATIONS ON THE CONTINENT

GIs are not new in Africa. From a legal point of view, they have been included in the African Intellectual Property Organization (OAPI) legal framework for IP since the 1977 Bangui Agreement (revised in 1999).

In 2005, on the initiative of OAPI, a Ministerial Conference was organized in Ouagadougou, Burkina Faso. This conference gathered together Ministers responsible for IP and Ministers of Agriculture of OAPI member countries.<sup>1</sup> A declaration and an action plan on GIs were adopted, providing in particular for the establishment of GI National Committees in each country and GI focal points in each Ministry of Agriculture, as well as the selection of "pilot products". OAPI was mandated by its member states to formulate the means of implementation of the action plan.

A significant number of GI-related training and awareness-raising events have been organized in Africa, or with the participation of representatives from Africa, over the last 20 years. These events have been increasing over the last few years (cf. Annex 2). The initial events were organized by OAPI with the support of the World Intellectual Property Organization (WIPO) and the National Industrial Property Institute [*Institut national de la propriété intellectuelle* (INPI)] with regard to IP aspects. The most recent event was the regional training organized between 2013 and 2014 in four countries (Benin, Burkina Faso, Ghana and Italy) by a consortium of African stakeholders (OAPI and the Network of Farmers' Organizations and Agricultural Producers in West Africa [ROPPA]) and international stakeholders (FAO/Technical Centre for Agricultural and Rural Cooperation [CTA]/United Nations Industrial Development Organization [UNIDO]/Reducing Emissions from Deforestation and Forest Degradation [REDD]), as well as training organized in Kenya, Uganda, Zambia, Zimbabwe, Botswana, Mozambique, Togo and Burkina Faso (in collaboration with the EU, OAPI and the African Regional Intellectual Property Organization [ARIPO]). The aim was to build the capacity of a pool of facilitators and trainers (almost 100 African men and women from 20 African countries) to support GIs in a perspective of rural development.

A number of technical assistance projects to support GI development have been implemented, including the following.

- FAO technical assistance in Tunisia (2008–2009), to support the institutional framework on certification and development of various pilot schemes (in particular, the registered Gabès pomegranate and Sbiba apple); in Guinea, in collaboration with the Agricultural Research Institute of Guinea (IRAG) and REDD (2011–2012); and in collaboration with Slow Food in Senegal, Côte d'Ivoire, Sierra Leone and Mali (2010–2012).
- PAMPIG (supporting the establishment of GIs) project funded by the French Development Agency (AFD) with OAPI in OAPI member countries (West and Central Africa) and the technical assistance of the International Cooperation Centre of Agricultural Research for Development (CIRAD) (2010–2014), which led to the registration of the first three GIs in sub-Saharan Africa: Penja white pepper [*poivre de*

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<sup>1</sup> OAPI member countries are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, the Niger, Senegal, Togo, and Comoros.

*Penja*] and Oku white honey [*miel blanc d'Oku*] in Cameroon, and Ziama Macenta coffee [*Café Ziama Macenta*] in Guinea.

- Tunisia: the PA-IG project (2012–2017), funded by FDA, in collaboration with the Ministry of Agriculture and with CIRAD technical assistance; the PAMPAT project (2013–2017) with the Ministry of Agriculture and Industry and UNIDO, financed by the Swiss State Secretariat for Economic Affairs (SECO), and targeting a harissa collective label; and the HILFRTAD project (2015–2016) with the Ministry of Agriculture and Industry, financed with Italian cooperation.
- As part of the Association Agreement with the EU, the Algeria GI-AO (appellation of origin) twinning project on the labelling of agricultural products (2014–2016) that led to the recognition of two new GIs: Tolga Deglet Nour date [*datte deglet nour de Tolga*] and Beni Maouche dry fig [*figue sèche de Beni Maouche*].
- The pilot initiative of the International Fund for Agricultural Development (IFAD) to support the establishment of three GIs for cocoa, coffee and pepper in São Tomé and Príncipe.
- Swiss-Kenya project on GIs to build capacity in human resources and develop GI legislation; WIPO-JPO-WCDS-KCG-KIPI Kisii Soapstone Project on Leveraging Market Potential of Kisii Soapstone through Innovation and Intellectual Property Rights; WIPO-JPO-KIPI Project on branding of Taita baskets in Kenya.
- International Trade Centre (ITC) and WIPO project for branding and protecting Zanzibar clove.

Several studies on potentials have been conducted and led to the identification of a number of products (cf. Annex 1), in particular:

- FAO identification of traditional and GI products in Guinea, and with Slow Food in Senegal, Côte d'Ivoire, Sierra Leone and Mali;
- EU studies on coffee from Kenya, cocoa from Cameroon and on the potential for marketing agricultural products from African, Caribbean and Pacific Group of States (ACP) countries using GIs and origin branding;
- the ongoing inventory developed by the Organization for an International Geographical Indications Network (OriGIN).

Action research and case studies were also developed by a number of partners (FAO, CIRAD, IRAG, the Togo Agricultural Research Institute [ITRA], Swiss Centre for Scientific Research in Côte d'Ivoire, National Abomey-Calavi University of Benin). Of particular note are those on Grand Lahou *attiéké* (cassava semolina) in Côte d'Ivoire; cocoa in Kenya; Kovié rice in Togo; Galmi purple onion in the Niger; Casamance honey in Senegal; Gisovu tea in Rwanda; Dogon shallot in Mali; and ongoing studies on Pink Lake salt in Senegal and on Agonlimi groundnut oil in Benin. Studies and research action were also conducted in southern Africa, especially in the Republic of South Africa by the University of Pretoria, the Western Cape Department of Agriculture and the South African Rooibos Council, among others.

There are, however, few concrete cases of marketing local products on the basis of quality linked to place. The branding of Ethiopian coffees according to geographical names and the *Belle de Guinée* potato (a geographical name registered as a collective trademark) can be highlighted here, as well as the three GIs registered by OAPI within the PAMPIG project.

With specific regard to the AU, GIs are still included in the Strategic and Operational Plan 2014–2017 of the Department of Rural Economy and Agriculture (DREA) of AUC, in Strategic Action 3.1 “Design and support implementation of programmes on rural infrastructure and value addition” with the following operational actions:

- 3.1.19 – support awareness creation on GIs;
- 3.1.20 – facilitate GI policy harmonization.

Under the joint Africa-EU partnership, AUC organized a series of events aiming to sensitize and inform the key players and actors in the agricultural sector within the RECs on GIs, as well as offer an opportunity for actors in these regions to share their experiences in this regard.

- Joint Conference in Kampala, Uganda, in November 2011.
- Joint national seminars (Uganda, Burkina Faso, Benin, Botswana, Kenya, Zambia, Zimbabwe, Mozambique and Togo).
- Consultative training on GIs : Abuja, Nigeria, 2012; Midrand, South Africa, 2013; Nairobi, Kenya, 2013 and 2014; Gaborone, Botswana, 2014; and Maputo, Mozambique, 2014.

GIs have proved to be a tool to address many issues in relation to economic development (smallholder empowerment, market access and value added, local economic development promotion), but also preservation of biocultural diversity. As a result of the discussion among key players – particularly some RECs and regional institutions responsible for GIs (OAPI, ARIPO) – the importance of a continental strategy has been recognized as well as the need to build it on recent GI experience in African countries. The opportunities and challenges related to GIs are common to all African countries and the benefits from development regarding economic, environmental, social and cultural aspects should spread across the whole continent.

## **1.2 FORMULATION PROCESS OF THE CONTINENTAL STRATEGY**

The continental strategy process relies on the involvement of African key players at continental and regional levels – the AU and RECs; the ministries and institutions responsible for or involved in GI issues at national and local levels; and research and development actors.

In order to ensure transparency and a consultative process, the GI strategy has been developed through the following steps.

1. In November 2014, under the joint Africa-EU partnership, AUC organized a consultative training on GIs in Nairobi. The main output of the training was the first draft outline for a continental strategy on GIs. DREA contacted FAO headquarters in 2015 to organize technical support to draft the strategy.
2. In January 2016, the initial workshop was held at FAO, Rome, to agree on the overall objectives of the strategy and the formulation process, in the presence of the AUC representative responsible for GI activities; FAO staff responsible for the Quality and Origin Programme; European Commission representatives responsible for international relations and GIs for ACP countries; and GRET, the French NGO contracted by FAO to facilitate the formulation process.
3. Official letters were sent by AUC to OAPI and ARIPO to engage these organizations officially as key players in the strategy formulation (beginning of March).

4. A first proposal of the strategy was drafted by a working group composed of AUC, FAO and GRET representatives (February–March 2016).
5. In April 2016, e-consultations were organized. About 100 experts and stakeholders (cf. Annex 4) completed the draft proposal to revise or complete the background information and give their opinions on the content.
6. From 31 May to 1 June 2016, a validation workshop took place where the consolidated proposal finalized through e-consultation was presented, discussed and approved by key stakeholders and representatives (cf. Annex 5). The workshop also identified the first elements to be included in the action plan.
7. From 22 to 25 November 2016, a workshop was organized in Nairobi, to present and discuss the strategy with AU member states. The first draft of the action plan was also presented for inputs from AU member states and GI experts (cf. Annex 6).
8. The strategy will be presented to the AU Specialized Technical Committee on political endorsement and published in 2017.
9. The draft action plan will be shared with the e-consultation experts, and the agriculture and IP representatives of AU member countries, to be consolidated with their inputs during the second semester of 2017.
10. A workshop will then be organized for the validation of the action plan.

## 2. BACKGROUND AND ISSUES TO BE ADDRESSED

Lessons learned from GI experiences in Africa and throughout the world show that GIs may be a tool for sustainable rural development so long as certain conditions are taken into account in their implementation.

### 2.1. GEOGRAPHICAL INDICATIONS AS A TOOL FOR SUSTAINABLE RURAL DEVELOPMENT

#### 2.1.1. Lessons learnt about Geographical indications in the world

##### a) *What a geographical indication involves*

Technically, a GI is a name or sign associated with a geographical location that is used on products originating from this location and presenting some specific qualities or reputation because of their link to this origin, as a result of local traditional methods or natural resources involved in production. Defined internationally<sup>2</sup> as an Intellectual Property Right (IPR), a GI has to be protected on the market against misinterpretation or infringement once its specific quality or reputation linked to geographical origin has been demonstrated.

The GI process is used here to refer to the series of actions that are designed and implemented by local actors with the objective of preserving and promoting an origin-linked product through identification of its link to its origin and the formalization of the related rules on production and processing methods (the GI rules that will be the basis

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<sup>2</sup> In particular, Article 22 of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994) defines GIs as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”.

for the official code of practice [CoP] once it is registered).<sup>3</sup> A GI product is a product that is used with a GI (geographical name or traditional name referring to a place), whether this GI is registered or not. Consequently:

- a GI product has a specific quality linked to origin: not all products can develop a GI process;
- a GI process includes rules written in the CoP;
- a GI process refers to a geographical delimitation;
- a GI process is a voluntary approach: only producers willing to develop a GI process for their product have to comply with the GI rules that they have shared among themselves;
- as far as a GI is recognized and protected by any legal tool, there is an exclusive right to use the name by producers obtaining GI status: in this sense, respect for the rules becomes mandatory for all producers willing to designate their product by the GI name;
- as an IPR recognized in many countries, as well as at international level, GI protection entitles producers and consumers to be protected against misinterpretation and infringement, and also represents a marketing tool for differentiation;
- the GI is linked to a collective heritage (reputation, terroir and the related local natural and cultural resources) and, as such, it requires collective action from local stakeholders and impacts on public goods (landscape, biodiversity, nutrition, etc.);
- GIs represent a process of reputation building and then deciding upon a quality standard fixed locally but based on market requirements – only the specific quality and associated production methods have to be described for well-known typical products, but this is not the case for commodity products such as cocoa and coffee;
- not all products can develop a GI process.

The GI process is a unique way of combining a collective marketing tool (market approach) with the management of a cultural and biodiversity heritage (public goods approach). Its very nature explains the capacity of GI processes to contribute to sustainable development in its three components (economic, social and environmental). A number of positive impacts have already been observed and reported in the literature on GIs in European countries where GI development started earlier. However, GIs are increasing steadily in developing countries.

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<sup>3</sup>Various terms can be used indifferently to refer to the specific standard linked to a registered GI: CoP, code of conduct, book of requirements, specifications and conditions of production (the latter being less common because it is less specific). In this framework, CoP is used. The GI rules represent the production/processing methods (and other specific aspects of the product, for example the packaging in some cases) that may or may not be formalized and shared among local producers.

### ***b) Importance of a GI process for sustainable rural development and food security***

From an economic point of view, GIs primarily give the capacity to differentiate GI products from others and add value, especially when there is a GI label on the final product that consumers recognize and use in their consumption choice.

In these niche markets, GI products are less dependent on international prices, and can resist market crises better. In addition, the IPR confers protection that prevents use of the name by non-legitimate users. It is interesting to see, for example in the case of Penja pepper in Cameroon, how GI protection can address undue private appropriation of the name on both the EU and local markets. The economic impacts differ according to the specific case – the structure and functioning of the sector, the context in which it is found, its recent developments and the strategies of its different agents – but the following effects can be observed in many cases:

- (i) enhanced reputation resulting from the GI process (official recognition, and CoP with specific quality meeting market requirements);
- (ii) increase in quantities sold;
- (iii) increased consumer willingness to pay;
- (iv) increase in final price and prices paid to producers;
- (v) increase in producers' incomes;
- (vi) reduction in both production and transaction costs;
- (vii) quality improvement.

It is significant that, in many cases, the collective nature of the GI process may allow individual strategies converging towards a common project, inducing synergies and therefore economies of scale, limiting competition and ensuring benefits for all (as far as the geographical delimitation is concerned) instead of benefits for some rather than others.

This is directly linked to the GI capacity of “relocalization” of the economic activities and local redistribution of value added. GI recognition also enables local production to be safeguarded against competition from imported products. There may even be effects in structuring and strengthening the local value chain, as in the case of the *Belle de Guinée* potato where local producers worked in coordination to promote their products through a collective trademark.

GI promotion may strengthen links among local stakeholders in the value chain, producers, processing units, upstream and downstream petty traders, as well as public-private partnerships and public support at local level. Clusters of small and medium enterprises (SMEs) or local production systems may allow for agglomeration externalities and promote a virtuous circle of local economic development.

These economic impacts have direct effects on rural development and sociocultural issues by maintaining economic activities, thus often increasing production and employment for people in rural areas, giving better livelihoods to farmers and their families, as demonstrated in the cases of Penja pepper and Ziama Macenta coffee.<sup>4</sup>

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<sup>4</sup> Between the 2011 and 2012 campaigns, the price paid for Penja pepper to producers more than doubled and a minimum price was fixed. Producer incomes, production area and employment multiplied more than three

Processed food products are particularly significant for women's employment. It is worth highlighting that GI is an extremely relevant IPR for smallholders, because of its collective dimension and its link to the traditional practices that are often maintained by smallholders. GI official recognition gives visibility to the product, the producers and their territory, which reinforces their identity and self-esteem.

The GI reputation opens up new economic opportunities for other products and services originating from the territory, and this may refer to the concept of the territorial-based "basket of territorial goods and services". These aspects are of particular significance for fragile areas (such as deserts, mountains and wetlands) where intensification of agricultural techniques is not a valid option, and where patrimonial products based on extensive agriculture can consequently be promoted. In fact, the GI process strongly impacts on preservation of the local heritage: patrimony, knowledge and biodiversity. This explains the links among the GI process, customs, landscape and local tourism on the one hand and the *in situ* conservation of local races and varieties on the other. With regard to indigenous plants and their traditional use, discussions are ongoing at WTO/WIPO multilateral level, in the framework of TRIPS and the Convention on Biological Diversity (CBD), as to how to handle the issue of genetic resources/traditional knowledge in interventions.

Finally, the fact that the GI CoP is defined locally ensures that GI requirements are tailored to local conditions and needs. Although it is not contemplated in the GI legal status and definition as such, preservation of the environment can be taken into consideration in the GI CoP, either because existing traditional practices are environmentally friendly (see, for example, the case of mountain cheeses with low-density breeding, low chemicals and low pastures) or because stakeholders want to ensure the reproduction of local resources in the long term and the good image of the product and its territory.

From a consumer point of view, it is important to highlight important assets of a GI process as far as the institutional context allows producer and consumer protection.

- The process guarantees specific qualities linked to origin and quality – including food safety (although in itself not an attribute of GIs) – as the production and processing rules have to ensure sales on the formal market.
- It enables specific quality products to be maintained on the market and offers more opportunities for diverse diets and, in some cases, more nutritious food.
- For consumers of GI products with sociocultural ties to the region of origin, the process contributes to the maintenance and recreation of these ties and reinforces consumer identity.

### *c) Success factors and conditions for sustainable geographical indications*

As a tool, the GI process has to be implemented in a certain manner to ensure positive impacts or it may have no effect or provoke a negative one. Again, there is a great deal of literature on the four key elements and conditions of success for a sustainable GI process. The first three concern local aspects while the fourth refers to the national context.

1. **Product typicality.** The link to the terroir (encompassing origin and local natural and human resources) must be solid enough to ensure on the one hand differentiation and

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times. Ziama Macenta coffee has a higher price on the market, and the income of smallholders has increased (from 18 to 58 percent, according to the case in the sample).

consumers' significant willingness to pay, and on the other the capacity to impact positively on local resources. The link should be used as the basis for establishing the CoP and the right to protection. In this sense, the CoP is a key instrument for sustainability – whatever is mentioned as a requirement in the CoP will impact on social and natural resources. For example, the fact that packaging is included in the Penja pepper CoP ensures that this activity takes place in the local area.

2. **GI governance.** Collective action, inclusiveness, representation of all stakeholders' interests (primarily the producers or farmers and processors) and leadership of a GI organization are central elements for success from the start (definition of GI rules) through implementation and evolution over time, and in every component: official recognition through GI registration, production, marketing, controls, territorial extension, etc.

Local actors are the triggering factor. Both the social capital and the federative capacity of a leader are important conditions to start a GI process. For example, although Dogon shallots in Mali have great potential for the GI process, conflicts among different groups of producers and the lack of coordinated collective action currently prohibit any development. On the other hand, the GI process that quickly led to registration of the trademark for Bora Male rice ("rice mud" in the Susu language – parboiled rice from the eponymous mangrove in Guinea) is a result of the stakeholders' unanimous desire to create an interprofessional organization in order to trade Bora Male rice directly. Local NGOs can contribute important value added in improving the inclusiveness of the process, establishing participatory dialogue and building a sustainable GI vision.

3. **Market linkages.** From the beginning, the GI process must identify the appropriate markets and channels, their requirements and the specific actors expected to become partners. This concerns the more or less favourable game of distribution of power along the value chain in relation to the governance factor. As a market tool, a GI without a market cannot survive or provide economic grounds for the long-term viability of the overall process.
4. **Institutional framework.** As an IP tool, GI requires a sound legal framework for its protection; the control and certification aspects may require an internationally recognized public body to accredit the certification and control bodies. Surveillance of the markets and repression of fraud are important aspects in enforcing GI law. In addition to these elements of GI protection, the institutional framework can provide a certain number of policies and regulations to foster sustainability of the GI process. In fact, several aspects of the process may require public support and guidance. These include: research and studies to demonstrate the link to origin; support to the local governance (e.g. status regulation for the economic organization); facilitation of cooperation among stakeholders; fostering market access through market information systems; and raising consumer awareness.

Specific support may also be provided to address the needs of smallholders with low capacities (technical, financial, knowledge and information access) in order to avoid exclusion of the poorest. A key issue here is the right balance of public authority involvement/economic actors, so as to provide enough support while ensuring independence between public and private actors and avoiding a top-down approach.

In practice, it is worth highlighting the **investment capacity** (research and development [R&D] at logistics and technological improvement level) that is common to the GI governance factor (how local stakeholders organize themselves to have the necessary capacity to invest in their private and collective strategy) and the institutional framework factor (public investment, especially research, training, awareness creation and consumer information).

Moreover, **territorial dynamism** is an important asset in the GI process, especially when the process aims at benefiting not only the value chain actors but all the territory actors, and when not only economic effects in SMEs are expected but also environmental and social effects. This dynamism depends in particular on the importance of the product for its territory (in terms of image, economy and identity); the complementarity (versus the competition) between GI production and other activities; and the roles played by local public authorities to facilitate synergies.

### 2.1.2. Opportunities and challenges of geographical indications in Africa

The African continent certainly offers potentialities as well as specificities for GI development, as a result of its natural resources, culture and history. The following opportunities may be highlighted.

#### a) *Opportunities for successful GI processes in Africa*

- [Africa has immense pool of traditional products with important economic, social and environmental contributions](#)

As a result of the strong cultural heritage and diversity of terroirs, the names of many local products refer to their cultural and/or geographical origin and are used all over the country or group of countries. A large number of origin-linked food and handicraft products deserve to be preserved and promoted through a GI process. Preliminary inventories carried out in the framework of different projects (see, for example, the inventories carried out by OAPI, FAO and oriGIn) have already identified an important number of GIs with potentialities for registration as IPRs.

Each country in Africa presents an important diversity of traditional foods and non-food products. They are particularly appropriate to local needs, as part of local culinary specialities with significant nutritional values. They also depend on local varieties or races.

#### BOX 2.1

##### **Diverse potential traditional products for the GI process**

- Meat products such as *kilishi* (dried meat product) (Nigeria, the Niger, Cameroon, etc.)
- Dairy products such as *wagashi* cheese made by the Fula/Peul ethnic group in Sahelian countries
- Fish or seafood products such as *yett* (Senegal) and Nouadhibou bottarga (Mauritania)
- *Dihé* spirulina algae (Chad)

- Fruit and vegetables such as the Maferinyah pineapple and Mamou chili pepper (Guinea), Galmi purple onion<sup>5</sup> (the Niger) and Dogon shallot (*Bandiagara Jaba*) (Mali)
- Cereals and tubers: Bora Male rice (Guinea), Bondoukou Kponan yam (Côte d'Ivoire), Bassar yam (Togo), Kovié rice (Togo), Grand Lahou cassava semolina [*attiéké*] (Côte d'Ivoire), *gari missé* (cassava semolina) (Benin)
- Spices and plants such as Penja pepper, and rooibos tea (South Africa)
- Honey such as Casamance honey (Senegal) and Oku white honey (Cameroon)

It is worth highlighting the link between most of these products and the role of women, who take care of production and processing methods. In fact, traditional products can often be the pivot for a development project with the focus on gender issues (for example, the Slow Food projects on Nouadhibou bottarga in Mauritania, produced by nomad women of the Imraguen ethnic group, or the Grand Lahou *attiéké* of Côte d'Ivoire).

Moreover, most of these products are important allies in preservation of the environment, especially in fragile areas; for example, cashew trees in the north of Côte d'Ivoire act as a barrier against desertification. GIs could also play a role in preserving forests, especially those of the high-value wood sector (such as dimb, venn and teak). This type of wood is justly famous and much sought after, but is also threatened.

Projects promoting GI products may play an important role in preserving the environment. See, for example, action regarding Oku white honey that put an end to bushfires or the GI process for Ziama Macenta coffee in the Ziama forest, which promotes good agricultural practices, including protection of the environment around the Ziama mountains.

#### BOX 2.2

##### **The African continent as an important reserve for GI handicrafts**

There are many famous origin-linked handicrafts to be found on the African continent.

##### *Cote d'Ivoire*

- Korhogo pictorial canvas, handwoven and handpainted by the Senufo ethnic group
- Tiébissou loincloths
- Katiola pottery

##### Casamance (Senegal) and Guinea-Bissau

- Local cotton loincloths made by the Manjack ethnic group, famed in international haute couture thanks to the work of the designer Collé Sow Ardo, but threatened by imported cotton from China

##### Senegal

- Famous local leather shoes made in the town of Ngaye Mekhe, much appreciated by Senegalese and tourists alike, also threatened by Chinese products

##### Uganda:

- Indigenous bark cloth – a fabric that has been recognized as a masterpiece of the world's intangible heritage

<sup>5</sup> This onion is a promising potential GI product, and is registered as a variety in the *West African catalogue of plant species and varieties*, compiled and published by FAO and the Sahel Institute. Therefore, its area of cultivation cannot be restricted to a limited territory as is the case of a GI. An origin-based branding of Niger onions may nevertheless be of interest, but another name has to be used, unless the name of the variety is changed.

The GI process, for both food and non-food products, can even be coordinated with the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage – a number of sites have been recognized in Africa – and the Globally Important Agricultural Heritage Systems (GIAHS)<sup>6</sup> of FAO, defined as remarkable land use systems and landscapes that are rich in globally significant biological diversity evolving from the coadaptation of a community with its environment and its needs and aspirations for sustainable development. In both cases, it is about preserving and promoting a territorial heritage, building on an emblematic product in the GI process, or defining the activities involved in the case of world and agricultural heritage. Consequently, combining the two approaches can generate important synergies.

There is also the option of edible insects. For example, there is a highly nutritious edible insect called *janya* that is only found in Zimbabwe, specifically in Masvingo province.

The African continent also abounds in commercial crops that could benefit from a GI process to be differentiated on the international market by reference to the country or territory name. Of particular note is coffee (from Ethiopia, Kenya, Cameroon and Guinea, with a registered GI for Ziama Macenta coffee) and cocoa (from São Tomé and Príncipe, Côte d'Ivoire and Cameroon).

Preserving and promoting these traditional products through a GI process could therefore contribute to food security, by ensuring that these foods are maintained on local markets, and providing additional income by selling on international differentiated markets.

- [Africa is an important fast growing market for such products](#)

African consumers represent an important asset for GI product development. First, the origin-linked quality of traditional products are recognized by consumers who ask for them on local markets and are willing to pay a higher price for them.

- For example, a consumer survey in 2009 showed that local consumers in Togo want Kovié rice (34 percent for its name and 24 percent for its specific characteristics). This is similar to Bora Male rice, which is very popular in Guinea and is sold at a higher price than other local rice (+25 percent) or imported rice (10–20 percent).

Demand for local products is growing as both the urban population and the population in general are increasing in Africa. More specifically, there is a growing middle class in Africa (globally the fastest growing) that taps into the increasing domestic market for quality goods and particularly agricultural products.

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<sup>6</sup> Currently recognized in Africa are: the Ghout System (Oases of the Maghreb, Algeria; Oldonyonokie/Olkeri Maasai Pastoralist Heritage in Kenya; Shimbue Juu Kihamba Agroforestry Heritage Site and Engaresero Maasai Pastoralist Heritage Area in the United Republic of Tanzania; Gafsa Oases (Oases of the Maghreb) in Tunisia; and the Oases System in the Atlas Mountains of Morocco (Oases of the Maghreb).

**BOX 2.3****Discovering local and national heritage**

The creation of the Benin label for quality products on local markets illustrates the trend for local products and the importance of origin (in this case, on a national basis). Urban consumers in particular are looking for a “new quest of identity”, wishing to (re)discover their roots and traditions through their food practices and searching for guarantees on origin.

This is the case of Penja pepper in Cameroon, where selling pepper locally often brings more benefits to producers than exporting it.

Although consumption of coffee is quite low in Kenya, many coffee shops have opened over the last few years in Nairobi, showing interest for coffee of certified origin in the urban area. It is worth noting that these markets can also be regional when traditional products are part of a heritage exceeding national boundaries, such as those for cassava or *wagashi* cheese, or those for travellers and migrants. In fact the diaspora represents an important channel for these products, as illustrated in the cases of Mamou chili (Guinea), *gari missé* (Benin) and Tsévié palm oil (Togo).

The fact that origin-linked products are recognized on local markets and benefit locally from their reputation is an asset for them to conquer other markets. However, up to now, even if African consumers are sensitive to origin-linked products, they are usually not aware of the GI schemes protecting against fraudulence.

- [Africa presents important GI products for export with possible synergies with other demanded standards](#)

African GI products have a high potential for export markets, especially key commercial products that can engage in a strategy of differentiation or “decommoditization” to resist against international price fluctuations (e.g. coffee, cocoa).

**BOX 2.4****Key commercial products for geographical indications**

The GI process could be extremely relevant for commercial products that are emblematic of African countries, such as cocoa from Côte d’Ivoire – the first world producer; typically coloured cocoa from Cameroon; cocoa from São Tomé and Príncipe; and coffee from Kenya and Ethiopia.

Other products, once mainly linked to local markets, can conquer international niche markets, as shown by Penja pepper and rooibos tea. In such cases, the GI scheme provides important guarantees for buyers on quality (specific and generic quality, including food safety) through the associated traceability and risk management systems, which also make buyers aware of particular efficiency in the value chain.

Important synergies can be created in Africa by combining GI with another voluntary standard, particularly fair trade and organic, which are highly requested on international markets. In fact, private standards are taking a growing market share of export products (becoming a must for some buyers for tea, coffee, bananas and other fruit, chocolate, processed food, etc.). GIs are strategic tools that can be activated not to compete with these standards but to work in synergy with them. In actual fact, GIs are setting the rules

for collective actions and internal control systems that are also key to accessing private certification. When public institutions build the capacity of producers to develop GIs, they are also helping them to access new markets requiring private certification.

#### BOX 2.5

##### **Combination strategy**

Ziama Macenta coffee demonstrates the complementarity of GI and fair trade specifications and the relevance of associating these from the start, by partnering with fair trade stakeholders on export markets and inserting specific requirements in the GI CoP.

A combination strategy requires little effort since both standards converge in their vision of a better redistribution of value added; it ensures a secure minimum price and appropriate niche markets. When production methods are close to organic ones, a similar approach can be used to combine GI and organic standards and related control aspects. Furthermore, the control costs do not change much if one or several standards apply to the same producers.

- [Interest from public and private stakeholders and the dynamics for dialogue in Africa](#)

An opportunity worth mentioning is the momentum for developing GI processes to benefit from current good dynamics on this theme in Africa, both in the private and public sectors. In fact, motivation of producers and institutional support are two key success factors. During the various capacity building events on GI organized in Africa (FAO-OAPI-CTA regional training and EU-AU seminars in particular), all participants from public institutions responsible for GI and agriculture (Ministries of Agriculture, IP offices) as well as research and extension actors, producers' representatives showed not only interest but enthusiasm in engaging in GI development. By reference to local identity and national heritage, and by aiming at economic viability with more market power regarding international markets and buyer pressure, also considering the preservation of biocultural diversities, GIs unite the various stakeholders.

#### BOX 2.6

##### **Institutional convergence**

Combination of the economic and public good dimensions is a strong incentive for public-private dialogue and mobilization, as illustrated in the case of Bora Male rice where guidelines for good practices have been validated by all industry players and government services (Agriculture, Industry and Trade Ministries) and officially published in Guinea in 2014. This enables GI products to be promoted through institutional networks (fairs, information campaigns, networking, etc.) and additional partners to be involved for synergies and funding. The Oku white honey and Ziama Macenta coffee cases show how the involvement of financial institutions has been facilitated, while the case of Penja pepper shows how the visibility of the GI production area facilitated its recognition as a cluster and it therefore gained support from the Enterprise Development Centre and funding for research activities.

However, it cannot be expected that all stakeholders engage in the GI process as converging collective action. Some producers may promote rules that are too strict to be followed by smaller or poorer producers. Traders may be reluctant to offer a premium for the specific product and may not engage in transparency. Therefore, the establishment of an inclusive producers' organization is a critical step, as well as the building of negotiating arenas moderated by the state. It is important to acknowledge the fact that conflicts are part of the process to build common vision and appropriate compromise for most people. Consequently, time should be considered an ally in the projects to allow the necessary discussions towards solutions.

In this respect, it is worth highlighting the importance of supporting pilot projects to build capacity at territorial and national institutional level, and provide lessons learned and demonstrative effects to all interested stakeholders within and outside the specific area, especially pioneer areas. However, the costs of this learning process cannot be borne by the producers alone.

#### BOX 2.7

##### **PAMPIG project**

The PAMPIG project, which supported GI strategies in three pilots (Ziama Macenta coffee, Penja pepper and Oku white honey), succeeded in developing capacities both in the territories and at regional level. OAPI developed capacities not only to support GI registration but also rural development. These three pilots in fact pave the way for other strategies based on GI, providing lessons learned not only with regard to the value chain and marketing development, but also at institutional level.

Benefits will be amplified when the capacities built at regional level expand to national level. It is important to stress that the time frame of a project is not sufficient to enable collective action to consolidate, and therefore GI should be incorporated in agricultural, territorial or environmental policy strategies and projects.

#### **b) *Challenges and needs***

Although opportunities for GI development are significant in Africa, a number of challenges still need to be addressed. They are twofold: the generic challenges for any development project in the agricultural and food sector; and the challenges specific to GIs.

- [Problems generally faced within development projects](#)

The usual main issues with regard to economic development projects in Africa, especially when aiming at empowering producers, are linked to producers' capacities, since they are often smallholders who are fragmented and unorganized; if they *are* organized in some way, they face weak professional organization, structural conflicts or lack of trust.

One of the major factors limiting the success of development projects in Africa is the weak absorptive capacity of small-scale producers as a result of their low level of education and training. They work with limited resources and investment capacity, and lack both extension services and access to a market information system. Smallholders may even lack access to basic resources, preventing them from producing quality goods.

The case of Penja pepper in Cameroon is illustrative of the above.

- The CoP specified that the pepper be washed with clean water but small-scale producers did not have access to this facility and risked exclusion from the quality strategy.
- In the framework of GI recognition, thanks to strong collective action and governance, the small farmers obtained funds from the Ministry of Agriculture to build wells. This gave them access to GI, while improving their living conditions.

All the problems mentioned above impact negatively on producers' market power and their capacity to benefit from a fair share of value added and value redistribution. This is accentuated in the case of export products where the supply chains are extremely long and have a multitude of stakeholders. More specifically, in the food sector, producers lack resources to invest in technology and upgrade food quality and traceability, which leads to food safety issues. They also lack control over food products in the downstream trade segments, where quality may be negatively affected by noxious packaging and storage practices, and voluntary fraud. Packaging often presents impossible investment costs, so that many products are sold in bulk. This does not reflect GI norms where packaging and labelling are important tools for consumer information and for guaranteeing origin with a specific GI logo (see, for example, the roobois case where 90 percent of exports are in bulk).

Furthermore, this explains why mainly raw materials are sold on export markets, with a consequent loss of value added and an inadequate GI process (no responsibility for the final product). This issue may be linked in some situations to international trade agreements that may or may not be in favour of exporting processed products, according to tax levels.

Confronted with these issues, it is important to highlight the capacity of GI projects to address these *general* challenges, particularly by strengthening the value chains and building up cooperation among actors.

#### BOX 2.8

##### **Collective actions**

A collective strategy for Ziama Macenta coffee led to strengthening a value chain approach, building trust between producers and cooperatives (those existing before the project as well as those created afterwards) to retain them as the main buyers, against buyers' attempts to keep farmers fragmented. An efficient traceability and internal control system for lower cost certification was also established.

The creation of an interprofessional body for Penja pepper (encompassing nurseries, producers and retailers) also strengthened organization of the value chain and producers' empowerment, through an agreement on the minimum price to be paid to farmers, and the provision of services for the production and dissemination of innovations. As well as economies of scale and pepper quality improvement, these services ensure financial autonomy of the GI organization.

A strong driver for value chain actors to promote collective action is the need to protect the reputation of their GI products. Producers of *Belle de Guinée* potatoes were able to react quickly and collectively in order to register their GI as a trademark. Small-scale producers of Penja pepper were able to access clean water because they were well

organized to face this need. These achievements are important not only for GI production but also for a daily healthy life.

Lack of trust and conflicts are covered in the GI process by the qualification process (definition of shared rules), which provides an opportunity through project mediation to establish the necessary agreements and build up trust. Objectives may vary among the different actors of the value chain, as illustrated in the rooibos tea case, where GI project mediation helped to build a shared development vision.

- Specific GI problems

When GI processes are quite recent, as in Africa, a main challenge is the lack of awareness of all the stakeholders, whether value chain actors, authorities or consumers. GI strategies can be complex, since they require both multidisciplinary approaches (agronomic, technological, economic, legal, etc.) and (private, public) multistakeholder approaches at each stage of the process (identification of potentialities, qualification and definition of rules, marketing, control and certification). This is why ad hoc policies are necessary to promote GI specifically as a tool for sustainable development, to build up the capacity of all value chain stakeholders and to inform consumers. This is particularly crucial in the context of smallholder producers lacking technical capacities and public authorities not trained in using GIs.

Public authorities should have sufficient resources to invest in both the protection and promotion of the GI tool, which is often challenging in African countries. The institutional and legal framework does not always provide enough effective enforcement with regard to protection: guarantee system measures such as certification, inspection and controls are often lacking, and accreditation and accredited certification bodies are often not available. Nevertheless, the case of the Benin label<sup>7</sup> should be mentioned, where certification is backed by the Ministry of Agriculture, which plays an important part in supporting development of the label and ensuring its success at national level. Where certification bodies exist, certification costs are an important issue, whether for producers and private certification or for public authorities in the case of public systems. Third party certification is necessary for export markets, but other systems may be designed for small quantities of GI products sold on local markets. An appropriate system adapted to local conditions, based on simple tools and methods with an internal, social or participative guarantee system (PGS)<sup>8</sup> should be designed and officially recognized. Both in Africa and worldwide, PGS have been developed essentially for organic products on local markets;<sup>9</sup> a specific project could be developed to examine the feasibility for GIs.

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<sup>7</sup> The Benin label is not a GI as such, but is a label based on a national standard to ensure local sourcing of the product and a specific production quality.

<sup>8</sup> IFOAM definition: "Participatory Guarantee Systems (PGS) are locally focused quality assurance systems. They certify producers, based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange". Among stakeholders, consumers can play an important role.

<sup>9</sup> See, for example, the PGS case studies developed by the Songhai Centre in Benin, the Namibian Organic Association and Freshveggies in Uganda, in the forthcoming FAO/French National Institute for Agricultural Research (INRA) *Innovations in linking sustainable agricultural practices with markets*.

**BOX 2.9****Control systems**

The control system implemented for *gari missé* from Savalou in Benin is based on social relations. The product cannot be found on local markets so as not to be confused with others, but is bought by intermediaries who are well known and engaged in trust relationships. They are, however, excluded from the system in the case of any fraud (social control).

PGS, which is being promoted by the International Federation of Organic Agriculture Movements (IFOAM) for organic products, and is increasingly officially recognized in Latin American and Asian countries, could be an interesting model for GIs in Africa, particularly the current experience in the Santa Catarina region of Brazil.

Simple tools and methods for internal control can be designed and implemented to suit local conditions and smallholders' capacity. Penja pepper retailers established a self-discipline system to prohibit the fraud where Penja pepper was mixed with low-quality pepper from China or Dubai).

As already mentioned, certification costs are important considerations when developing a GI process. A case-by-case detailed analysis of costs and benefits according to the system and to production (volume and price) needs to be carried out. The GI process does not usually generate further specific costs since existing practices do not change unless there is a need to improve generic quality or use local resources with regard to generic development aspects.

Cross-border issues are one of the most important challenges for GI development in Africa, because of the regulation of African borders at the Berlin Conference of 1884–85. Consideration of cross-border GIs should be key in the African context. An example of cross-border GIs is Kalahari melon seed oil from the Kalahari Desert, which comprises parts of Namibia, South Africa and Botswana.

Finally, if governance is a general aspect to consider in any project, its particular complexity in the case of GIs must be stressed, because of its multifaceted approach. The GI process requires pluridisciplinarity in its establishment and management (legal, agronomic, economic, etc.) and multistakeholder platforms with private actors – at the different stages of the value chains in particular – and public sectors (recognition, support). A strong interprofessional body is needed to be custodian of the GI. Moreover, conflicts may sometimes arise over the definition of GI rules and mediation may be necessary. Consolidation of the collective action and shape of governance will require time and specific skills to ensure sound local development. These are not only technical skills to establish and maintain the internal control system, but also animation skills to identify key development issues, propose appropriate solutions and monitor their proper implementation over the long term.

### **2.1.3. Conclusion and recommendations**

Africa has enormous potentialities and opportunities with regard to the development of GI strategies as a way to contribute to food security and sustainable rural development:

- large reserve of traditional products with important potential impacts on society (including women's roles) and the environment;

- fast growing local market and emblem products for export;
- momentum as regards public and private stakeholder interest; and
- existing capacities.

However, there are numerous issues to be resolved. GI projects can act as drivers to address the general problems faced by stakeholders in terms of development (producers' weak technical, organizational and financial capacities; food safety issues; packaging and market power), by putting local stakeholders, especially smallholders, at the centre of the local process, mobilizing multi-actors, pluridisciplinary approaches and support along public/private coordination. Since collective action is by nature a key aspect of the GI process, the project can act as a lever for building trust and solidarity. Time is an important ally throughout the project. Actor roles should be clearly identified at the outset in order to design the appropriate development process. The specific issues linked to GI development advocate for an African vision: the GI process as a tool for food security and sustainable rural development. Moreover, looking globally at the opportunities and challenges, a clear image emerges of Africa's specificity regarding GI development. This still needs to be better analysed and defined. However, a number of elements arise that require further identification and promotion of an African approach to GI development. Some of these specificities and possible prospects for their inclusion in an African approach are highlighted below.

- There are many traditional products linked to local varieties and races, traditional production methods, traditional recipes, etc., and to localized markets (low volume of production surplus). Could a GI process be specifically designed for these localized low-volume products supplying domestic markets in order to preserve and promote this heritage and contribute to food security?
- A large number of handicrafts could benefit from a GI process. These products are strongly linked to ethnic or cultural groups that are now dispersed over wide areas (without a strong link to the physical territory). Could a GI specific framework be designed to valorize these handicrafts?
- There are significant specific traditional agricultural systems linked to particular ecosystems (pastoralism, oasis, floodplain agrofiseries, numerous agroforestry systems, etc.) that could be recognized as GIAHS. Could specific linkages be created between GI strategies and UN projects for remarkable site or intangible material recognition?
- As a result of their link to a large community or specific natural area, a number of GI products can be found in different African countries (ecosystems or sociocultural groups may extend over several countries). Could the regional institutions responsible for GIs and RECs develop regional GIs in Africa with a facilitated/specific procedure?
- In order to contribute to sustainable rural development, an African approach to GIs requires equitable distribution of income among the different actors in the product supply chain. However, there is a risk of the bulk of the economic gain being appropriated by groups with superior bargaining power. It is thus vital to include mechanisms to ensure the equitable sharing of benefits from GIs.
- There are unacceptable third party certification costs for local markets, in a context where African consumers should be able to find typical products that are economically accessible and where local communities may have the capacity to set up their own control systems. Could an African PGS be defined and officially recognized?

- A GI CoP for food and handicraft products (when conceived for sustainable development) is highly appropriate for fair trade. Could African GIs integrate fair trade principles and certification as far as possible, and the two certification systems merged or made compatible?
- GI development in Africa is a driver to address many development issues and also increase food security, provided that food GIs on local markets are accessible to the majority of consumers. When GI products are intended for the export market, they can still contribute to food security by improving farmers' income through linkages to remunerative markets.

These are just some of the many aspects to consider for GI development in Africa. There is room for a specific African approach, especially with regard to certification methods and marketing tools (guarantee systems, combination of voluntary standards, labelling and packaging systems, support to processing, facilitating economic partnerships, etc.). The public authorities and project implementers also have an important role in building up capacity and raising awareness.

Returning to the four key success factors for GI development, conclusions can be drawn from an analysis of the strengths, weaknesses, opportunities and threats identified in Africa.

TABLE 2.1

**Success factors for development of geographical indications**

<b>Factors</b>	<b>Strengths/opportunities</b>	<b>Weaknesses/threats</b>	<b>Prospects</b>
<b>Product typicality</b>	<p>African countries are a reserve of typical food and handicraft products with a strong link to origin, culture and biodiversity</p> <p>As an important heritage both to preserve and promote, these products are key to sustainable development and increased food security</p>	Lack of awareness (on the part of producers and public authorities)	Identification through local participative processes of GI products with potential for registration in each country as key to sustainable rural development and food security
<b>GI governance</b>	GI potentials currently raising the interest of some influential public and private stakeholders	<p>Producers' fragmentation and requisites for collective action (trust, enforcement)</p> <p>Complexity of GI processes and governance (multistakeholders, pluridisciplinary)</p> <p>Long-term processes requiring strong involvement and regular funding</p>	GI project as driver for building trust and mobilizing inclusive collective action of stakeholders, with particular focus on the roles of women and youth and smallholders' organizations
<b>Market linkages</b>	<p>African consumers from middle and upper-middle classes willing to pay (local and regional market)</p> <p>Potentials of export market, especially in synergy with other voluntary standards</p> <p>Existing national standards for some export products</p>	<p>Lack of consumer awareness on GIs</p> <p>Problems caused by lack of technical and financial capacities in public and private sectors</p> <p>Low intraregional exchange flows</p>	<p>Development of pilot products and strengthening value chains, also through clusters, in order to build capacities and develop market linkages</p> <p>Boost intra-African trade and export of GI products through economic partnerships and with support from RECs</p> <p>Develop awareness raising and consumer information campaigns</p>
<b>Institutional framework</b>	<p>Interest from stakeholders and institutional support</p> <p>Reactivity in case of usurpation</p> <p>OAPI and ARIPO</p>	<p>Lack of institutional resources</p> <p>Cost of certification</p> <p>Low enforcement capacity regarding regulations and protection of the name</p> <p>Little formal R&amp;D support</p> <p>Lack of coordination and synergy among supporting actors and agencies at national and regional levels</p>	Development of an African vision, approach and partnerships (including research action) to improve enabling environment through synergies among countries, partners and technical assistance projects

These elements demonstrate the need for, and interest in, a continental strategy for GI development in Africa, and justify the following recommendations for such a strategy.

- Identify, design and promote a GI African vision and approach for the African food and handicraft heritage with appropriate and specific GI programmes, tools and methods, in particular with regard to registration (e.g. guidelines for CoP content to ensure sustainability, regional GIs); marketing (e.g. link with other standards, facilitation of regional trade); and certification and controls (e.g. PGS).
- Build on existing experiences and capacities (e.g. OAPI) and enable this knowledge to be diffused, thanks to a permanent dialogue on national, regional and continental multistakeholders and multisectoral platforms (public authorities in different domains such as IP, agriculture, food, etc., farmers' platforms, market actors), giving the lead to African stakeholders while partnering with key players internationally (e.g. oriGIn, Slow Food, IFOAM).
- Raise awareness among various stakeholders in African countries (economic actors, public authorities, consumers), disseminating information, building capacities and encouraging public actors to promote GI processes as a tool for sustainable rural development (protection and support policies) by mainstreaming these topics in national policies.
- Facilitate marketing of GI products, to increase food security: (i) on local markets by increasing consumer awareness and ensuring the means to maintain local availability and reasonable prices; and (ii) especially in intra-African trade and export, by improving "access to market" information systems, encouraging mutual recognition or harmonization of rules among African countries and encouraging economic partnerships.
- Support specific R&D that combines product and market innovation with maintenance of product specificity and identity.
- Implement GI development projects to address general development issues and GI issues through pilots, stressing the importance of inclusiveness (facilitating smallholders' organizations so they can defend their interests and focusing on the roles of women and youth) and environmental sustainability (preservation of natural resources necessary for the long-term success of the GI process, importance of climate change resilience).
- Implement consultation/negotiation mechanisms among the various stakeholders involved in the GI process (including producers, state and local government representatives and buyers/exporters) to reach a compromise acceptable to all.
- Develop specific research for the African context to help design appropriate programmes, tools and methods (as part of the African approach), including identification of GI products in all countries (inventories of heritage and potentialities) and encourage diffusion of these templates through extension services.

## 2.2. EXISTING LEGAL AND INSTITUTIONAL FRAMEWORK

Most African countries are members of WTO and, as such, are intended to enforce legal tools for the protection of GIs. However, following Article 1 of TRIPS, WTO member states are allowed discretion on protection options for origin-related products, provided they are compliant with TRIPS. These options usually range from unfair competition to trademark law through specific legislation – the so-called *sui generis* law.

While many African countries have put in place some form of protection, some legislations on GIs are uncompliant with TRIPS, or so new that they do not always reflect the interests of African producers. In this respect, not only should the availability of the protection options be considered but also the scope of the protection. In fact, African countries have a high level of GI protection within the TRIPS negotiations, but not all of them have seized the opportunity to enforce higher standards of protection<sup>10</sup> within their territory, despite existing options at national or regional level.

However, the implementation of TRIPS is only one course of action. African countries could make more use of existing flexibilities in relation to IP protection and enforcement<sup>11</sup> by integrating the development aspects of GIs better, rather than focusing exclusively on mere compliance with TRIPS. In fact, membership of African countries in alternative international conventions that are more protective of their interest is extremely limited.

### 2.2.1. Global context

From early times, the GI of goods has been important, notably when the goods in question were no longer produced for home consumption. GIs were used on the national market to differentiate between goods of the same category with a basic quality or reputation, but also to guarantee their origin to the consumer and thereby justify a higher price for the product. In this context, it is easy to see why the misappropriation of names by free-riders was problematic. Misappropriation resulted in transferring the economic profits associated with the name to illegitimate operators and something needed to be done to prevent this misuse. However, at that time, by virtue of what is called the principle of territoriality of IPRs, this protection was relevant only for an infringement committed in the territory of the state where the AO was protected. There were no legal means to fight misappropriation of a given name abroad. Nevertheless, methods of transportation were developing and, with them, trade at international level that left a legal vacuum and consequent danger of fraud, creating significant risks in loss of earnings.

In the nineteenth century, states decided to cooperate internationally on this matter. However, it has taken a long time for minimum standards of protection of GIs to be achieved that apply to as many countries as possible. And yet the current legal framework for the protection of GIs is considered to be unsatisfactory at least in view of the interests of African countries. In the long legal saga, first came the Paris Convention for the Protection of Industrial Property (1883), then the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891), the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958) and finally the TRIPS Agreement (1994). In 2015, the Geneva Act revising the Lisbon Agreement was adopted; five accessions or ratifications are necessary for the new Act to enter into force.

Among other things, this new Act modernizes and updates the Lisbon Agreement by providing protection for and enabling international registration of GIs in addition to AOs, allowing accession to the Agreement by intergovernmental organizations such as

<sup>10</sup> Standards that meet their particular needs.

<sup>11</sup><http://www.ictsd.org/bridges-news/bridges-africa/news/a-look-into-the-real-picture-of-ip-challenges-for-african-ldcs>

OAPI or ARIPO<sup>12</sup> and giving the possibility of registering transnational GIs and AOs (cf. Annex 3).

The advent of the TRIPS Agreement (15 April 1994) was significant. For once in the history of international protection of GIs, a convention:

- defined the concept of GI for all WTO members (164 at present);
- requires its members to provide a minimum level of protection for all IPRs, including GIs.

Nevertheless, the TRIPS Agreement enforces a two-tier system of protection with basic protection for all GI products and additional protection for GIs on wines and spirits. With regard to GIs, according to TRIPS Article 22.2, member states must provide the legal means for interested parties to prevent the use of geographical names corresponding to GIs in WTO member states in a manner that misleads the public as to the true geographical origin of the product or constitutes an act of unfair competition. Such a system is based on the risk of confusion for consumers that encourages the use of GIs by illegitimate parties in conjunction with expressions such as “type”, “kind”, “style”, etc.

These expressions are also called “delocalizers”.



Mocha Kenya Style, a type of coffee sold through an Australian Web site, would not automatically be in violation of Article 22.2 of TRIPS, even if it were proven that it does not correspond to the qualities set forth by legitimate Kenyan producers.

As the burden of proof lies on GI producers, they would have to bring their case before a national tribunal and prove that such a label misleads the public. This has major implications in terms of costs and time. Moreover, as the test for consumer confusion is different in each country, there is no guarantee of winning such cases in a foreign jurisdiction based on TRIPS Article 22.2. Article 23 of the TRIPS Agreement confers additional protection for GIs identifying wines and spirits. By virtue of Article 23.1, each WTO member must provide interested parties with the legal means to prevent the use of GIs identifying wines or spirits that do not originate from the place indicated by the relevant GI. For wines and spirits with a GI, the protection does not depend on demonstrating a risk of confusion for consumers. Article 23 ensures meaningful protection even when the true origin of the goods at stake is indicated on the label, or if the GI is used by illegitimate parties in translation or accompanied by delocalizers.<sup>13</sup>

<sup>12</sup> It should be noted that, according to Article 28.1 (iii): “any intergovernmental organization may sign and become party to this Act, provided that at least one member state of that intergovernmental organization is party to the Paris Convention and provided that the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Act and that, under the constituting treaty of the intergovernmental organization, legislation applies under which regional titles of protection can be obtained in respect of geographical indications”. In other words, while OAPI may, at this point, become party to the Geneva Act provided it is duly authorized by its member countries, ARIPO may not, since it does not register regional titles of protection.

<sup>13</sup> Practical manual, p. 21.

This state of law is the subject of international negotiations within WTO. The “African group”<sup>14</sup> – together with the EU and Switzerland<sup>15</sup> – is negotiating to extend the additional protection to GIs on all products mainly because it would be expensive for producers to prove consumer confusion every time there is an alleged misappropriation of their names and because they are not, with the exception of South Africa, major producers of wines and spirits.<sup>16</sup> The African group also supports the establishment of a multilateral register that would be open to all GIs and binding for all WTO member states. No consensus has been reached over the last 15 years on the extension of international protection within the TRIPS Agreement and on the international register.

In this context, African countries have to seize opportunities at international level, such as the Geneva Act of the Lisbon Agreement on the protection of GIs and AOs, to enforce effective protection for their GIs in foreign countries. Because both international protection and registration of GIs are a function of their protection at national level, the existence of an operational framework at national level is of the utmost importance. African GIs also need to be protected efficiently at national/regional level to avoid easy misappropriation and genericity that would ultimately result in the impossibility of protecting the names on the international market.

### **2.2.2. Legal options to protect geographical indications: advantages and drawbacks**

It is worth clarifying that GIs refer to geographical names that have acquired uniqueness thanks to their association to a given product and irrespective of whether they have been registered or not (see scheme above). In fact, most origin-linked products in Africa do not have protected names. However, local reputations can be misused or appropriated outside the designated area. This can happen when an indigenous community is slower than a private company in registering a name. In any case, it is worth mentioning that GIs, registered or not, differ from rules of origin<sup>17</sup> (such as “Made in Kenya”) that are not IPRs as such. Rules of origin are necessary to apply taxes in the course of international trade, or to define the place where a product was made, but by no means do they refer to quality linked to origin.

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<sup>14</sup> Members of the African group are: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Côte d’Ivoire, Djibouti, Egypt, Gabon, the Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, the Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, United Republic of Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

<sup>15</sup> For more information on the countries defending the “Majority proposal” see *Draft Modalities for TRIPS Related Issues*, TN/C/W/52 (WTO Trade Negotiations Committee, 2008).

<sup>16</sup> On the other hand, a coalition of 20 member states refuses negotiations on the level of protection. In their view, it is unnecessary. Banning delocalizers and translations on these products may create confusion for the consumer who is already used to this type of branding.

<sup>17</sup> “Rules of origin are the criteria used to define where a product was made. They are an *essential part of trade rules* because a number of policies discriminate between exporting countries: quotas, *preferential tariffs*, anti-dumping actions, countervailing duty (charged to counter export subsidies), and more. Rules of origin are also used to compile trade statistics and for “made in ...” labels attached to products. This is complicated by globalization and the way a product can be processed in several countries before it is ready for the market (WTO Web site: [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm9\\_e.htm#origin](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm#origin)).

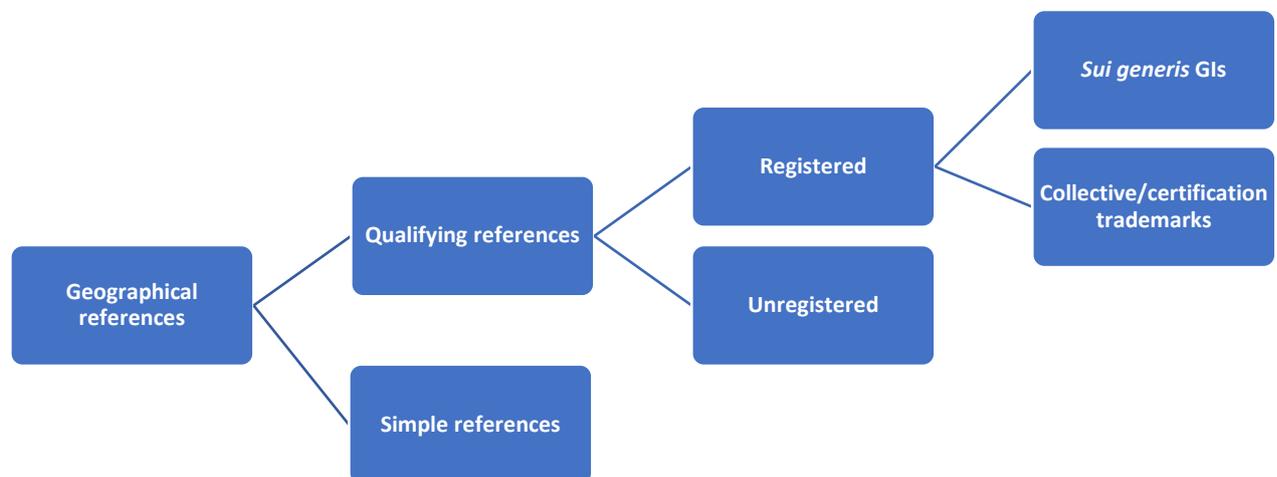
Apart from these “simple” references to origin, other geographical references qualify the product. In this case, they generate an IP for the communities that may or may not be registered. In their registered form they would usually be called AOs or GIs. Where they are not registered, yet qualify, they may be called *indications of source* or *indications of provenance*. However, caution must be taken when considering these concepts. Numerous systems of protection for GIs exist in national legislations and each state is free to choose whatever option suits its interests. The greatest challenge is, on the one hand, to differentiate between simple references to the origin and qualifying references to the origin; and within qualifying references to the origin, between those who are registered and those who are not; within the registered, those who are registered in the framework of a *sui generis* system or by virtue of the law on trademarks.<sup>18</sup>

Protection systems may be classified in three main groups: (i) legislation on trade practices that concern “unfair competition” and “passing off”; (ii) the law governing trademark, collective and certification marks; and (iii) ad hoc legislation on GIs, the so-called *sui generis* systems. These options are not exclusive and each option has its own advantages and challenges.

GIs also differ from “indications of source”, which are direct or indirect references to the geographical origin of goods or services, and may or may not include references to their properties or the quality associated with their origin, and which are understood by the relevant public as indicating a certain origin of the goods or services.

FIGURE 2.1

### Geographical indications within geographical references



In the absence of a *sui generis* system, which offers a broader scope for protection, the alternative is protection through trademark law.

<sup>18</sup> Some countries also protect unregistered trademarks (common law trademarks).

TABLE 2.2

**Comparison between trademarks and geographical indications**

<b>Subject</b>	<b>Certification and collective marks</b>	<b>High-level <i>sui generis</i> protection</b>
<b>Scope of protection</b>	<p>Protection against consumer confusion</p> <p>Prior (individual) mark will halt a new trademark application (first in time, first in right principle)</p> <p>No protection against translation or delocalization (unless for well-known marks)</p>	<p>Protection against misuse, imitation or evocation of the GI. Protection against translation and use of delocalizers (type, style, kind, etc.)</p> <p>Unless relating to a “well-known”<sup>19</sup> mark, it is consistent for TRIPS to provide for a limited exception to the “first in time, first in right principle” for the protection of trademarks. Thus, <i>sui generis</i> law may indicate that a prior trademark can coexist with a subsequent GI.<sup>20</sup> However, a subsequent trademark would usually be ruled out if it does not respect the requirements of the GI</p>
<b>Genericity</b>	Certification and collective mark registration does not usually protect from genericity	Critical issue under a <i>sui generis</i> system. <sup>21</sup> Usually, and when provided for by national legislation, the GI name cannot become generic, once registered
<b>Registration</b>	Geographical names can be difficult to register as certification and collective marks (distinctiveness test)	Need for CoP to justify the monopoly of use of name
<b>Costs</b>	Registration to be renewed every ten years	Most <i>sui generis</i> systems envisage registration <sup>22</sup>
<b>Enforcement</b>	<p>Private right</p> <p>Private enforcement</p> <p>High costs of rights enforcement in many countries</p>	<p>Collective right</p> <p>Private and public enforcement</p> <p>No registration costs</p> <p>Costs linked to the certification process (control)</p>
<b>Length of protection</b>	Ten years (subject to renewal)	Most <i>sui generis</i> systems envisage indefinite protection, no need for renewal <sup>23</sup>
<b>Use</b>	Necessity to use the name on the market	Protection of GIs is usually not conditioned by use on the market

<sup>19</sup> Pursuant to Article 16.2 of the TRIPS Agreement.

<sup>20</sup> This state of law derives from Article 17 of the TRIPS Agreement and was confirmed by the WTO Dispute Settlement Body in Panel DS 290, opposing the United States of America and Australia to the European Communities as a limited exception to the first in time, first in right principle.

<sup>21</sup> There should be a general clause prohibiting overall subsequent genericness.

<sup>22</sup> It is to be noted that some systems may require renewal of the registration. See Article 17, Decree No. 76 of 16 July 1976 on Algerian AOs.

<sup>23</sup> This law provides for indefinite protection of AOs, provided the rights holder renews the registration and continues to comply with the requirements of the law.

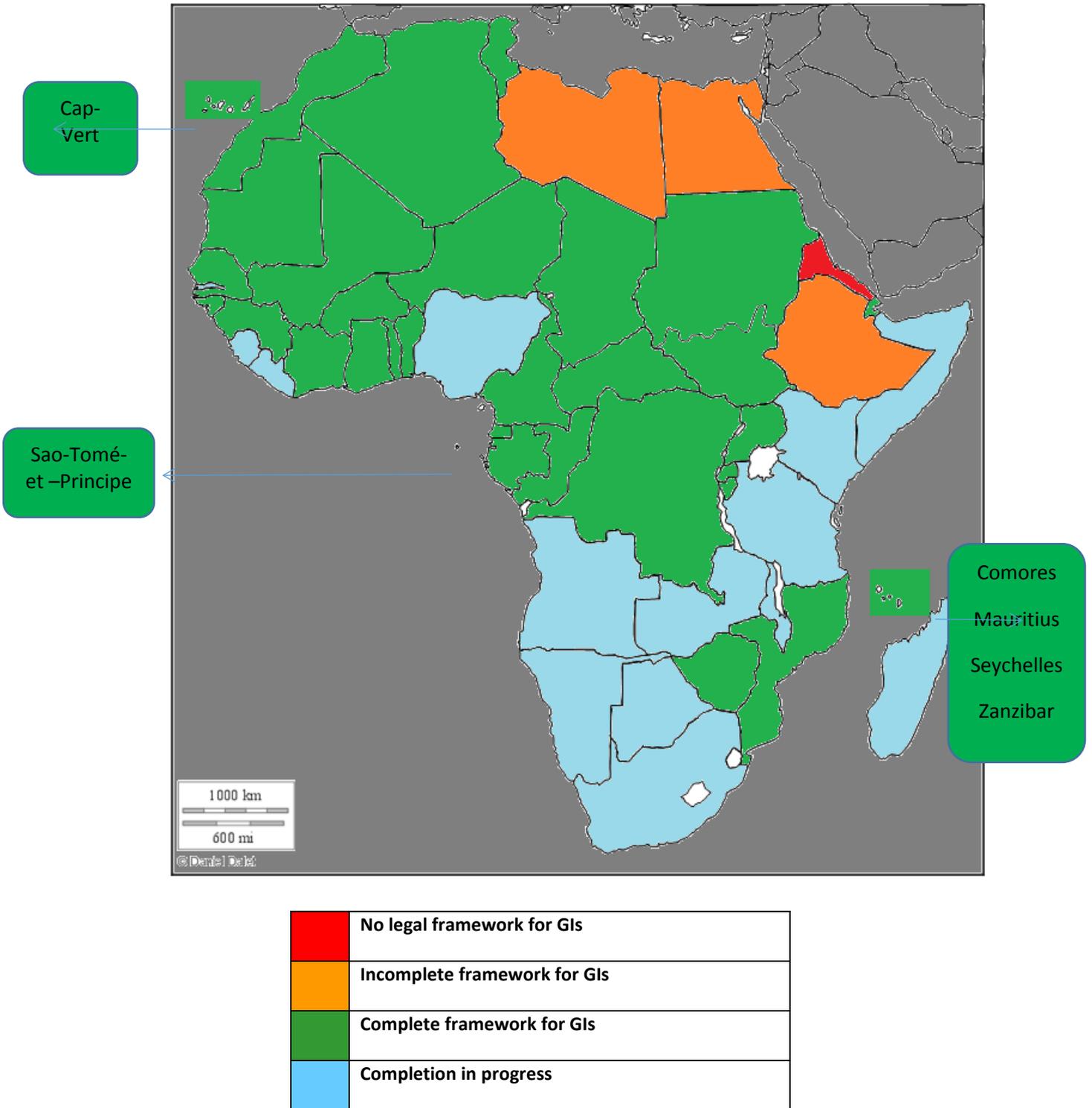
### 2.2.3. State of GI protection in Africa

Based on the status of its GI regimes, Africa can broadly be classified into four categories (see Figure 2.2).

- (i) Countries with a complete legal framework that is also compliant with TRIPS (green).
- (ii) Countries that are considered, for one or more reasons, as not enforcing a complete legal framework (orange).
- (iii) Countries that are in the process of completing their legislation (blue).
- (iv) Countries that have little or no legislation on GIs (red).

It should be noted that a case box has been included in Annex 3 and gives details relating to the main options in protecting geographical names in each country as well as their status as members of international agreements.

FIGURE 2.2  
 Classification of countries in Africa according to degree of achievement  
 of the legal framework of geographical indications



### a) *Countries having a complete framework*

“Complete framework” refers to countries that have adapted their trademark legislation to protect geographical names and that also provide for a specific system to protect GIs.

Within the undermentioned jurisdictions the tools are operational because they have been approved by decree.

The countries listed below are also compliant with Articles 22 to 24 of TRIPS with regard to definition of the GI and scope of protection.<sup>24</sup> They use existing flexibilities by applying GIs on all products and by enforcing additional protection for them within their territories.

#### ● The OAPI system of protection

OAPI enforces the Bangui Agreement on the protection of IP tools which is directly applicable in the answerable jurisdictions of its member countries. Additionally, OAPI serves as both the national office for industrial property and the central authority for documentation and information regarding IP. The Bangui Agreement (OAPI) enforces two options to protect GIs: collective marks (Article 19) and GIs. The Galmi purple onion, *Belle de Guinée* potato and Dogon shallot are registered as collective trademarks, while Penja pepper, Oku white honey and Ziama Macenta coffee are GIs. OAPI is considered to be TRIPS compliant, in some cases even “TRIPS plus”.

On the one hand, OAPI makes trademark law available for the protection of geographical names through collective trademarks (Article 2.2, Title I of the Bangui Agreement/Article 32 of Title V). Following Article 19, the collective trademark is subject to renewal every ten years.

On the other hand, OAPI provides for a *sui generis* specific system, which is characterized by a wide scope of protection, an obligation to register the name and also to submit a CoP.<sup>25</sup> The indication is protected as such and cannot be appropriated even if the true origin of the product is indicated, the genuine name translated or affixed by delocalizers. Not only does the Bangui Agreement allow for all types of products (agricultural, natural, industrial and handicrafts)<sup>26</sup> to be protected as GIs, but it also provides the same protection for them all. In this regard, the Bangui Agreement is “TRIPS plus”.

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<sup>24</sup> It should be noted that most countries in Africa have not enforced in their legislation the provisions on the relation between GIs and trademarks as set down by Articles 22.3, 23.2 and 24.5 of TRIPS.

<sup>25</sup> The link between the quality of the product and its origin must be justified in the CoP.

<sup>26</sup> Article 22.1 of TRIPS opens with the protection of GIs on “all products”.

Registered GIs and collective marks<sup>27</sup> registered in the OAPI system (in the special register),<sup>28</sup> are automatically protected in the 17 countries of the organization.

- [Specific countries with a complete framework](#)

*Cape Verde.* Within Legislative Decree No. 4/2007 of August 2007, Cape Verde enforces protection for collective and certification marks (Articles 146 and 148) and for GIs (Article 216). The scope of protection is broad.

*Djibouti.* Djibouti enforces unfair competition (Article 183), collective and certification trademarks (Chapter V), and (a strong level of) protection following the new Industrial Property Law of 21 June 2009.<sup>29</sup>

*Mozambique.* In Mozambique, GIs and AOs have been the subject of Regulations on Appellations of Origin and on Geographical Indications (approved by Decree No. 21/2009 of 3 June 2009). In 2015, the new Mozambique Industrial Property Code was approved by the Council of Ministers by Decree No. 47/2015 (31 December 2015). It came into force on 31 March 2016. Most of the “new” provisions incorporated into the new IP code in relation to AOs and GIs were already foreseen in the 2009 decree, which has been revoked and replaced by the new code. AOs and GIs now have a more comprehensive legal framework. The new IP code provides a new definition for GIs and further specifications (in addition to those required in the former IP code) for compliance.<sup>30</sup> The Industrial Property Institute keeps an up-to-date register of registered AOs and GIs. It sets out who has the legal capacity to apply for registration of AOs and GIs.

Mozambique has been a member of ARIPO since 8 February 2000 and, as such, also enforces collective and certification marks.<sup>31</sup>

*São Tomé and Príncipe* enforces a complete legal framework within its Intellectual Property Law (Law No. 4/2001 of 31 December 2001).<sup>32</sup>

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<sup>27</sup> It should be noted that certification marks are not enforced within the OAPI system. They are detained by a “certifier”, i.e. a state that allows operators to use them provided they conform to the specifications laid down by the certifier. These specifications may apply to the place of origin.

<sup>28</sup> On the occasion of the Ministerial Conference of OAPI member countries on GIs and plant varieties, the Ministries responsible for agriculture and IP underlined the need for the legal protection of quality products in a development friendly way and with a view to preserving traditional knowledge. Therefore, public stakeholders are committed to integrate the development of GIs in their national policies on trade and to provide a suitable legal and institutional framework. This declaration dates back to 7 December 2005. Following this declaration, the Government of Côte d’Ivoire voted a budget line to support GIs in 2013.

<sup>29</sup> However, no practice has been reported and it is not clear whether the law has been approved by decree.

<sup>30</sup> Additional requirements have been created in the new IP code, namely, “a single document” must now be lodged at the time of filing the application, which should contain the following information: the name, description of the product, including specific rules relating to its packaging and labelling and a concise description of the geographical area; a description of the link between the product and the geographical environment or the geographical origin including, if appropriate, the specific elements in the product description or production method that justify such a link. If the application relates to a geographical area in a third country, the application for registration shall also comply with the conditions required and shall contain proof that the designation in question is protected in its country of origin. In addition, the application shall be written in Portuguese or, if drafted in another language, it shall be accompanied by an official translation into Portuguese.

<sup>31</sup> Mozambique has not yet ratified the Madrid Agreement.

<sup>32</sup> See Articles 24 to 26.

In *Tunisia*, a *sui generis* legal framework has been achieved through Law No. 99-57 of 28 June 1999, inspired by the provisions of the European regulation on GIs that enforces protection of AOs and GIs.<sup>33</sup>

However, no practical experience has been reported to date from these latter two countries.

### ***b) Countries with an incomplete framework***

A cursory look at the laws suggests that there are gaps in the existing GI legislations of some countries in Africa. Several problems have been listed as indicators of an incomplete legal framework.

- Non-Compliance with TRIPS

*Minimum standards.* As stated above, GIs are the subject of multilateral treaties with which countries must comply. The failure of some legislations to comply with TRIPS minimum standards has been noted. Angola and Eritrea do not respect these standards. GIs are only protected against unfair competition and no specific provisions exist for additional protection for wines and spirits.<sup>34</sup>

*National treatment.* Algeria, Comoros, Equatorial Guinea, Ethiopia, Liberia, São Tomé and Príncipe and the Sudan are not members of WTO and thus are not bound to enforce TRIPS minimum standards. They do not have to apply the national treatment (Article 4 of TRIPS), which means treating nationals and foreign operators equally. It is worth noting that Comoros and Equatorial Guinea are OAPI members and therefore in conformity with TRIPS even if they are not members of WTO. Algeria does discriminate between national and foreign applicants with regard to GI protection.<sup>35</sup> Moreover, with Law No. 82 of 2002, Egypt submitted the protection of foreign GIs to membership of the state to WTO or reciprocity in GI protection. In this context, African countries that are non-members of WTO and do not provide protection to Egyptian GIs are not entitled to receive protection on Egyptian territory.

The coexistence of trademarks and GIs should be accompanied by specific rules to avoid conflicts. However, most countries in Africa have not enforced in their legislation the provisions on the relation between GIs and trademarks as imposed by Articles 22.3, 23.2 and 24.5 of TRIPS. Article 22.3 states that trademarks that contain misleading reference to an existing GI will be invalidated. Article 23.2 deals with the invalidation of trademarks containing the name of a wine or a spirit when the wine or spirit in question does not originate from the place indicated. Finally, Article 24.5 proposes to consider, before invalidating a trademark containing a geographical indication stating the invalidation of one trademark, the fact that the trademark at issue has been registered in good faith

<sup>33</sup> In Tunisia, GIs are referred to as “indications of provenance”.

<sup>34</sup> In this case, the countries have not taken the opportunity to enforce a higher standard of protection even though such an opportunity is allowed by TRIPS and is beneficial for African countries.

<sup>35</sup> Decree No. 76-65 of 16 July 1976, Article 6, relative to AOs: “*Les appellations d’origine étrangères ne pourront être enregistrées comme telles au sens de la présente ordonnance, que dans le cadre de l’application des conventions internationales auxquelles la République algérienne démocratique et populaire serait partie et, sous réserve de réciprocité, dans les pays membres des dites conventions.*”

either before the adoption of TRIPS or before the protection of the GI in the country of origin. In accordance with relevant WTO jurisprudence (TRIPS panel initiated by the United States of America and Australia against the EU), coexistence between GIs and trademarks is indeed allowed, pursuant to Article 17 of TRIPS as a limited exception to the "first in time, first in right principle", subject to the possibility that prior reputed trademarks block the registration of a subsequent GI. EU legislation provides for such prevalence of the trademark (see Article 6[4] of Regulation No. 1151/2012).

Because most GIs in Africa have not yet been registered, consideration should be given to addressing the issue of prior trademarks with a GI, irrespective of whether or not the GI applies to a wine or a spirit.

#### BOX 2.10

##### **Geographical indications and prior existing trademarks**

Prior trademarks with a GI are a particular risk for African GIs. In Kenya, for example, the commercial strategy of local coffee roasters is based on commercial trademarks such as "Kenya AA", which has already acquired a certain reputation. Moreover, the national origin is well known on the export market through the indication "Kenya AA Top". In this particular case, if the Kenya Coffee Directorate that registered "Kenya coffee" wants to challenge the reference by local roasters to geographical names such as "Kenya AA" (Java) or "Kenyan Coffee" (Dorman's), it is likely that the Kenya Intellectual Property Institute (KIPI) will examine whether these trademarks were registered in good faith. It should be noted that no international definition of "good faith" exists. In practice, the authorities will merely assess, based on the circumstances of the case, whether the trademark holders were aware of the intention of the Coffee Directorate to register "Kenya coffee" and whether a malicious intent can be associated with the registration.

#### ● [Trademark protection only](#)

Countries in blue in Figure 2.2 only enforce collective or certification trademarks to protect products of origin. At present, Eritrea has only unfair competition to fight against misuse of a name and "commercial" trademarks to register geographical names. This last option is contrary to the common rules governing the protection of trademarks. As stated before, a trademark cannot be descriptive of the place where the product was made. Therefore, on principle, a "commercial" trademark cannot be used to protect a geographical name. While countries may sovereignly decide to register commercial trademarks containing geographical names, this choice may be challenged in other territories, as observed in the case of Ethiopia. Exclusion from registration usually depends on an assessment as to whether a geographical term used as a "commercial" trademark could be perceived by the public to indicate a connection between the origin of the goods and the trademark.

Other countries such as Nigeria and the United Republic of Tanzania provide protection of products of origin through collective or certification marks. While this option has advantages (see Box 2.11), it should be noted that registration of a trademark is subject to renewal (contrary to GIs)<sup>36</sup> and is thus more costly<sup>37</sup> (see Box 2.12).

#### BOX 2.11

##### **Cases where protection with a trademark is most needed**

In 2013, a study was commissioned by the EC to assess the economic potential of a cocoa GI in Cameroon. It is unlikely that hypothetical registration of the *sui generis* GI “Cocoa from Cameroon” itself would be sufficient to equip the rights holders to bargain the use of the name with retailers and transformers. There is, in fact, a general assumption that *sui generis* GIs may not be licensed or transferred. Hence, considering that the field of cocoa (or coffee) is fragmented, the rights holders of a reputed product of origin potentially find themselves with no practical tool to control the use of the GI along the value chain and to obtain some of the price benefits that a GI on the final product will generate once the product is put on the market (often at a premium price).

The experience of Ziama Macenta coffee in Guinea has shown that use of the GI has much improved the governance of the producers’ organization. With regard to marketing, the organization faces challenges in controlling use of the name by coffee roasters abroad. In cases where roasters and retailers do not belong to the collective organization using the GI, registration within a *sui generis* system provides formal protection but not the capacity, in practice, to negotiate a premium price for use of the name. Consequently, the GI has no impact on reservation of the name by rights holders (as long as it is used on a product with the corresponding origin) and does not provide an opportunity to obtain a better price.

It is assumed that the registration of reputable names as trademarks would create a window of opportunity to sell licences to other stakeholders and reinforce negotiating capacity. Case studies would be able to reinforce this assumption. This option for a fragmented field does not impede the registration of a *sui generis* GI from benefiting from the scope of protection offered by this system.

<sup>36</sup> Within a *sui generis* system, a GI is normally registered only once, although one member state of the African Union, Algeria, has made provisions for the renewal of the registration.

<sup>37</sup> It should be noted that certain national systems, as in Algeria, require the renewal of registration of GIs.

## BOX 2.12

**Costs of registering a trademark in selected countries**

Application for a trademark is generally expensive. For instance, to register a trademark in Angola an applicant needs €685 per registration. In Nigeria, the first class is US\$1 101 (€881), while additional classes filed simultaneously are US\$1 067 (€854) each. Some countries such as South Africa and Kenya have lower fees to register a trademark.

The minimum cost to register and publish a GI in OAPI: is FCFA145 000/€225). It should be noted that fees may be perceived in relation to correction of material mistakes, prior rights search or delivery of the certificate (cf. Annex 3).

- *Sui generis* only

*Sui generis* is highly appreciated in many contexts in Africa, particularly where the scope of protection is in line with the needs of operators. Moreover, it usually implies that the public authorities support implementation.

- Limited scope of protection

Protection under the TRIPS Agreement provides basic protection for all GIs and an additional protection for GIs on wines and spirits. However, in certain African legislations, the protection devoted to GIs is only additional with regard to GIs on wines and spirits, while most African countries have an interest in providing a broad scope of protection to GIs on other products as well. Examples are the Burundi Law on GIs; the Geographical Indications Act (Act No. 23 of 2002) of Mauritius; Angolan law (Article 73); the law of the Democratic Republic of the Congo; and the law of Seychelles.<sup>38</sup>

However, such limited scope of protection applying to fields where Africa has a “comparative advantage” leads to easy misappropriation of the associated names (see Box 2.13).

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<sup>38</sup> Law No. 4/2001, Chapter 7, of 31 December 2001.

## BOX 2.13

## Argan oil



In 2010, the name “Argane” was registered as a protected GI in Morocco, as the use of the national logo for protected GI products shows.



However, the name is still used by other operators as an ingredient in their products.

Although the name has probably been used in good faith and the product inside the package is argan from Morocco, in the long term this evocation of the famous GI is likely to dilute promotion efforts by authentic users to associate their product with southwest Morocco. Incidentally, evocation of registered names is one of the shortcomings of the protection of GIs through trademark law since the trademark option only protects the name against “consumer confusion”, the existence of which has to be proved. In the long term, the name is likely to become generic.

This is also one of the challenges of specific products that are used mainly for end products. Certain jurisdictions have started to regulate the use of GI products as ingredients by imposing a certain percentage of use before the operator is allowed to indicate such use.

The registration of a GI within a *sui generis* system does not usually call for renewal. However, in Algeria, the registration of a GI is valid for ten years and is subject to renewal.<sup>39</sup> This unusual choice may be justified by the budgetary sustainability of the national office for the registration of IPRs.

### c) *Countries in the process of completion*

A number of countries have felt that trademark law is not enough to protect their names efficiently on national markets. In fact, GI producers need to pay attention to the scope of protection in those countries that have adopted trademark legislations. Generally, the registration of a geographical name through a mark does not necessarily prevent a third party from using it in its translated version, using the same name preceded by a delocalizing expression (e.g. rooibos from the United Republic of Tanzania) or with terms such as “style”, “kind” and “type”. Moreover, as a private mechanism, enforcement through trademarks is entirely at the owner’s cost. For each case of alleged violation of rights, the owner would have to establish consumer confusion. Costs linked to the trial or, upstream, to monitoring compliance with defined standards, are borne entirely by the owner.<sup>40</sup>

Consequently, South Africa<sup>41</sup> has recently adopted a *sui generis* approach on legislation that is more protective of geographical names in the national territory. Similarly, in 2009, Kenya adopted the Geographical Indications Bill. However, no law is enforceable in the absence of approval by decree.

ARIPO has carried out major preparatory work that is envisaged to lead to the conclusion of a protocol to govern the regional protection of GIs as well as boost development and harmonization of GI laws in its member states.<sup>42</sup>

With the adoption of the Lusaka Agreement on 9 December 1976, Article I established ARIPO. It currently has 19 member states – Botswana, the Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Somalia, the Sudan, Swaziland, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

The draft GI protocol, to be adopted pursuant to a diplomatic conference, provides a common definition for GIs and AOs (Section 2); creation of a regional register for GIs and AOs (Section 10); broad scope of application (Section 4.2); clarification on the ways and means to demonstrate a causal link of the product to its origin (Section 4.4); indications on the nature and requirements of the body in charge of certification (Section 5);

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<sup>39</sup> See the Law n°08-16 of August 3, 2008 on Agricultural orientation which provides in its Articles 32 and 33 for the establishment of a quality system for the utilization and promotion of agricultural products and products of agricultural origin, in particular the GIs and AOs.

Executive Decree No. 13-260 of 7 July 2013 on the quality system for agricultural and agricultural products, which provides for the establishment of the National Labeling Committee (CNL), the Specialized Subcommittees (SCS), The Permanent Secretariat (SP) and the Control Organizations (OC) and establishes the procedure and procedure for the recognition and registration of GIs and AOs.

<sup>40</sup> O’Connor. 2004. *Geographical indications and TRIPS*, pp. 14–19.

<sup>41</sup> See *draft Regulations relating to the protection of GIs and designations of origin on agricultural products intended for sale in the Republic of South Africa*, 12 February 2016.

<sup>42</sup> See *ARIPO Annual Report 2014*, p. 16.

formalities to register GIs (Section 6); delays in consideration of applications (Section 7); rights conferred to users (Section 9);<sup>43</sup> and duration of protection (Section 13).

A figurative device to be used by any operator of a registered AO or GI is to be approved and also protected against misuse (Section 11).

The protocol foresees the designation of a national competent authority responsible for the management of rights in awareness raising of GIs (education, guidance, monitoring, dispute resolution, etc.) (Section 14).

ARIPO's draft policy and legal framework for the protection of GIs will be approved by member states pursuant to an upcoming diplomatic conference.

#### ***d) Countries having no legal framework for the protection of GIs***

Somalia and the Sahrawi Arab Democratic Republic have no means of protection for GIs. They also belong to the group of states that are not members of WTO.

### **2.2.4 Legal institutional capacities**

#### ***a) Institutions to register GIs***

Apart from the South Sudan and the Sahrawi Arab Democratic Republic, all countries in Africa have general IP offices responsible for registration (i). Only a few countries have created specific bodies responsible for GIs (ii).

##### *i) General offices*

The list of national IP offices in Africa can be found on the WIPO Web site.<sup>44</sup> This list also includes the regional offices in Africa: OAPI and ARIPO. The Bangui Agreement and the Banjul Protocol empower OAPI and ARIPO respectively to receive and process applications on behalf of member states.

OAPI member states share a single regional registration office based in Yaoundé, Cameroon. There is no national registration of IPRs. Each country has "national liaison structures" responsible for conveying national applications to OAPI. These services merely play an intermediary role and are limited to transmitting applications for registration within five days from their submission. As each country has its national liaison structure, the effectiveness of these services is not homogeneous.<sup>45</sup>

Under the Banjul Protocol, an applicant may file a single application either in one of the Banjul Protocol contracting states or directly at the ARIPO office. The application should designate the Banjul Protocol contracting states as the states in which the applicant

<sup>43</sup> In this regard, it can be seen that the protection granted to GIs and AOs has a scope comparable with that existing in OAPI and EU countries. See ARIPO's *Draft policy and legal framework for the protection of geographical indications*, Section 9, Rights conferred.

<sup>44</sup> <http://www.wipo.int/directory/en/urls.jsp>

<sup>45</sup> See *The OAPI intellectual property protection system – CEIPI Conference [Le système de protection de la Propriété Intellectuelle de l'OAPI – Conférence au CEIPI]* <http://www.linkipit.com/le-systeme-de-protection-de-la-propriete-intellectuelle-de-loapi-conference-au-ceipi>

wishes the mark to be protected, once it has been registered by ARIPO.<sup>46</sup> It should be stressed, however, that only ten states are members of the Banjul Protocol: Botswana, Lesotho, Liberia, Malawi, Namibia, São Tomé and Príncipe, Swaziland, Uganda, United Republic of Tanzania and Zimbabwe.

### *ii) Specific institutions*

OAPI member states were involved in the setting up of national GI committees, which had to examine GI applications before they were passed to the OAPI office. They were established in about half of the member states.

In Cameroon, for example, Order No. 188/CAB/PM of 20 December 2010 created the National Committee for the Coordination of Geographical Indications (CNCIG). Decision No. 0226/MINADER/CAB of September 2011 gives the composition of the committee. The mission of CNCIG in Cameroon is to support the promotion of products in targeted markets, similar to the French National Institute of Origin and Quality (INAO).

At present, about half of the member states have set up a GI committee, thereby triggering debate about who should be the chair – whether a Minister of Agriculture or those responsible for IP (usually Ministers of Industry), who act as OAPI's interlocutors in each country and sit on the OAPI executive board. Despite OAPI's reliance on "GI focal points" in Ministries of Agriculture, there has been no allocation of funds from OAPI to ministerial departments not in charge of IP. As no national committee has received a budget, either from the project or from the government, their effectiveness may be questioned.<sup>47</sup> The PAMPIG project did, however, include capacity building for GI committees in Cameroon and Guinea.

Other countries are willing to follow this path. In Kenya, the Government has established a National Committee on WTO (NCWTO) which has several subcommittees that handle the various areas of WTO agreements. It is expected that one of these subcommittees will handle the issue of GI protection.

### **b) Procedures to register GIs**

The following paragraphs illustrate the discrepancies between AU member states with regard to registration procedures of GIs (i) and existing gaps (ii).

#### *i) Existing discrepancies in registration procedures*

. Registration procedures vary from one country to another. The law may sometimes require a CoP (such as in Tunisia, Article 20), but producers must in any case submit specifications in their request, as in OAPI member states. Sometimes the law may only need applicants to mention the characteristics linked to the origin (Algeria, Article 11).

There may be different examining procedures. In OAPI countries, a substantial examination is carried out, notably by the Committees on GIs, while in other countries it is assumed that there is only a formal examination. In these countries, it might be thought that the name is appropriated by whoever applies first and fulfils the requirements of registration for a GI, and not by those who can actually prove to the state that there is a

<sup>46</sup> For more information, see <http://www.aripo.org/about-aripo/legal-framework>

<sup>47</sup> See Chabrol, Mariani and Sautier. 2015. *Establishing Geographical Indications without state involvement? Learning from case studies in Central and West Africa.*

genuine link between the product's qualities and its origin to justify registration of the name. The same comment applies wherever the law allows that a natural person has legal standing to apply for a GI.

Nevertheless, fees are expensive whether registering a trademark or a GI. This fact does not always consider that such fees may challenge the ability of producers' organizations to protect their names and promote them on the market.

There may at some point be issues with opposition procedures. Delays in opposing the registration of a name vary according to the country and may not always be accessible to Producers' Organisations (published in the official journal/gazette or in newspapers).

### ii) Existing gaps in terms of register

This uncertainty is not always rectified by accessibility to national or regional registers that are either costly and/or technically unavailable for a lay person. This is contrary to the European system where the DOOR database is accessible free on the Internet and a person can see the published, registered and requested GIs (see site in Figure 2.3).

FIGURE 2.3  
DOOR database

The figure consists of two screenshots. The top screenshot shows the DOOR database website (ec.europa.eu/agriculture/quality/door/list.html?locale=fr). It displays a table of geographical indications with columns for 'Numéro de dossier', 'Pays', 'Dénomination', 'Type de demande', 'Date', and 'Statut'. The table lists various products such as Prosciutto Veneto Berico-Euganeo, Jabugo, Anguria Reggiana, Poularde du Périgord, Hännlamb, Český modrý mák, Rheinisches Zuckerrübenkraut, Schwäbische Spätzle, and Kopi Arabika Gayo.

Numéro de dossier	Pays	Dénomination	Type de demande	Date	Statut
IT/PDO/0117/02104	Italie	Prosciutto Veneto Berico-Euganeo	AOP	12/11/2016	Publiée
ES/PDO/0105/01372	Espagne	Jabugo	AOP	11/11/2016	Publiée
IT/PGI/0005/01385	Italie	Anguria Reggiana	IGP	09/11/2016	Enregistrée
FR/PGI/0005/01373	France	Poularde du Périgord	IGP	04/11/2016	Enregistrée
SE/PDO/0005/01327	Suède	Hännlamb	AOP	04/11/2016	Enregistrée
CZ/PGI/0005/02236	République tchèque	Český modrý mák	IGP	03/11/2016	Demande introduite
DE/PGI/0105/01288	Allemagne	Rheinisches Zuckerrübenkraut / Rheinischer Zuckerrübensiru (...)	IGP	01/11/2016	Publiée
DE/PGI/0105/01384	Allemagne	Schwäbische Spätzle / Schwäbische Knöpfle	IGP	01/11/2016	Publiée
ID/PGI/0005/02115	Indonésie	Kopi Arabika Gayo	IGP	01/11/2016	Publiée
IT/PDO/0105/01344	Italie	Prosciutto Veneto di Montebelluna	AOP	01/11/2016	Publiée

The bottom screenshot shows the ARIPO e-SERVICE portal (eservice.aripo.org/pmi/PMIMain.do). It features a sidebar with 'E-SERVICE', 'IP DIGITAL LIBRARY', 'JOURNAL', and 'INFORMATION'. The main content area includes 'Online Filing', 'Quick Search', 'eForms', 'Journal', 'Publication Server', and 'User Guide'. At the bottom, there are sections for 'Most Popular Form' and 'Most Popular Journal'.

ARIPO has an online service that enables a quick search of availability of names, but there is no centralized information point for registered names available for every African operator. This situation makes it all the more crucial for existing measures to repress fraud to be efficient.

### ***c) Means for repression of fraud***

Anti-counterfeit agencies that collaborate with other public institutions are the usual means to repress fraud. For example, an Anti-Counterfeit Agency was created in Kenya under the Ministry of Industrialization to coordinate market surveillance of protected goods such as beverages, seeds and fertilizers. Owners of IPRs/manufacturers can now sue for damages and restrain the sale of counterfeit goods on the domestic market. The Anti-Counterfeit Act provides teeth and muscles to fight business crime and sanction offenders with stiff penalties. Nevertheless, there is a lack of human and technical resources. It may therefore be assumed that the efficiency of anti-counterfeit agencies varies from one country to another.

There are no reports regarding seizure of goods with false or deceptive indications. Based on the level of awareness of the GI issue, it may be assumed that the customs officials or the authority responsible for repression of fraud in a country are not equipped to deal with misuse of names on products. They do not benefit from the existence of a list of names protected at regional or continental level.

Litigations on GIs are almost non-existent within countries. Nonetheless, it is assumed that the rules of competencies of courts vary from one state to another. The treatment of misuse of a GI may be approached differently, notably in terms of interpretation, if in one country it is a criminal court that is competent and in another it is a commercial court. Neither is this uncertainty rectified by the existence of a regional or continental court such as the Common Court of Justice and Arbitration of the Organization for the Harmonization of African Business Law. There simply is no common jurisprudence and there are as many possible interpretations of GI protection as there are existing courts at national level.

It may be stressed here that one of the strengths of the European system of protection is the possibility of bringing the matter before the European Court of Justice after all domestic remedies have been exhausted. This has been done several times regarding the concurrent use of marks between operators from different countries, as in the case of feta cheese, Budweiser or Bavaria beer.

Even where a regional agreement determines the extent of GI protection as in OAPI, the Bangui Agreement states that IPRs registered at OAPI are independent national rights. This means that the name that was subject to one registration splits into as many rights as the number of OAPI member states. Therefore, interpretation of the scope of protection may be challenged upstream at national level.

## **2.2.5 Prospects for GIs legal policies**

### ***a) Strong involvement of public actors and a need for measures at national and regional levels***

Institutional stakeholders are engaged in the definition and implementation of GI policies at national and regional levels. The lack of financial resources dedicated to these specific policies often hinder progress unless development projects support the process.

For example, in Tunisia, the Ministry of Agriculture backed a GI certification scheme by updating the regulations on quality labels related to origin and obtaining international recognition of Tunisian GIs, in particular within the EU. The PAIG project, funded by AFD, was therefore implemented. Control of the project is provided by the Ministry of Agriculture (General Directorate of Agricultural Production) in partnership with CIRAD, over a period of four years from September 2013 to March 2017. The aim of the project is to register Degler Nour dates, Gabès pomegranates and Teboursouk olive oil.

In Algeria, the Ministry of Agriculture is also working on a GI certification scheme. Through an Association Agreement with the EU, a partnership with the French and Italian Ministries of Agriculture is ongoing to provide technical support for the registration of GI products: Tolga Deglet Nour dates, Beni Maouche dry figs and Sig olives.

At regional level, building on the Ouagadougou Declaration and Action Plan, OAPI has raised awareness about GIs and supported inventories of potential GIs in its 17 member states through the PAMPIG project. The project has helped three pilot products to register as GIs.<sup>48</sup> It was implemented by OAPI, with CIRAD technical assistance and with financial support from AFD. OAPI's experience demonstrates the operability of the Bangui Agreement in its member countries. This experience should be relayed by national authorities themselves.

The GI issue has resonated at national level thanks to the PAMPIG project, which has encouraged national IP offices to select potential GIs within their territory with a view to receiving further technical assistance. In the meantime, some offices have begun to take significant action. In particular, the office in Côte d'Ivoire has assisted the producers of Korhogo canvas and Tiébissou loincloths in the registration of a collective trademark.

In cases where the government is the initiator or manager of the IP, it is essential to promote constant dialogue between the private and public sector to monitor quality, establish adequate traceability mechanisms and promote business alliances and commercial partnerships consistently.

Where a *sui generis* system is applicable, the enforcement of rights and repression of fraud regarding the GI name would normally be achieved by public authority intervention. However, despite the existence of *sui generis* systems in frameworks in Africa, *ex officio*<sup>49</sup> protection has not yet been implemented by the authorities, with the exception of Algeria (Article 2 of the *Ordonnance N°76-65* of July 16, 1976, *on the protection of appellations of origin*), Djibouti (Article 182 of the Law N°50/AN/09/6ème *on the protection of Industrial Property*), South Africa, but only with regard to liquor (Article 18.2 of the Liquor Products Act) and Tunisia.

*Ex officio* is a Latin expression, literally meaning “from the office”, by virtue of office or position, “by right of office”. It refers to the kind of protection where the state or public authorities are responsible for policing and ensuring GI protection.

*Ex parte*, on the other hand, is a Latin legal term meaning “from (by or for) one party”. *Ex parte* protection is the kind of protection given at the request of an interested party (i.e. the producers themselves). In *ex parte* protection systems (the majority in Africa), the

<sup>48</sup> Ziama Macenta coffee, Oku white honey and Penja pepper.

<sup>49</sup> O'Connor, *op. cit.* p. 5.

burden of protection is shouldered entirely by the producers or rights holders (association of producers, etc.) who have to go to courts, tribunals or other administrative venues to claim protection for their GIs.

There is one case of exceptional *ex officio* protection in the Niger, relating to misappropriation of the Galmi purple onion name. However, in most cases, producers have to control the misuse of GIs on the market by themselves (*ex parte*).

It is true that *ex officio* protection requires competencies within IP offices and institutional capacities in the field of repression of fraud. These may be obtained through technical assistance and training but need financial means. In order to approach African needs as far as possible, consideration should be given to enforcing renewal of the protection of GIs to ensure the budgetary sustainability and efficiency of the institutions.

Apart from the comprehensive work of OAPI, the Common Market for Eastern and Southern Africa (COMESA) has come up with a draft IP policy that capitalizes on innovation and competitiveness – IP has been adopted as an important tool for the region's competitiveness strategy. The draft policy also underlines the link between IP and economic development, particularly in relation to the role of IP in promoting innovation in developing countries.<sup>50</sup>

At continental level, the proposal to establish a Pan-African Intellectual Property Organization (PAIPO) that seeks harmonization of IP standards among AU countries was recently discussed in the Union.

#### ***b) Proactive protection at international level***

International protection can be accomplished through various means, namely through multilateral, regional and bilateral agreements.

As mentioned before, it is not obligatory for a country to protect a foreign GI if the latter is not protected in its country of origin (Article 24.9 of TRIPS). Therefore, national registration is the first step to international protection. Most national legislations outside Africa – including those of the EU<sup>51</sup> – subject the protection of foreign GIs to their prior protection at national level.

Except for OAPI countries, a GI protected in an African country is only protected in its own country, and has to be registered in all other countries where protection is required. There are only three ways to protect it in more than one country: by registration with OAPI (when not already done), with the EU or through the Lisbon or Madrid systems. The Economic Partnership Agreements (EPAs) are becoming alternative routes to protect several names in several countries at the same time.

While WTO provides minimum standards of protection for GIs at international level, WIPO enforces two international mechanisms for registration of geographical names.

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<sup>50</sup><http://www.ictsd.org/bridges-news/bridges-africa/news/a-look-into-the-real-picture-of-ip-challenges-for-african-ldcs>

<sup>51</sup> See Articles 8.1 and 49.5 of Regulation 1151/2012.

- International registration of trademarks within the Madrid Agreement and Protocol<sup>52</sup> is available and the procedure may be consulted.<sup>53</sup>
- Protection and international registration of AOs is available under the Lisbon Agreement<sup>54</sup> and will also be possible for GIs when the Geneva Act<sup>55</sup> enters in force.

The Geneva Act of 2015 will open the possibility of an efficient multilateral protection system for GIs in line with the WTO TRIPS Agreement. The new act will be both a valid model for future legislation and a more straightforward way of international protection for GIs in those countries that already have a functioning system of recognition and protection for GIs. The benefits of accession to this treaty are direct protection of internationally registered GIs in the member countries of the Lisbon system.

#### BOX 2.14

##### **Africa's indistinct borders**

It is common fact that Africa's borders were arbitrarily drawn up during the Berlin Conference of 1884/85. The implication is that areas sharing certain characteristics may stretch over international borders.

For example, South Africa, Namibia and Botswana share the Kalahari Desert. There are even claims that the southern parts of Angola and the southwestern part of Zambia have the same geological characteristics as the Kalahari Desert. From a geological and plant distribution perspective, the southern part of Namibia is much the same as the Karoo – generally accepted to stretch over large parts of the Eastern, Northern and Western Capes, and the southern parts of the Free State province. The northern part of the Waterberg district in Limpopo has the same Köppen climate characteristics as the southern part of Zimbabwe.

There are many other examples in the rest of Africa. In this respect, accession to the Geneva Act of the Lisbon Agreement on the international protection of GIs and AOs is crucial.<sup>56</sup>

Registration of GIs on foreign markets can also be carried out by direct application for registration under national procedures to the GI Registries of other countries, as the EU case shows. Provided they are duly protected in their country of origin, GIs may also be registered in the EU according to Article 8 of Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs (21 November 2012). A single document containing the main points of the CoP and a description of the link between the product and its geographical environment must be provided. There is a guide for applicants on how to compile the "single document".<sup>57</sup>

Finally, the EU and a number of ACP partners have concluded EPAs. The EPA with the Southern African Development Community (SADC) includes a bilateral protocol between the EU and South Africa on the protection of GIs and on trade in wines and spirits. The EU will protect names such as rooibos, the famous infusion from South Africa, and numerous

<sup>52</sup> <http://www.wipo.int/export/sites/www/madrid/en/guide/pdf/partb2.pdf>

<sup>53</sup> Ibid, note 52. <http://www.wipo.int/export/sites/www/madrid/en/guide/pdf/partb2.pdf>

<sup>54</sup> <http://www.wipo.int/lisbon/en/general>

<sup>55</sup> [http://www.wipo.int/meetings/diplomatic\\_conferences/2015/en](http://www.wipo.int/meetings/diplomatic_conferences/2015/en)

<sup>56</sup> See Article 5.4 of the new Geneva Act: "[Possible Joint Application in the Case of a Transborder Geographical Area] In the case of a geographical area of origin consisting of a transborder geographical area, the adjacent Contracting Parties may, in accordance with their agreement, file an application jointly through a commonly designated Competent Authority".

<sup>57</sup> [http://ec.europa.eu/agriculture/quality/schemes/guides/guide-for-applicants\\_en.pdf](http://ec.europa.eu/agriculture/quality/schemes/guides/guide-for-applicants_en.pdf)

wine names such as Stellenbosch and Paarl. In return, South Africa will protect more than 250 EU names in the food, wines and spirits categories.<sup>58</sup> The possibility of extending these advantages to other countries in Africa is being considered. Therefore, some EPAs provide for a “rendezvous clause” to negotiate on IP including – supposed GIs.<sup>59</sup>

#### BOX 2.15

##### Availability of international registration of names

The general procedure is the following.



1. Definition of the product by the producers' group, according to precise specifications.
2. Request from the producers' group sent to the competent national authorities.
3. Examination of the application by the national authority to check whether it is justified and meets regulation conditions.
4. Objection procedure: if no objection is raised and the requirements of the regulation are met, the state takes a favourable decision; if an objection is raised, the state considers the admissibility of the objections and decides whether to reject or accept the application.
5. The decision is made public.
6. The request from the producers' group is sent to the body managing the multilateral, regional or bilateral treaty, or directly to the foreign GI register.

International protection can be undertaken in various ways, namely through multilateral, regional and bilateral agreements, but can also be effected through direct application for registration of GIs under national procedures to the GI Registries of other countries.

The international registration of trademarks under the Madrid Agreement or Protocol<sup>60</sup> is allowed and described in a guide. Protection and international registration of AOs under the Lisbon Agreement are characterized by a single registration at WIPO and protection of the registered AOs in all Contracting Parties (currently 28);<sup>61</sup> with the entry into force of the Geneva Act the protection and international registration system will also apply to GIs<sup>62</sup> and not only to AOs.

There are currently ongoing negotiations between the EU and RECs: the Economic Community of West African States (ECOWAS), COMESA, SADC, European Advisory Commission (EAC) and others to reach agreements on IP rights and regimes in these economic blocs.

<sup>58</sup> <http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc>

<sup>59</sup> See, for example, the EPA between the EU and Cameroon: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2009:057:FULL&from=EN> (Intellectual property, Article 58) and the EPA between the EU and Madagascar, Mauritius, Seychelles and Zimbabwe (Article 53). The EPAs with West Africa and the East African Community (EAC), currently in the signature process, also include rendezvous clauses for IPRs. In the EAC EPA, there are provisions for further cooperation in this area (in the Agriculture and Development chapters).

<sup>60</sup> <http://www.wipo.int/export/sites/www/madrid/en/guide/pdf/partb2.pdf>

<sup>61</sup> <http://www.wipo.int/lisbon/en/general>

<sup>62</sup> Membership may only be considered when the Agreement enters into force.

There are also several proactive protection processes coming from the private sector when public authorities have difficulties reaching a consensus.

#### BOX 2.16

##### **Coffee from Ethiopia and the Starbucks coffee company**

In 2004, the Ethiopian Government launched the Ethiopian Coffee Trademarking and Licensing Initiative (hereinafter called the Initiative) to provide a practical solution to overcome the longstanding divide between the amount coffee farmers receive for a sack of their beans and the amount retailers charge for that coffee when they sell it in retail outlets in different countries. The Initiative is organized and run by the Ethiopian Fine Coffee Stakeholder Committee (the Stakeholder Committee), which is a consortium comprising cooperatives, private exporters and the Ethiopian Intellectual Property Office (EIPO) as well as other concerned government bodies. EIPO took leadership of the Initiative and worked on identifying a mechanism that would lead to a greater share of profits for the country's coffee growers. The Initiative also intended to generate high retail prices for Harrar, Sidamo and Yirgacheffe – the three most famous coffee brands in Ethiopia. The key strategy, the Stakeholder Committee agreed, was to achieve wider recognition of the distinctive qualities of Ethiopian coffees as brands and thus position them strategically in the expanding speciality coffee market, while at the same time protecting Ethiopia's ownership of the names so as to prevent their misappropriation. This would lead to a greater share of the high retail prices commanded by Ethiopian coffee going straight to rural producers.

The trademark strategy for Ethiopian coffee faced a major difficulty in 2006. The United States Patent and Trademark Office (USPTO) had approved the application to register Yirgacheffe but the National Coffee Association (NCA), representing coffee roasters in the United States of America, objected to EIPO's applications to trademark first Harrar, then Sidamo. The grounds for opposition in both cases were that the names had become too generic for a description of coffee, and as such were not eligible for registration under United States trademark law. USPTO turned down the application for Harrar in 2005 and for Sidamo in 2006. EIPO filed rebuttals against the USPTO decisions with supporting evidence to demonstrate that the terms Harrar and Sidamo had acquired distinctiveness. Meanwhile, both Starbucks and the Ethiopian Government were keen to resolve their differences quickly and find a flexible way forward. Their joint efforts led to an announcement in 2006 that they had reached a mutually satisfactory agreement regarding the distribution, marketing and licensing of Ethiopia's speciality coffee designations, which provided a framework for cooperation to promote recognition of Harrar, Sidamo and Yirgacheffe.

Starbucks agreed to sign voluntary trademark licensing agreements that immediately acknowledge Ethiopia's ownership of the Harrar, Sidamo and Yirgacheffe names, regardless of whether or not a trademark registration has been granted. Legal commentators reached an agreement on the use of the term "designation" in the agreement as a means of circumventing the obstacles caused by the status of the Harrar and Sidamo applications.

## **2.3 CONCLUSIONS AND RECOMMENDATIONS**

Over the last decade, GIs in Africa have been increasing. Although consumers and producers make extensive use of place names to describe a wide range of products reflecting biodiversity, local production, knowledge or social identities, no GI (except for champagne) had been registered in AU countries before 2013. The economic and commercial gains and benefits deriving from the protection of GIs in Africa are enormous and AU member countries show interest in registering and implementing GIs.

The protection of GIs could give African countries a natural competitive advantage since they apply mainly to agricultural and cultural products. However, it should be pointed out that unless African countries attach the requisite importance to the legal and institutional implications to geographical labelling in their individual countries, the anticipated gains and benefits will be reduced.<sup>63</sup> Africa's main challenge is to ensure that the appropriate and relevant institutional frameworks are put in place through the assistance and policy direction of the relevant state institutions and governments at large.

The national regulatory frameworks of African countries on GIs are still evolving. A number of conditions suitable for the sound development of GIs on the African continent from the legal perspective already exist, notably the existence of political will and support policies. At the same time, African countries face challenges that can be addressed in the framework of a continental policy on GI implementation. Within Africa, cooperation mechanisms and/or dialogues among regions for capacity building and sharing of best practices on GIs are recommended with a view to achieving a progressive harmonization and mutual recognition of African legal frameworks for the protection of GIs. These frameworks should also serve to promote incentives to access a multilateral system.

Most countries have enforced a legal framework to protect GIs but, at the time of writing, policies and legal frameworks on GIs differ among countries (and even in countries among products). A continental strategy should provide support to individual countries to develop appropriate systems through the drafting of a continental model law. Efforts need to be made to inform communities on the relationships among the various mechanisms so that everyone is able to understand the law. For example, confusion exists between the concepts of traditional knowledge and GIs. Furthermore, the difference between AOs and GIs is not always clear when provisions exist for both levels of protection. AOs and GIs should coexist and provisions made to understand the relationship between the two options as well as between GIs and traditional knowledge.

The necessity to upgrade country legislation on application by individuals has already been discussed. It should be made clear as to who can apply (in some cases, to ensure progress, one person should be allowed, but should never have exclusive rights to the GI). Moreover, the product description should never be exclusive to one person. The model law should address the issue of genericity, notably by specifying that a registered name cannot become generic. Furthermore, it should make provision for transborder GIs.<sup>64</sup> On export products such as cocoa and coffee and because processing does not take place in country, value is created but not captured. Unless producers from African countries can obtain some level of control over distribution channels and/or they trade directly with final consumers, it is unlikely that significant value retention will occur. Discussions have begun as to the best tool to capture the value added of GIs: trademark licences have been quoted as options.

Without an institutionalized support system, few producers will be in a position to use the legislative framework. Institutions differ from one country to another and there is often no coordination among the public institutions involved in the enforcement of GIs.

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<sup>63</sup> Appiah. 2011. [http://ec.europa.eu/agriculture/events/2011/gi-africa-2011/appiah\\_en.pdf](http://ec.europa.eu/agriculture/events/2011/gi-africa-2011/appiah_en.pdf)

<sup>64</sup> The law could recommend an agreement between countries in the case of specific examples.

The industry receives no regular technical support before going to an IP Office. At national level, there should be a forum/committee (or IP forum, with a subforum on GI) – a one-stop shop on GIs. Their function should be to coordinate between departments. At continental level, consideration should be given to creating a continental body of GI expertise (including peer learning, and a GI network of contact people to give advice on the different legal entities that may drive GI custodianship). Moreover, laws and processes per country could be communicated on the AU Web site.

To date, research on GIs is still needed, to: (i) supply further coordination on the institutional requirement to be created at country level on GIs; (ii) evaluate the implications of the existence of more than one regional body in charge of GIs; (iii) find commonalities in the processes of registration; (iv) make provision for transborder GIs; and (v) ascertain the role of states. With regard to the latter, it should be noted that the *sui generis* system generally implies a territorial dynamic and a certain degree of state involvement.

Further activities coordinated by AU could focus on disseminating information on GIs in a simple way. Dissemination of information and promotion of the GI tool would allow strategic choices regarding the protection option. Activities should also attempt to develop a pilot project, in particular on transnational GIs, and to document continental success stories.

Capacity and resource-related challenges continue to delay African countries' attempts to make their GI regimes compatible with TRIPS and also development friendly. Compliance with TRIPS would create minimum standards at continental level for important aspects such as definition, national treatment and relation between prior trademarks and GIs. The African market is becoming increasingly attractive and applying equivalent and reciprocal rules would eventually benefit economic operators. Moreover, nothing prevents states from applying for a higher level of GI protection which, incidentally, reflects their diplomatic positions at WTO as well as their specific needs. The choice depends on the needs and challenges they identify on the continent with regard to misappropriation of geographical names. For the time being, there is no doubt that misappropriation of geographical names on foreign markets is a serious issue and cannot be underestimated. Consideration should be taken to access alternatives routes to TRIPS to protect the names at risk within the Lisbon and Madrid systems, provided the GI is protected in its country of origin.

There is also a need to encourage members to adhere to TRIPS and the Paris Convention if they have not already done so. The inclusion of GI provisions in all EPAs should be explored.

Finally, the private sector should be associated with public efforts on GIs. With this in mind, a continental private sector group on GIs could be developed to encourage industry organizations to include GI-related activities in their constitutions. Existing farmers' groups are not focused on GI – they have other priorities. Moreover, private groups are likely to register names corresponding to products of origin and then sit on the benefits.

TABLE 2.3  
SWOT analysis of the legal framework

	Strengths/ opportunities	Weaknesses/threats	Future prospects
<b>Adoption of legal framework</b>	<p>Most countries have a legal framework</p> <p>Most stakeholders have an interest in implementing GIs</p>	<p>Some member states already have GI laws in place but no secondary legislation to implement them fully</p> <p>Discrepancies in the protection of GIs (definitions, scope of protection)</p> <p>No reciprocal protection with African countries that are not members of WTO</p>	<p>Enforcement of national treatment</p> <p>Approval by decree on ongoing legislation where applicable</p> <p>Harmonization of legislation on GIs</p> <p>Where applicable, inclusion of provisions on certification marks</p>
<b>Compatibility of legal framework with African needs</b>	<p>A few countries reflect African interests in their legislation and may serve as examples</p>	<p>GI issue is still in its infancy in African countries and legal frameworks have not always been designed to reflect African interests</p>	<p>Define African interests by taking market risks and the needs of producers into account – particular attention should be given to small producers and producers of export goods</p> <p>Opportunity to achieve a progressive harmonization and mutual recognition of African legal frameworks for protection of GIs</p>
<b>Use of legal framework</b>	<p>A few countries have used their legal framework to register names and their experience will be shared and create incentives for other African operators</p>	<p>Producers do not always understand or have access to GIs</p> <p>Officials may have a limited knowledge of GI systems, associated costs and administrative burdens</p> <p>GIs are not always registered where applicable</p>	<p>Awareness raising of stakeholders</p> <p>Further training of officials responsible for GIs is recommended</p> <p>National protection of GIs, <i>inter alia</i>, to allow international protection</p>
<b>Institutional capacities</b>	<p>Most African countries benefit from the existence of a national IP office</p>	<p>Weak mechanisms for repression of fraud</p> <p>Challenges to implement <i>ex officio</i> protection</p>	<p>Capacity building for institutions in repression of fraud</p> <p>Important consideration as to the appropriate fees and occurrence in order to cover the needs of <i>ex officio</i> protection</p>
<b>International framework</b>	<p>A few conventions may facilitate the registration of African names internationally</p>	<p>Lack of incentives to access international unions because of limited number of registered names</p>	<p>Cooperation mechanisms and/or dialogues among regions for capacity building and sharing of best practice</p> <p>Enhanced regional and international cooperation on protection and enforcement of GIs</p> <p>Membership in multilateral agreements (Lisbon Agreement and new Geneva Act of the Lisbon Agreement; Madrid Agreement)</p> <p>Registration of names in foreign GI Registers (e.g. EU Register)</p> <p>Involvement of RECs to support these processes</p>

### 3. CONTINENTAL POLICY FRAMEWORK FOR GEOGRAPHICAL INDICATIONS

A continental policy framework for GI development is justified by the economic and institutional contexts in Africa and builds on the recommendations emerging from the presentation of GI success factors and the lessons learned on GI and legal issues in Africa. The consultative process organized by AUC led to the following policy framework.

#### 3.1 VISION

The vision for the future is an improved enabling environment for successful GI development in Africa in order to foster sustainable rural development and increase food security.

#### 3.2 MISSION

The mission of the policy is to develop sound GI promotion and protection strategies through institutional capacity building, public policies and support programmes, strengthened legal and institutional frameworks, efficient coordination and partnerships, and demonstrative pilots in Africa.

#### 3.3 GOALS

Goals are to promote and mainstream GIs in the political agenda of AU member states and regional institutions in order to contribute to inclusive and gender-equitable sustainable rural development, safe and quality nutrition, food security and improved African livelihoods.

#### 3.4 CORE VALUES

These derive from the issues identified in Chapter 2. They are also in line with the aspirations of AU as formulated in the 2063 Agenda and can be categorized as biocultural, social, economic and legal values.

From an *economic* point of view, these core values:

- increase the economic values of local agricultural, food and handicraft products through market development and increased market access;
- support fair distribution of economic values upstream in the food chain;
- strengthen positive effects in all African territory, through extended territorial strategies and linkages with tourism and other economic sectors;
- merchandise and promote the marketing of local and typical African products.

From a *biocultural* point of view, they:

- preserve and promote emblematic African food and handicraft products;
- promote traditional and indigenous knowledge and wisdom;
- preserve specific natural resources, particularly local races and varieties, and remarkable (agricultural) landscapes;
- promote local identity and local image.

From a *social* point of view, they:

- support empowerment of vulnerable groups, particularly smallholders, women and youth;
- promote decent work;
- promote safe food as well as healthy and diversified diets;
- promote knowledge and reputation of African GI products among the African population.

From a *legal/institutional* point of view, they:

- encourage efficient public-private dialogue, coordination and partnerships ;
- promote a shared vision among AU member states, and support mutual recognition and harmonization of legal means of GI protection;
- enhance coherence and synergies among policies.

### 3.5 GUIDING PRINCIPLES

The guiding principles, in line with AUC values, aim at efficient framework implementation, by ensuring adaptation to and appropriation by AU stakeholders (internal coherence), and by adhering to and benefiting from the international context (external coherence).

#### Internal coherence

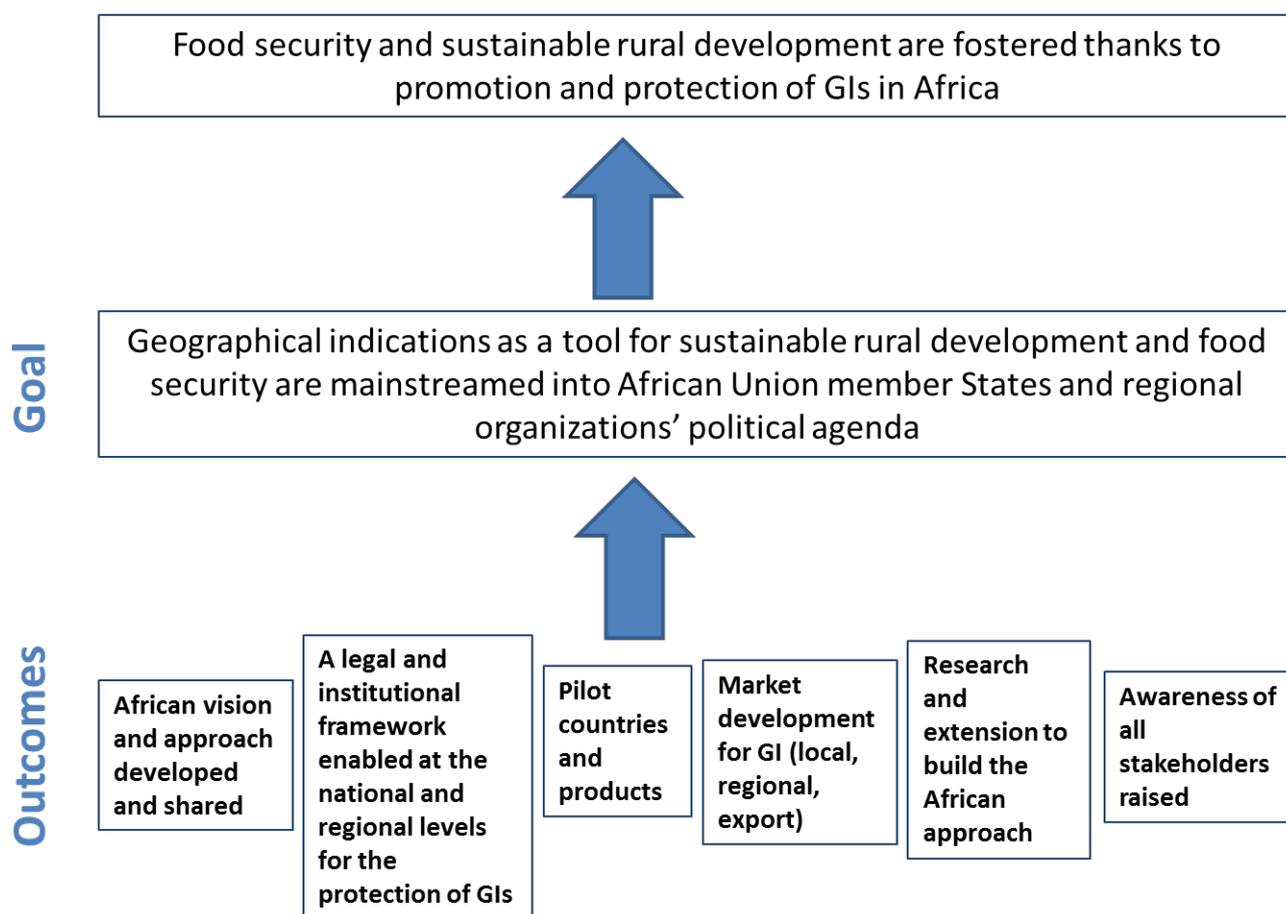
- Building on GI experiences and existing GI frameworks, especially regional institutions such as OAPI and ARIPO.
- Partnerships and coordination among stakeholders at regional level, especially through RECs, and at national level (particularly GI national committees).
- Coordination with other agricultural policies and regulations, both public and private (e.g. food safety, organic, fair trade, etc.), at regional and national levels, as well as with complementary initiatives at continental level (particularly the Ecological Organic Agriculture [EOA] initiative).
- Participative approaches (inclusiveness) and representativeness of all stakeholders, including consumers.
- Transparency of processes.
- Seek consensus.

#### External coherence

- Coordination, partnerships, and synergies – on policy or market aspects – by interacting with stakeholders at international level (UN agencies, EU, donors, etc.).
- Conformity with international treaties and agreements related to the definition and protection of GIs (TRIPS, Lisbon Agreement, Madrid Agreement, etc.).

This policy framework and the results model (see Figure 3.1) will be the starting-point for elaboration of the Action Plan for Geographical Indications in Africa.

FIGURE 3.1

**Geographical indications policy framework – results model****3.6 SCOPE AND GEOGRAPHICAL FOCUS**

The GI African strategy concerns all products related to agriculture, including livestock, fisheries, arts and crafts, medicinal plants, cuisine, textiles, forests and wood, and edible insects.

The strategy relates to all African regions and the AU member countries.

**3.7 OBJECTIVES AND OUTCOMES**

The objectives and outcomes of the GI continental strategy are described below. Some associated activities and products, together with targets and indicators, will be further defined in the Action Plan together with the detailed logical framework.

**Main objectives**

This policy framework is formulated to provide guidance to the AU, RECs, regional institutions in charge of GIs, member states and other stakeholders involved in GI promotion and protection so as to contribute to sustainable rural development on the African continent.

### Strategic outcomes

Building on the identified recommendations presented above and in order to achieve the goals and main objectives of the policy framework, six strategic outcomes are defined:

- **Outcome 1:** An African vision on GIs as a tool contributing to sustainable rural development and food security and a GI African approach are developed and shared.
- **Outcome 2:** A legal and institutional framework is enabled at national and regional levels for the protection of GIs.
- **Outcome 3:** The development and registration of GI products as pilots and drivers for rural and sustainable development are supported, to provide learning and demonstrative effects.
- **Outcome 4:** market development for GI products is promoted through innovative approaches on local markets, through regional trade among RECs and on export markets (particularly in the EU, since GIs are an established market tool there).
- **Outcome 5:** Research, training programs and extension are encouraged to ensure the identification, development and diffusion of the best African tailored practices and to contribute to the African approach in the context of climate change. Since a great deal of research has been undertaken by non-African institutions, cooperation between African and non-African experienced institutions should be facilitated.
- **Outcome 6:** Awareness of all stakeholders, including consumers, is created, and communication among stakeholders and diffusion of information to a wider audience are ensured.



**AFRICAN UNION**

**DEPARTMENT OF RURAL ECONOMY AND AGRICULTURE**

**CONTINENTAL STRATEGY FOR  
GEOGRAPHICAL INDICATIONS  
IN AFRICA**

**ANNEXES**



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## ANNEX 1: INVENTORY OF TRADITIONAL PRODUCTS IN AFRICAN UNION COUNTRIES

### SLOWFOOD INVENTORIES IN AFRICA, IN COLLABORATION WITH FAO:

- The final report of the Slow Food Foundation for Biodiversity, as part of the project “Promoting origin-linked quality products in four countries”, Sierra Leone, Guinea Bissau, Mali and Senegal (one of the eight projects in the FAO Program "Food Security through Commercialization of Agriculture" in West Africa): [http://www.fao.org/fileadmin/templates/mountain\\_partnership/doc/Report\\_finale\\_ENG.pdf](http://www.fao.org/fileadmin/templates/mountain_partnership/doc/Report_finale_ENG.pdf)
- [Katta of Tumbuctu and Gao, Mali \(in Italian\)](#)
- [Cola of Kenema, Sierra Leone](#)
- [Salted millet couscous, Fadiouth isle, Senegal \(in French\)](#)
- [Palm oil, Guinea Bissau \(in Italian\)](#)

ORIGIN INVENTORY: <http://www.origin-gi.com/fr/81-activit s/3354-repertoire-informatique-des-indications-geographiques-ig-prot gees-dans-le-monde.html>

FAO-CTA-UNIDO-REDD INVENTORY: <http://www.fao.org/food-quality-origin/events/fao-regional-seminars/guinea/en/>

### SOUTH AFRICA:

Under the Duras Project an investigation has been conducted into six Southern African potential GI (Rooibos, Heuningbos, Karoo Lamb, Camdeboo Mohair, Swakara and Kalahari Melon Seed – the latter two are Namibian case studies). Based on this research a book was published by Springer (Developing Geographical Indications in the South: Bramley, C, Bienabe, E and Kirsten, J (Eds) (2013)).

Country	GI or potential GI	Status
Algeria	DATTE deglet nour de Tolga FIGUE sèche de Beni Maouche OLIVE de Sig	On going process
Benin	Fromage Wagashi Noix Anacarde du Bénin Ananas Pain de Sucre Huile de Palme « zomi » de Comè Huile d'arachide d'Agonli Gari de Savalou Afitin locust bean seasoning Kerstingellia geocarpa bean Lagenaria & Curbis sp. seeds « egusi » Cossette d'igname Igname lamboko/pouna	No registration
Burkina Faso	Beurre de karité du plateau Mossi Haricots verts Souflou	No registration
Cameroon	Miel blanc d'Oku Poivre blanc de Penja Igname de MBE Oignon de Maroua Cacao de Ntonga Cacao de Nkonjock Cacao de Nyanon cacao de Mbangassina Cafe de Santchou café de Boyo Avocat de Mbouda Ananas de Bafia Riz de Nsonmessok	Miel blanc d'Oku AND Poivre blanc de Penja <a href="#">registered</a>  Study on Cocoa and Coffee from Cameroon
Côte d'Ivoire	pagne Baoulé toile de Korhogo poterie de Katiola mangue des savanes riz des montagnes café des montagnes cacao de Taabo	Khorogho Canvas Collective mark <a href="#">registered</a>  The pagne Baoule registration is ongoing.  4 products, poterie de Katiola, mangue des savanes, riz des montagnes, café des montagnes, are characterized

	noix de cola de Sikensi café d'Aboisso noix de cajou de Bondoukou piment de Bénéné igname kponan huile de palme de l'ouest montagneux attiéké de Grand Lahou Attiéké de Dabou Attiéké de Jacquville Attiéké de Ebrié Attiéké Agbodjama pagne traditionnel Gouro maïs violet de Katiola riz de Gagnoa miel de Katiola fruit noirs du Faisantier de Katiola fruit de Thomacoccus danieli de Côte d'Ivoire	and ready to enter the registration process.  The other products are being identified.
<b>Ethiopia</b>	Sidamo Yigacheffe Harrar Limu Jimma Lekempt Ghimbi	All coffees; Sidamo, Yigacheffe, Harrar <b>registered</b> as trade marks in main markets (EU, US, Jpn). No IPR protection in Ethiopia. 1994 FDRE constitution on Art. 5/877.
<b>Gabon</b>	Oukoume timber	No registration
<b>Gambie</b>	Thé de Gambie (tisane)	No registration
<b>Ghana</b>	Ghana Cocoa Ghana Fine Flavour Cocoa Kente Cloth (Bonweri &Kpetoe) shea butter Pona Yam Sugar loaf Pineapple (Central region) Zomi(Palm Oil) Brown rice Adinkra cloth(Ashanti) Bolga baskets Northern Smock Agomenya Beads	No information

<b>Guinea</b>	Ananas Maférinyah Café du Mont Ziama Pomme de Terre Belle de Guinée Riz Bora Malé Poisson blanc (otolithes) de la baie de Kamsar Miel jaune de Djaguissa Bonnet "POUTO de l'artisanat du Fouta Petit piment de Benna Gros piment de Mamou Gombo de Kérédou	Café du Mont Ziama <u>Registered</u> Riz Bora Malé <u>registered</u>
<b>Guinea Bissau</b>	CAJÚ DA GUINÉ-BISSAU Huile de palme traditionnelle de Cabedù Citrinus (variétés locales d'agrumes) Vinaigre de citron local traditionnel Petite tomate locale sinho Tambacumba Mancarra do bijacos Quiabo local Jacatou local Badjiqui Variétés locales de riz Fruta di pong (fruit à pain)	No registration
<b>Equatorial Guinea</b>	Mbong	No registration
<b>Kenya</b>	Kenya Tea Mount Kenya Coffee from Kenya Roses Kenya Masai coffee Arusha Coffee Ngoro Ngoro Mountain coffee Cut flowers Wild silk Kisii Soapstone Wine	Kenya Tea Mount Kenya Coffee from Kenya <u>registered</u>
<b>Madagascar</b>	Vanille du Madagascar	No registration
<b>Mali</b>	Échalote du Pays Dogon Pommes de terre Sikasso Mangue du Mali	No registration

	<p>Fromage Touareg Tikomart</p> <p>Oufer (pain de jujube Touareg)</p> <p>Mouton de Macina (race locale)</p> <p>Kram Kram (céréale sauvage centrale dans la culture et la gastronomie Touareg)</p>	
<b>Mauritius</b>	<p>Mauritius Demerara Sugar</p> <p>Rodrigues Limes Baie</p> <p>Topaz Red Beans</p> <p>Piment Rodrigues Bois</p> <p>Cheris Tea</p> <p>Rodrigues Honey</p>	No registration
<b>Mauritania</b>	<p>Poutargue de Nouadhibou</p>	No registration
<b>Namibia</b>	<p>Maroela Oil Tulip-Sheep</p> <p>Karakoel pelt Haidoo-plant</p> <p>Heuningbos Kalahari Melon Seed (KMS)</p>	No registration
<b>Niger</b>	<p>Kilichi du Niger (viande séchée)</p> <p>Violet de Galmi</p> <p>Peau de la chèvre rousse de Maradi</p> <p>Poivron de Diffa</p> <p>Fromage de Toukounous, Tchintabaraden, Maïné Soroa</p> <p>Sésame de Tésaoua</p> <p>Aïl blanc et Pomme de terre de Tabelot</p> <p>Sel de Fogha</p> <p>Miel de Madarounfa et Magaria</p> <p>Orange de Timia</p> <p>Niébé blanc de Dosso</p> <p>Oignon blanc de Gothey</p> <p>Sel gemme de Sambera</p>	Violet de Galmi <u>registered</u> as a collective mark
<b>Nigeria</b>	<p>Pepa Yam</p>	No registration
<b>Rwanda</b>	<p>Rwanda Mountain Coffee</p> <p>Rwandan Tea</p>	
<b>Senegal</b>	<p>Yett du Senegal</p> <p>Miel de Casamance</p> <p>Couscous de millet salé de Fadiouth</p> <p>Miel de mangrove (îles Saloum, Casamance)</p> <p>Kinkeliba, Duté bu xéegn, Maciti (tisane)</p>	No registration

	<p>Noix de cajou</p> <p>Toulcouneu (La Myrrhe, huile locale pharmaceutique))</p> <p>Poudre de tamarin noir velouté</p> <p>Amandes des dates sump</p> <p>Danx (Detarium microcarpum)</p> <p>Tol (Landolphia Heudelotii), une liane</p> <p>Kejax, poisson séché braisé</p> <p>Crevettes de Katakalous, crevettes de la ria Casamance</p> <p>Dimb (cordyla pinnata)</p> <p>Néré (Parkia Biglobosa) : nététou (condiment)</p> <p>Jaxatu (solanum aethiopicum)</p> <p>Ndur (cassia tora)</p> <p>Madd (Saba senegalensis)</p> <p>Bissap (Hibiscus sabdariffa)</p> <p>Ron (Borassus Aethiopicum)</p> <p>Ditar (Detarium Senegalensis):</p> <p>Solom (Dialium senegalense)</p> <p>Leung (Donia vitex) ; fruit, drupe ovoïde</p> <p>Danx ou Dankh (Parinari excelsa)</p> <p>Fonio, une céréale</p> <p>Sap sap (moringa oleifera)</p> <p>Neou (pommier du Cayor) (Neocarya macrophylla)</p> <p>Sidem (Jujube)</p> <p>Xewer (cerisier du Cayor) (aphania senegalensis):</p> <p>Ninkom (cerise sauvage, couleur jaune à maturité, Casamance)</p> <p>Le riz rouge (variété locale en Casamance)</p> <p>Pagne tissé Manjack</p> <p>Dallu Ngaye (Chaussures de Ngaye)</p> <p>Poteries de Méouane</p>	
<b>Sierra Leone</b>	<p>Noix de cola</p> <p>Tea bush (tisanes)</p> <p>Miel koinadugu</p> <p>Sounbareh* (assaisonnement à base de graines de néré)</p> <p>Pois d'Angole</p> <p>Black Ndama ("Waneh")</p>	No registration
<b>South Africa</b>	<p>Rooibos herbal tea</p> <p>Heuningbos Kalahari Melon Seed (KMS)</p>	South African wines <u>registered</u> as geographical indications

	<p>Oil Klein Karoo Ostrich</p> <p>South African Olive Oil</p> <p>Boland Waterblommetjies (The stems, leaves and flowers of Aponogeton distachyos)</p> <p>Wine of Origin</p>	<p>under the Liquor Products Act (Act 60 of 1989)</p> <p>Rooibos tea <u>registered</u> as a certification mark</p> <p>Rooibos and Heuningbos KSM has been protected as a GI in South Africa under the Merchandise Marks Act (Act 17 of 1941)</p> <p>“Karoo Certified Meat of Origin” is protected as a mark under Trademark laws.</p>
<b>Tanzania/Zanzibar</b>	<p>Zanzibar Cloves</p> <p>Rift Valley Coffee</p>	No registration
<b>Tunisia</b>	<p>IP Grenade de Gabès</p> <p>IP Pomme de Sbiba</p> <p>IP Huile d’olive de Monastir</p> <p>IP Deglet Ennour Tunisienne</p> <p>AOC Figs de Djebba</p> <p>IP Menthe « el ferch »</p> <p>7 AOC vins</p>	<p>Arrêté du Ministre de l’Agriculture du 3/02/2009</p> <p>Arrêté du Ministre de l’Agriculture du 3/02/2009</p> <p>Arrêté du Ministre de l’Agriculture du 15/12/2010</p> <p>Arrêté du Ministre de l’Agriculture du 12/05/2012</p> <p>Arrêté du Ministre de l’Agriculture du 12/05/2012</p> <p>Arrêté du Ministre de l’Agriculture du 12/05/2012</p> <p>7 AOC wine are registered via the Lisbon agreement</p>
<b>Togo</b>	<p>Igname de Bassar</p> <p>Riz de Kovié</p> <p>Riz de Binah</p> <p>Huile de Palme de Tsévié</p> <p>Avocat d’Agou</p> <p>Cacao des Plateaux</p> <p>Café de Danyi</p>	Comprehensive research on Riz de Kovié

	<p>Cafe de Dzogbegan                  Ananas de Notsè                  Igname laboko de Bassar                  Moutarde de Dapaong                  Pintade des Savanes                  Fonio d’Akposso                  Adème de Notsè                  Gari de Vogan                  Noix de cajou de Tchamba                  Labocco de Bassar</p>	
<p><b>Uganda</b></p>	<p>Bark-cloth textiles of central Uganda                  West Nile district cotton                  West Nile district sesame                  West Nile Honey                  White Perch                  Vanilla beans ("Mukono vanilla")                  Pineapple Apple                  Banana                  Goose berry                  Jack fruit                  Matooke (green banana)                  Honey from Luwero triangle                  Mount Elgon coffee</p>	<p>Non-agricultural product West Nile cotton and sesame are the subject of "regional branding" project by WIPO</p>

## ANNEX 2: AFRICAN CONTEXT FOR GI DEVELOPMENT

### **AGRICULTURE (INCLUDING FORESTRY AND FISHERIES)** **IS A KEY SECTOR FOR AFRICA**

- **Agricultural and rural development is necessary to fight food insecurity**

More than three-quarters of Africans live in rural areas and depend on agriculture and natural resources for their livelihoods, and agriculture is an important driver for economic development in Africa.

Hunger and poverty are still prevalent – according to estimates by FAO, 240 million Africans, or a quarter of the entire population of the continent, do not eat well for their health and well-being.

Over the past two decades (1990-92 and 2012-14) the poverty rate declined by 23 percent between 1993 and 2011 and the overall food availability in Sub-Saharan Africa has increased by nearly 12 percent. Nevertheless, poverty is still very high -75% of the world's poorest countries are located in Africa- and the total number of undernourished people continues to increase with an estimated 220 million in 2014-16 compared to 175.7 million in 1990-92 (FAO Stat).

On the other hand, with land currently uncultivated but available for farming and a fast growing urban market, African agriculture can be seen as a force in the global food and nutrition security system.

Agricultural and sustainable rural development is therefore essential for progress towards the UN sustainable goals, in particular for ending hunger and reduced poverty through inclusive growth in a world threatened by climate change.

- **The African agricultural and food sectors face important issues and challenges**

From the economic point of view first, a major challenge is that **farmers and processors, mainly small-holders, struggle in linking their produce to markets**, for a number of reasons: lack of infrastructure, lack of investment capacities, market requirements (food safety and quality issues). Weakly organized and lacking of market power, **they often don't get real value for their products and suffer from low income**. Moreover, the lack of access to land and resources and the degradation of natural resources increase the problem of low productivity. To top it all off, the low investment in agricultural research, training and extension services from one hand, and the lack of private sector services in the other, make this situation even worst. **On a macro-level view, another challenge often recognized is that Africa trades more with the rest of the world than within itself**. Estimates show an increase of the annual agricultural import bill (currently close to US\$40-50 billion) while exports are stagnating, leading to a dependence on international trade which is not sustainable. In this context, **the role of Regional Economic Communities (RECs)** in strengthening intra-African trade by removing existing trade barriers, is essential.

**Natural resources in Africa are great but are threatened by a fragile state of the environment put even more at risk with climate change.** Africa is one of the most vulnerable regions regarding the impacts of climate change and with little capacity to adapt. About 70 per cent of Africa's land is under arid or semi-arid environment, with severe degradation of natural resources that reduces productivity and erodes ecosystems. It is even more essential to preserve biodiversity in Africa as African communities often meet their energy, food, shelter and medicinal demands from their ecosystems. Loss of biodiversity not only represents a loss of heritage but also a reduced capacity to adapt agriculture to specific climate and soil conditions, which negatively impacts on the livelihood of African communities. The wisdom and specific agricultural know-how of indigenous people which is often associated to specific natural resources represent a knowledge worth to be disseminated to provide solutions in other places. But this specific knowledge about traditional complex farming systems and practices are usually not valorized and little researched.

Another important issue relate to the **fast growing urbanization** – linked to rural migration-, in a context where imported goods is more and more present in local markets. This leads to a general **preference for imported processed foods**, and a 'rich' lifestyle that is not healthy, as demonstrated with the increasing problem of lifestyle diseases (diabetes, obesity, high/low blood pressure, etc.).

Finally, it is worth acknowledging the **importance of women and youth for the sustainable and rural development in Africa.** African women play a critical role in food security in Africa by fulfilling their role as food providers and selling any marketable surplus. They provide the majority of the labor in agricultural and food production, being either responsible for production of all or most food crops (especially local varieties) or more specialized in food processing. Youth represent the future: agricultural and food sector must be attractive (not only in terms of income but also of image and technology) so to ensure its future.

Africa is paradoxically blessed with rich natural resources and biocultural diversity that give birth to numerous traditional products with quality linked to origin, while its peoples are suffering from food insecurity.

**A GROWING INTEREST FOR GEOGRAPHICAL INDICATIONS ON THE CONTINENT:  
AWARENESS RAISING EVENTS**

- Annual InterGI international high-level trainings organized by CIRAD and REDD, in France and Switzerland, since 2007;
- ACP-EU expert meetings on issues related to geographical indications, Montpellier, France, 24-27 March 2009;
- A CTA seminar in Brussels, Belgium, 8 September 2009;
- A CTA-OriGIIn seminar on Coffee and Cocoa in Cameroon, 28 to 30 September 2010;
- A cycle of conferences on GIs organized by oriGIIn, the Francophonie and the French delegation to the WTO, since May 2010;
- A Trade.com seminar on GIs in Africa, April-November 2010;
- The match-making of producers at the conference "All ACP" on GIs in Brussels, Belgium, November 2010;
- Within the PAMPIG project, two workshops of long-term trainings (2 weeks) were held in Montpellier, France on 04- 15 October 2010 and 14-25 March 2011 for the representatives of Liaise National Structures and the Ministries of agriculture ; three training workshops of short duration (3 days) took place on 11-13 April 2011; 14-16 April 2011 and 18-20 April 2011 in OAPI Headquarters in Yaoundé, Cameroon to the attention of professionals from the 16 member countries; three regional seminars on GIs development prospects in Africa were organized (Libreville, Gabon, 2010; Conakry, Guinea, 2011, together with FAO; Douala, Cameroon, 2012);
- FAO-OAPI-CTA-ROPPA-UNIDO-REDD 4 regional trainings for French and English speaking countries (Benin, Burkina Faso, Ghana, Italy) on identification of origin-linked and GI potentialities between 2013 and 2014. The first training was held in Cotonou, Benin, in May 2013, with 30 participants from Benin, Ivory Coast, Togo, Cameroon, Chad, Congo, Centreafrique. The second in November 2013 in Ouagadougou, Burkina Faso, with 33 participants from Burkina Faso, Cameroon, Gabon, Ghana, Guinea, Guinea Bissau, Mali, Niger, Senegal, Togo. The third training was held in Akosombo, Ghana, in May 2014, bringing together 26 participants from English-speaking countries: Ghana, Liberia, Sierra Leone, Nigeria, and Rwanda. The fourth one was a training of trainers, organized in Turin, Italy in October 2014, back to back with the Forum Origin, Diversity and Territories for 15 experts from Burkina Faso, Cameroon, Ghana, Guinea, Rwanda, Niger, Senegal, Togo.

## **AN EXISTING INSTITUTIONAL FRAMEWORK FOR GEOGRAPHICAL INDICATIONS AT THE INTERNATIONAL AND CONTINENTAL LEVELS**

A strategy on GIs at the Continental level can be linked to existing institutional frameworks, at the international level and within the African Union vision.

As a result of the links between GIs from one side, and agriculture, food and biocultural diversity from the other (this will be described more into detail in the next part), the ultimate goal of a GI continental policy framework would be to contribute to **food security and sustainable rural development** and to the **UN sustainable development goals** (see box 1).

### **Box 1: The 2030 Agenda for Sustainable Development- the 17 sustainable goals**

- 1) End poverty in all its forms everywhere
- 2) End hunger, achieve food security and improved nutrition, and promote sustainable agriculture
- 3) Ensure healthy lives and promote wellbeing for all at all ages
- 4) Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
- 5) Achieve gender equality and empower all women and girls
- 6) Ensure availability and sustainable management of water and sanitation for all
- 7) Ensure access to affordable, reliable, sustainable and modern energy for all
- 8) Promote sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all
- 9) Build resilient infrastructure, promote inclusive and sustainable industrialisation, and foster innovation
- 10) Reduce inequality within and among countries
- 11) Make cities and human settlements inclusive, safe, resilient and sustainable
- 12) Ensure sustainable consumption and production patterns
- 13) Take urgent action to combat climate change and its impacts
- 14) Conserve and sustainably use the oceans, seas and marine resources for sustainable development
- 15) Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification and halt and reverse land degradation, and halt biodiversity loss
- 16) Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
- 17) Strengthen the means of implementation and revitalise the global partnership for sustainable development

In relation with the African integration, the Aspirations of Agenda 2063 adopted by the 24th African Union Assembly in 2015, and representing a continental plan for the next fifty years, represent an inspiring guidance for the GI policy framework, so to ensure transformation and sustainable development of the African Continent for future generations (see box 2).

**Box 2: The 2063 agenda “ASPIRATIONS FOR THE AFRICA WE WANT”**

1. A prosperous Africa based on inclusive growth and sustainable development
2. An integrated continent, politically united and based on the ideals of Pan-Africanism and the vision of Africa’s Renaissance
3. An Africa of good governance, democracy, respect for human rights, justice and the rule of law
4. A peaceful and secure Africa
5. An Africa with a strong cultural identity, common heritage, shared values and ethics
6. An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children
7. Africa as a strong, united and influential global player and partner

Such a GI policy framework will directly contribute to **important objectives of the African Union**, as formulated in the constitutive act:

- establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
- promote sustainable development at the economic, social and cultural levels as well as the integration of the African economies;
- promote cooperation in all fields of human activity to raise the living standards of African peoples;
- coordinate and harmonize the policies between the existing and future Regional Economic communities for the gradual attainment of the Union
- advance the development of the continent by promoting research in all fields, in particular in science and technology.

The GI policy framework will be directly in line with the AU Commission priorities 2, and 5 to 6, reproduced in the box 3 below.

**Box 3: The Eight AUC Priorities, 2014-2017 Strategic Plan**

1. Promote peace and stability, including regional initiatives, good governance, democracy and human right as a foundation for inclusion, security and the development of the continent and its people.
2. Expand Agricultural production, developing the Agro-processing and businesses sectors, increase market access and attain Africa’s collective Food self-sufficiency and nutrition through promotion of smallholder agriculture, sound environment and climate change and natural resource management.
3. Promote inclusive economic development and industrialization through the acceleration of infrastructure development projects that will aid economic integration and utilization of the continent’ mineral and other natural resources.
4. Build Africa’s human capacity through the prioritization of Primary Health Care and Prevention; Education, skills development and investment in science, research and innovation, access to clean water and sanitation with inclusion of the vulnerable groups.
5. Mainstream the participation of women and the youth in all priorities and activities of the Union and the continent.
6. Implement strategies of resource mobilization, with special emphasis on alternative source of funding, and/or additional funding to enable Africa to finance its programmes and development.

7. Strengthen a people centred Union through active communication of the programmes of the African Union, the branding of the Union and participation of Member States and other stakeholders in defining and implementing the African agenda.
8. Strengthen the institutional capacity of the AUC, the RECs and other organs, and its relations with strategic and other partners.

Moreover, the GI policy framework will definitely contribute to **the Comprehensive Africa Agriculture Development Programme (CAADP)** which represents a growth-oriented agricultural development agenda, to create the wealth needed for rural communities and households in Africa to prosper. Among the four CAADP pillars, the GI policy framework will particularly contribute to the pillars 2 and 4 in relation with trade-related capacities for market access and agriculture research and technology dissemination (see box 4).

**Box 4: The CAADP four pillars**

Pillar 1: Extending the area under sustainable land management and reliable water control systems;

Pillar 2: Improving rural infrastructure and trade-related capacities for market access;

Pillar 3: Increasing food supply, reducing hunger, and improving responses to food emergency crises; and

Pillar 4: Improving agriculture research, technology dissemination and adoption.

The Twenty-Third ordinary session of the African Union Assembly held in Malabo (June 2014), recommitted to the CAADP principles and goals and defined a set of targets and goals – referred to as the **Accelerated Agricultural Growth and Transformation Goals 2025**. Specifically, the **Malabo Declaration** (see box 5) outlines seven commitments that are geared towards fostering agricultural growth and transformation. The GI policy framework will contribute to all this approach, and in particular by contributing to achievement of commitment 4 and 5 related to inclusive agriculture growth and transformation, boosting intra-African trade and enhancing resilience to climate change.

**Box 5: The AU Malabo Declaration**

1. Recommitment to the Principles and Values of the CAADP Process
2. Recommitment to enhance investment finance in Agriculture
  - Uphold 10% public spending target
  - Operationalization of Africa Investment Bank
3. Commitment to Zero hunger – Ending Hunger by 2025
  - At least double productivity (focusing on Inputs, irrigation, mechanization)
  - Reduce PHL at least by half
  - Nutrition: reduce stunting to 10%
4. Commitment to Halving Poverty, by 2025, through inclusive Agricultural Growth and Transformation
  - Sustain Annual sector growth in Agricultural GDP at least 6%
  - Establish and/or strengthen inclusive public-private partnerships for at least 5 priority agriculture commodity value chains with strong linkage to smallholder chains.
  - Create job opportunities for at least 30% of the youth in agricultural value chains.
  - Preferential entry & participation by women and youth in gainful and attractive agribusiness
5. Commitment to Boosting Intra-African Trade in Agricultural Commodities & Services
  - Triple intra-Africa trade in agricultural commodities
  - Fast track continental free trade area & transition to a continental Common External tariff scheme
6. Commitment to Enhancing Resilience of Livelihoods & Production Systems to Climate Variability and Other Shocks
  - Ensure that by 2025, at least 30% of farm/pastoral households are resilient to shocks
7. Commitment to Mutual Accountability to Actions and Results

Finally, the GI framework corresponds to 2 of 4 key result areas of the DREA<sup>1</sup> (see box 6) and is directly contributing to the DREA strategic and operational plan (2014-2017), not only with regard the above-mentioned Strategic Action 3.1 “Design and support implementation of programmes on rural infrastructure and value addition” (in particular the two Operational Actions related to GI as mentioned before and the one on Supporting regional value chain development efforts), but could also develop linkages with (and benefit from) the following Strategic Actions:

- 1.3 Promote and facilitate the generation and dissemination of knowledge, innovation and technology for agricultural transformation.
- 2.1 Promote measures to enhance access of women, youth and persons with disabilities to land and other agricultural productive assets.
- 2.2 Support design and implementation of projects under the Fund for African Women on agribusiness.

<sup>1</sup> DREA Mandate: The African Union Commission’s (AUC) Department of Rural Economy and Agriculture (DREA) was established with the objectives of promoting agricultural and rural development and ensuring food security and nutrition for Africans. It coordinates policies and programs towards achieving sustainable development and improved livelihoods for the population, by ensuring sound environmental and natural resources management including disaster risk reduction and adaptation to climate change. DREA’s anticipated outcome and expected outputs elaborated in its Strategic Plan is to support the processes to expand agricultural production, developing agro-processing and business sectors; increase market access and attain Africa’s collective food self-sufficiency and nutrition through promotion of smallholder agriculture. A mandate in line with SREA’s Mission to develop and promote the implementation of policies and strategies aimed at strengthening African Agriculture and sound environmental management; by working with AU Member States, RECs, African Citizens, Institutions, and other Stakeholders.

3.2 Support programmes specifically designed to assist women youth and persons with disabilities undertake value-addition of agricultural products.

3.3 Set up and implement communication and advocacy campaigns and thematic media plans to raise awareness and ensure stakeholders' information and citizens' involvement and ownership of agribusiness programs for Women, youth and persons with disabilities.

4.1. Promote/facilitate sustainable management of the environment and natural resources, including water, land, biodiversity, etc.

**Box 6: DREA Key Result Areas (KRAs):**

1. Sustaining the implementation of CAADP priority programmes as an instrument to boost agricultural production and productivity, food and nutrition security, and eliminating hunger and reducing poverty.
2. Design and implementation of programmes on agribusiness, including on improved access to productive resources and capacity of women and youth and other disadvantaged social groups.
3. Design of and implementation of programmes for harnessing rural infrastructure for market access and trade in agricultural products.
4. Enhanced implementation of priority programmes on environment and natural resources and climate change.

It will be interesting to ensure complementarity between the GI policy framework and other continental strategies, and in particular with the **Ecological organic agriculture (EOA) initiative**, as the organic voluntary standard share common characteristics with GI one with regard to quality approach, certification scheme and marketing strategy.

## ANNEX 3: LEGAL FRAMEWORK FOR GEOGRAPHICAL INDICATIONS

### THE GLOBAL CONTEXT

The Paris convention on industrial property (20 March 1883) allowed to fight against the false use of indications of provenance. States had the obligation to seize any product bearing a false indication. However, there were a number of operational problems like the inexistence of a definition for the concept and a list of names protected in each country. The status of protected names was defined on a case by case basis by tribunals inside the country where the complaint had been lodged. On the top of that, it was still possible for a free rider to enjoy the benefits of the reputation attached to an indication of provenance without being challenged on the grounds of fraud according to Paris convention. Indeed there was fraud only if the indication was false. However, a given indication could be true (by indicating the authentic origin of a product) while at the same time referring to an existing indication and, thus, building upon its reputation.

Some states have chosen to correct this “imperfection” within the Madrid convention for the Repression of False or Deceptive Indications of Source on Goods (14 April 1891) but the number of participants to this Union is still very limited (36 member states including in Africa, Algeria, Egypt and Tunisia )

Later on, another limited number of states have negotiated the Lisbon agreement on the protection of appellations of origin and international registration (31 October 1958). Not only were they limited in number – today only 28 states are members of the Lisbon, but the subject matter of the protection was limited to appellations of origin and did not, as a consequence, impact the broader concept of geographical indications. Still the Lisbon Agreement offers the opportunity to obtain, upon international registration, the protection of an appellation of origin in the 28 countries. Additionally, the scope of protection is very broad. Following article 3 of the Lisbon Agreement, States must protect internationally registered AO against “*any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as “kind”, “type”, “make”, “imitation”, or the like”*”.

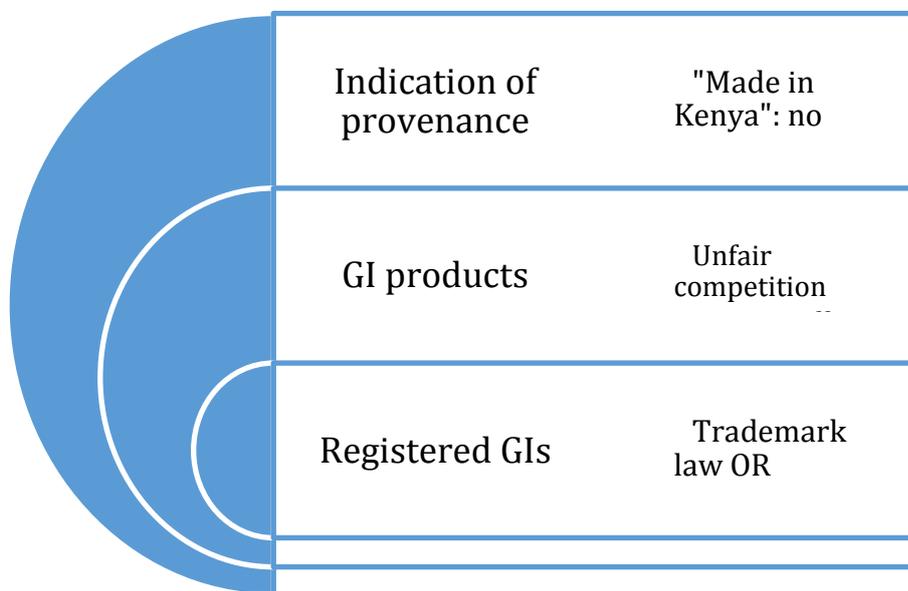
It is to be noted that four member’s states of the African Union are members of the Lisbon Union: Algeria, Burkina Faso, Gabon and Togo. From 2009 to 2015, the Lisbon Union has engaged in an important reform aiming at broadening the object of the protection of the Lisbon Agreement (from AO to GI) and improving the attractiveness of this international register. The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications was adopted on 20 May 2015 and is opened for ratification. At this stage, Burkina Faso, Congo, Gabon, Mali and Togo have signed the Act (on May 21<sup>st</sup>). The agreement will enter into force after five States have deposited their instrument of ratification.

As a matter of fact, Geographical names may also be protected by trademark law, notably through certification or collective trademarks. In this respect, the Madrid Protocol on the international registration of trademarks is also one of the legal conventions relevant to this field. The Protocol eliminates the high filing costs typically associated with filing a separate national application in each country/jurisdiction in which protection is sought. This agreement introduces innovations to the existing Madrid Agreement on the international registration of trademarks among which: the possibility to base the application for International Registration on a pending national application, rather than

having to wait until a national registration is granted, Applications under the Protocol may be in French, English or Spanish, whereas the Agreement permits only French, the possibility for a regional body to adhere to the instrument and to extend its benefits to many countries in one go. Furthermore, the protection enjoyed by the owner of an International Registration is identical to the protection that would result from a national registration with the trademark office of a contracting party to the Protocol. Algeria, Egypt, Ghana, Kenya, Lesotho, Liberia, Madagascar, Rwanda, Senegal, Sudan, Swaziland, Tunisia, Zambia, Zimbabwe are parties to the Madrid Protocol.

### **LEGAL OPTIONS TO PROTECT GI: ADVANTAGES AND DRAWBACKS**

Beforehand it is worth clarifying that by “geographical indication” we refer to geographical names that have acquired distinctiveness thanks to their association to a given product and irrespective of whether they have been registered or not (see scheme below). Indeed, most products of origin in Africa do not have their names protected. However, local reputations can be misused or appropriated outside the designated area. This might happen where indigenous community is slower than a private company in registering a name. In any case, it is worth mentioning that GIs, registered or not, differ from indication of provenance (such as: “Made in Kenya”) that are not submitted to registration. Indeed, indication of provenance or indications of source are necessary to apply taxes in the course of international trade, or to indicate the place where the company has its headquarters. But by no means do indications of provenance refer to the quality linked to the indicated origin.



### Different levels of the link between a given product and its geographic origin

Numerous systems of protection for GIs exist in national legislations and each State remains free to choose whatever option suits its interest. They may be grouped in three main groups: the legislations on trade practices which concern «unfair competition» and « passing off », the law governing trademark, collective and certification marks and *ad hoc* legislations on GIs, the so-called *sui generis* systems. These options are not exclusive and each option has its own advantages and challenges.

- [Unfair competition and passing off](#)

The passing off action can be described as a legal remedy for cases in which the goods or services of one person are represented as being those of somebody else causing thereby prejudice to the trade, the reputation or the good faith of the latter. Unfair competition can be defined as « any act of competition contrary to honest practices in industrial or commercial matters ». States are responsible for establishing rules for the fair functioning of the market and for declaring unlawful a certain number of commercial practices that mislead (or are likely to mislead) the public, in particular, for our purpose, as to the geographical origin of products proposed by the company. The great majority of countries have provisions for unfair competition.

Passing off is common in countries that follow the common law tradition. In these countries, passing off is often considered as the basis of protection against dishonest business competitors. Legally, the protection against unfair competition and passing off serves the goal to protect traders and producers from the unauthorized use of geographical names by third parties, rather than creating individual property rights over those names. Indeed, it is a legal instrument that aims at ensuring the fair functioning of trade more than guaranteeing the authenticity of the product. From a procedural point of view, to sue successfully on the grounds of unfair competition and passing off and stop the misuse of a geographical name, the plaintiff has to prove that the products for which the GI is regularly used has a market (clients), an established reputation and that the use of the geographical name by the non-authorized entity confuses the public and causes (or risks to cause) prejudice. Besides, the burden of the proof is supported by the plaintiff. Protection accorded to geographical indications following a lawsuit based on passing off or unfair competition is only effective between the parties to the procedure. The entitlement to protection of a given geographical indication shall be demonstrated every time enforcement is sought.

- [Protection of GI through certification and collective marks](#)

A “commercial” trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. A “commercial” trademark provides its owner an exclusive right to designate products and services, or to authorize another entity to use it in return of payment. The length of the protection varies (approximately ten years),



but a trademark can be renewed indefinitely by means of additional taxes. In most countries, trademarks are protected if they are registered. However, for the protection to be effective, the trademark must be used on the market.

It is commonly accepted that, in order to be considered distinctive, signs used as trademarks must not be descriptive or deceptive. To be considered as a lawful “commercial” trademark, a chosen sign must not be deceptive that is to say that the sign must not be of a nature that can generate confusion among consumers. “Commercial” trademarks must also be distinctive and non-descriptive. It must be distinctive, so that consumers can distinguish it from “commercial” trademarks identifying other products. Because of the general principle that “commercial” trademarks must not be descriptive, geographical terms cannot serve as “commercial” trademarks, unless they have acquired distinctive character through use, or their use is fanciful and, therefore, is not deceiving as to the origin of the goods on which the trademarks are used. One example of geographically descriptive trademarks having acquired distinctive character is “Sidamo”, “Yirgacheffe” or “Harar” in Ethiopia (See 2.2.2, 2, b.ii). One example of geographically descriptive trademarks considered as being fanciful would be “Ushuia” (for the deodorant) which refers to a geographical place in Argentina but must not be understood as referring to the origin of the goods on which it is used. Another example is “Antarctica” for bananas. The reference to the origin is said to be arbitrary and the trademark has acquired a “secondary meaning” because the geographical sign is used in such a way as to identify the source of the goods and consumers have over time come to recognize it as identifying a particular company. It no longer describes only the place of origin, but also the “source” of the uniqueness of the goods or services. At this point, the sign can therefore be trademarked.

A part from these exceptions, laws on trademarks specifically exclude from registration geographical terms that can be understood to constitute a reference to the origin of the relevant goods. Indeed, it is commonly accepted that it would be illegitimate that one operator prevents others from indicating the place of origin of their products by registering a trademark with a geographical name, if the trademark simply describes the place and is not associated with specificities.

Whereas “commercial” trademarks consisting of descriptive geographical terms are usually excluded from registration, geographical terms are often expressly admitted for registration as collective or certification trademarks.



Certification marks indicate that the products or the services for which they are used have particular characteristics, as, for example, the geographical origin. In this regard, the certification mark can be descriptive, and limit itself to designating the place of production without necessarily implying a link between the quality and the product that it identifies.

Collective mark indicates that given products or services were produced, provided or commercialized by the members of an identified group. Therefore, collective marks are owned by a collective body such as, for example, a trade association or an association of producers or manufacturers, and serve to indicate that the person who uses the collective mark is a member of that collective body. Membership in the association that is the owner of the collective mark is, generally speaking, subject to compliance with certain rules, such as the geographical area of production of the goods on which the collective mark is used, or standards of production of such goods.

Collective marks and certification marks insure protection of geographical names based on private initiative. In countries having adopted trademark legislations, GI producers must pay attention to the scope of protection. Generally, the registration of a geographical name through a mark does not necessarily prevent a third party from using it in its translated version<sup>2</sup> or to use the same name preceded by a delocalizing expression (e.g. : Californian Champagne) or with terms such as « style », « kind », « type », others. Besides, mark protection implies important financial resources mainly linked to registration fees. This registration formality must be renewed periodically (generally every ten years). As a private mechanism, enforcement through collective and certification marks is entirely at the costs of the owners. Mark's owners must continue to assert their rights. They need to carry out a regular monitoring of the markets where the trademark is protected. They need to be ready to launch all necessary legal actions (opposition to trademark registration for instance) to protect their intellectual property right. Failure to do so would significantly undermine the right. Such protection is called *ex parte*. For each case of alleged violation of its rights, the owner would have to establish the confusion of the consumer. The costs linked to the trial or, upstream, to the monitoring of the compliance with the defined standards, are entirely supported by the owner. Finally, for the protection to be effective, the mark must be used on the market. This can sometimes pose problems, for instance when sanitary standards prevents a product from being sold in certain markets. Failure to use the mark can lead to cancellation.

- [\*Sui generis\* protection of GI](#)

Contrary to general means of protection the third option concerns laws specifically aimed at protecting geographical indications. There is no uniform approach as to products that qualify for the *sui generis* protection. Generally, the protected name will benefit from a solid legal framework. The *sui generis* system protects against the direct commercial use of a GI (word for word use). It also prevents the indirect commercial use of the latter in the case where: the fake geographical indication is used with a mention reinstating the true geographical indication expected (i.e: if expressions such as “type”, “kind”, “style”,

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<sup>2</sup> i.e Rwandan Coffee was registered by an individual as US trademark number 3378503 for “The land of a Thousand Hills Coffee Handpicked in the Republic of Rwanda

“fashioning”, “imitation”, “evocation” are used), even if the fake indication makes a reference to the true geographical origin expected.

The *sui generis* GI system provides for a comprehensive protection against: direct or indirect commercial use of a registered name for products not covered by the registration. This extends to expressions such as “style”, “type”, “method” etc. suggesting that the product is equivalent or associated with the original, even if the true origin of the product is indicated or if the protected name is translated. False or misleading information about the origin, nature or qualities of products on packaging that might give a false impression as to their origin.

Irrespective of the legal option chosen, applicable sanctions to misuse of GI range from court injunctions preventing unauthorized use to the payment of damages and fines or, in serious cases, imprisonment.

### Trademarks and geographical indications comparison

Subject	Certification and collective marks	<i>Sui generis</i> protection
<b>Scope of protection</b>	<p>Protection against confusion of the consumer</p> <p>Prior (individual) mark will halt a new trade mark application</p> <p>No protection against translation or delocalization</p>	<p>Protection against misuse, imitation or evocation of the name on a non-registered product. Protection against translation, and use of delocalizers (type, style, kind and the like).</p> <p>Unless relating a “well-know”<sup>3</sup> mark, the registration of a GI will coexist with a prior trademark<sup>4</sup>. To the contrary a prior GI would usually block the registration of subsequent trademarks containing the GI.</p>
<b>Genericity</b>	Usually, certification and collective mark registration does not protect from genericity	Usually and when provided by the national legislation, once registered, the GI name cannot become generic.
<b>Registration</b>	Geographical names can be difficult to register as certification and collective marks (distinctiveness test)	Need for the code of practice to justify the monopoly of use of the name
<b>Costs</b>	Registration to be renewed every ten years	One registration
<b>Enforcement</b>	<p>Private right</p> <p>Private enforcement</p> <p>High costs of rights enforcement in many countries.</p>	<p>Collective right</p> <p>Private and public enforcement</p> <p>No cost of registration</p> <p>Costs in link with the certification process (control)</p>
<b>Length of protection</b>	Ten years (subject to renewal)	Indefinite protection, no need for renewal
<b>Use</b>	Necessity to use the name on the market	Protection of GIs is usually not conditioned on the use on the market

<sup>3</sup> The EU legislation provides for such prevalence of the trade mark (see Article 6 (4) of R. 1151/2012).

<sup>4</sup> This is indeed allowed pursuant to Article 17 TRIPS as a limited exception to the “first in time, first in right principle”

**Options to protect geographical indications and statutes  
of African Union's countries in international conventions**

UA Country	Options to protect geographical names nationally		Membership to international/regional organizations for the protection of geographical names			
	<i>Sui generis</i>	Trademark Law only	Regional body	Madrid Agreement	Lisbon Agreement	TRIPS
<b>People`s Democratic Republic of Algeria</b>			Obs ARIPO			
<a href="#">Republic of Angola</a>			Obs ARIPO			
<a href="#">Republic of Benin</a>			OAPI			
<a href="#">Republic of Botswana</a>			ARIPO			
<a href="#">Burkina Faso</a>			OAPI			
<a href="#">Republic of Burundi</a>			Obs ARIPO			
<a href="#">Republic of Cameroon</a>			OAPI			
<a href="#">Republic of Cabo Verde</a>			None			
<a href="#">Central African Republic</a>			OAPI			
<a href="#">The Republic of Chad</a>			OAPI			
<a href="#">Union of the Comoros</a>			OAPI			

UA Country	Options to protect geographical names nationally		Membership to international/regional organizations for the protection of geographical names			
	<i>Sui generis</i>	Trademark Law only	Regional body	Madrid Agreement	Lisbon Agreement	TRIPS
<a href="#">Republic of the Congo</a>			OAPI			
<a href="#">Democratic Republic of the Congo</a>			COMESA			
<a href="#">Republic of Djibouti</a>			COMESA			
<a href="#">Arab Republic of Egypt</a>			Obs ARIPO			
<a href="#">Republic of Equatorial Guinea</a>			OAPI			
<a href="#">State of Eritrea</a>			Obs ARIPO			
<a href="#">Federal Democratic Republic of Ethiopia</a>			Obs ARIPO			
<a href="#">Gabonese Republic</a>			OAPI			
<a href="#">Republic of Ghana</a>			ARIPO			
<a href="#">Republic of Guinea</a>			OAPI			
<a href="#">Republic of Guinea-Bissau</a>			OAPI			
<a href="#">Republic of Cote d'Ivoire</a>			OAPI			

UA Country	Options to protect geographical names nationally		Membership to international/regional organizations for the protection of geographical names			
	<i>Sui generis</i>	Trademark Law only	Regional body	Madrid Agreement	Lisbon Agreement	TRIPS
<a href="#">Republic of Kenya</a>			ARIPO			
<a href="#">Kingdom of Lesotho</a>			ARIPO			
Liberia			ARIPO			
<a href="#">Libya</a>			Obs ARIPO			
<a href="#">Republic of Madagascar</a>			None			
<a href="#">Republic of Malawi</a>			ARIPO			
<a href="#">Republic of Mali</a>			OAPI			
<a href="#">Republic of Mauritania</a>			OAPI			
<a href="#">Republic of Mauritius</a>			Obs ARIPO			
<a href="#">Republic of Mozambique</a>			ARIPO			
<a href="#">Republic of Namibia</a>			ARIPO			
<a href="#">Republic of Niger</a>			OAPI			
<a href="#">Federal Republic of Nigeria</a>			Obs ARIPO			

UA Country	Options to protect geographical names nationally		Membership to international/regional organizations for the protection of geographical names			
	<i>Sui generis</i>	Trademark Law only	Regional body	Madrid Agreement	Lisbon Agreement	TRIPS
<a href="#">Republic of Rwanda</a>			ARIPO			
<a href="#">Republic Arab Saharawi Democratic</a>			None			
<a href="#">Democratic Republic of sao Tome and Principe</a>			OAPI			
<a href="#">Republic of Senegal</a>			OAPI			
<a href="#">Republic of Seychelles</a>			Obs ARIPO			
<a href="#">Republic of Sierra Leone</a>			ARIPO			
<a href="#">Somali Republic</a>			ARIPO			
<a href="#">Republic of South Africa</a>			Obs ARIPO			
<a href="#">Republic of Sudan</a>			ARIPO			
<a href="#">Republic of South Sudan</a>			None			
<a href="#">Kingdom of Swaziland</a>			ARIPO			
<a href="#">United Republic of Tanzania</a>			ARIPO			

UA Country	Options to protect geographical names nationally		Membership to international/regional organizations for the protection of geographical names			
	<i>Sui generis</i>	Trademark Law only	Regional body	Madrid Agreement	Lisbon Agreement	TRIPS
Zanzibar Archipalego			ARIPO			
<a href="#">Republic of the Gambia</a>			ARIPO			
<a href="#">Togolese Republic</a>			OAPI			
<a href="#">Tunisian Republic</a>			Obs ARIPO			
<a href="#">Republic of Uganda</a>			ARIPO			
<a href="#">Republic of Zambia</a>			ARIPO			
<a href="#">Republic of Zimbabwe</a>			ARIPO			
<b>TOTAL</b>	<b>33</b>	<b>18</b>				<b>46</b>

<b>APPLICABLE TAXES FOR THE REGISTRATION OF GEOGRAPHICAL INDICATIONS IN OAPI</b>
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<b>TITRE VI</b>	
<b>APPLICABLE TAXES FOR THE REGISTRATION OF GEOGRAPHICAL INDICATIONS IN OAPI</b>	
<b>1 – Registration Fee:</b>	
a) Initial application for a geographical indication	CFA 90.000
b) Correction of material mistakes on application forms :	
-Before publication	CFA 15.000
-After publication	CFA 20.000
c) Publication of the GI request	CFA 55.000
d) Additional fee for colored publication	CFA 30.000
<b>2 – Restoration fee :</b>	
*Error attributable to the applicant	CFA 50.000
*Error applicable to the custodian	CFA 100.000
*Publication of a reestablished geographical indication	CFA 15.000
<b>3 - Taxes relating to the special register of geographical indications :</b>	<b>CFA 150.000</b>
Notification of any amendment affecting a geographical indication	
<b>4 – Prior research fees</b>	<b>CFA 95.000</b>
<b>5 – Registration Fee</b>	
a) Copy of the registered geographical indication	10.000
b) Copy of a certificate of identity of a registered geographical indication	10.000
c) Copy of a piece of documents relating a given geographical indication	10.000
d) Authenticated copy	70.000

6 – Appeal fee, per action	960.000
7 – Opposition fee	150.000
<b>8 –Extension fees</b>	
*Relating a new Member State of OAPI	60.000
*From OAPI to a new member	10.000
*Correction of material mistakes relation on the extension form	2.500
<b>9 – Other fees</b>	
a) Renunciation to a geographical indication	70.000
b) Change of representative, per indication	90.000

### The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications<sup>5</sup>

<b>SUBJECT</b>	<b>BEFORE</b>	<b>Article</b>	<b>AFTER</b>	<b>Article</b>
<b>Composition of the Lisbon Union</b>	The Union was only composed of States having ratified or adhere to the former arrangement	<b>Article 9</b>	The Union remains the same for all members of the New Act even for those who were not members of the previous Agreement	<b>Article 21</b>
<b>Assembly of the Special Union</b>	Nothing on the vote by consensus	<b>Article 9</b>	Decisions are made , to the extent possible, by consensus. In the absence of consensus , the decision is put to a vote. An international organization represents as many votes as it has member states	<b>Article 22.4</b>
<b>Definitions</b>	Only the AO is defined. It must be a geographical name. No reference is made to the reputation or notoriety.	<b>Article 2</b>	The AO and GI are defined. They have to be indications of a geographical place if not the name of this place. For the AO, the criterion of notoriety is required. For the GI, the criterion of reputation may be required.	<b>Article 2</b>
<b>Content of the protection</b>	AO are protected against “usurpation”, , translations, delocalization	<b>Article 3</b>	There is an ambition to harmonize the legal frameworks between members states as they are requested to provide procedures and remedies. The content of the protection is more specific and it includes guidance on the principle of	<b>Article 11 Article 14</b>

<sup>5</sup> For more information, see: <http://www.wipo.int/wipolex/en/details.jsp?id=15625>

			specialty and the relationship between subsequent trademarks and GIs .	
<b>Protection available under other instruments</b>	The Arrangement does not exclude other protections under national instruments , regional or international	<b>Article 4</b>	States are free to choose the appropriate tool in their territory as long as the requirements for the protection of the New Act are met	<b>Article 10</b>
<b>International registration</b>	<ul style="list-style-type: none"> <li>- Only the competent authority may register</li> <li>- The International Bureau notifies the registration</li> </ul>	<b>Articles 5, 7 Règles 5à 17</b>	<ul style="list-style-type: none"> <li>- Common register to the Lisbon Agreement and the New Act</li> <li>- Possibility to resquest international registration without relying on the national authority (where the legislation provides for it)</li> <li>- Referral to the regulations for the content of the request</li> <li>- Formal examination by the International Bureau</li> <li>- Period of validity of the registration precised and nuanced</li> <li>- The application of radiation can come from the</li> </ul>	<b>Article 4, 5, 6, 7, 8, 15, 16, 17, 18, 19, 20  Règles 5, 8,14,</b>

			beneficiaries themselves	
<b>Brand new provisions and corresponding articles</b>				
<b>New provisions</b>		<b>Corresponding articles</b>		
Individual fee		Article 7		
Transborder GIs and AO		Article 2		
Freedom in the choice of protection tools		Articles 9 et 10		
Admission of the prior trademarks registered in good faith Coexistence of prior trademarks and later GIs where provided by the legislation provides Rights Based on a Plant Variety or Animal Breed Denomination Safeguards in the Case of Notification of Withdrawal of Refusal or a Grant of Protection		Article 13		
Obligation to enforce procedures and remedies		Article 14		
Admission of an intergovernmental organization as a party		Article 28		
Prohibition of reservations		Article 30		

## NON-COMPLIANCE WITH TRIPS

The minimum standards: As stated above, GIs are the subject of multilateral treaties to which countries must comply. It has been noted the failure of some legislations to comply with the minimum standards TRIPS. The definition does not respect TRIPS in Angola and Eritrea. GIs are only protected against unfair competition no specific provisions exist for additional protection for wines and spirits<sup>6</sup>.

The national treatment: In Africa, [Algeria](#), [Comoros](#), [Equatorial Guinea](#), [Ethiopia](#), [Liberia](#), [Sao Tomé and Príncipe](#), [Sudan](#) are not members to the WTO and thus, are not bound to enforce the minimum standards of TRIPS. They do not have to apply the national treatment (article 3 TRIPS) which impose to treat nationals and foreign operators equally. Algeria literally discriminates between national and foreign applicants with regards to the protection of geographical indication<sup>7</sup>. Also, Egypt in Law No. 82 of 2002, submitted the protection of foreign GIs to membership of the State to WTO or reciprocity in GI protection. In this context African countries that are not members of WTO and do not provide protection to Egyptian GIs shall not receive protection on the Egyptian territory.

The relation between trademarks and GIs: most countries in Africa have not enforced in their legislations the provisions on the relation between GIs and trademarks as imposed by Article 22.3, 23.2, 24.5 of TRIPS.

Article 22.3 deals with the invalidation of misleading trademarks containing a GI: *“A Member shall, ex officio if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin”*.

<sup>1</sup> Article 23.2 deals with the invalidation of trademarks containing the name of a wine or a spirit when this wine or spirit does not originate the indicated place: *“The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, ex officio if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin”*.

<sup>1</sup> Article 24.5 proposes to take into account the fact that a trademark containing a GI has been registered in good faith either before the adoption of TRIPS or before the protection of the GI in the country of origin. *“Where a trademark has been applied for or registered in*

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<sup>6</sup> In this case, the countries have not taken the opportunity to enforce higher standard of protection while such opportunity is allowed by TRIPS and beneficial for African countries

<sup>7</sup> ORDONNANCE N° 76 - 65 DU 16 JUILLET 1976 RELATIVE AUX APPELLATIONS D'ORIGINE Article 6: *Les appellations d'origine étrangères ne pourront être enregistrées comme telles au sens de la présente ordonnance, que dans le cadre de l'application des conventions internationales auxquelles la République algérienne démocratique et populaire serait partie et, sous réserve de réciprocité, dans les pays membres des dites conventions.*

*good faith, or where rights to a trademark have been acquired through use in good faith either:*

*(a) before the date of application of these provisions in that Member as defined in Part VI; or*

*(b) before the geographical indication is protected in its country of origin;*

*Measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication”.*

Article 22.3 states that trademarks that contain misleading reference to an existing GI shall be invalidated. Article 23.2 deals with the invalidation of trademarks containing the name of a wine or a spirit when the wine or spirit in question does not originate the indicated place. Finally, Article 24.5 proposes to take into account, while stating on the invalidation of one trademark, the fact that the trademark containing a GI has been registered in good faith either before the adoption of TRIPS or before the protection of the GI in the country of origin.

Because most GIs in Africa have not yet been registered, consideration should be given in addressing the issue of prior trademarks containing a GI irrespective of whether the GI applies to a wine or a spirit.

## ANNEX 4: LIST OF EXPERTS AND STAKEHOLDERS INVOLVED IN THE E-CONSULTATION

Structure	Function	Name	e-mail
<b>International</b>			
IRAM	international GI expert	Olivier Renard	<a href="mailto:o.renard@iram-fr.org">o.renard@iram-fr.org</a>
REDD	international GI expert	Pascal Bernardoni	<a href="mailto:pascal.bernardoni@redd.pro">pascal.bernardoni@redd.pro</a>
REDD	international GI expert	Peter Damary	<a href="mailto:peter.damary@redd.pro">peter.damary@redd.pro</a>
CIRAD	international GI expert	Didier Chabrol	<a href="mailto:didier.chabrol@cirad.fr">didier.chabrol@cirad.fr</a>
CIRAD	international GI expert	Claire Cerdan	<a href="mailto:claire.cerdan@cirad.fr">claire.cerdan@cirad.fr</a>
CIRAD	international GI expert	Delphine Marie- Vivien	<a href="mailto:delphine.marie-vivien@cirad.fr">delphine.marie-vivien@cirad.fr</a>
CIRAD	international GI expert	Bernard Bridier	<a href="mailto:bernard.bridier@cirad.fr">bernard.bridier@cirad.fr</a>
CIRAD	international GI expert	Estelle Bienabe	<a href="mailto:estelle.bienabe@cirad.fr">estelle.bienabe@cirad.fr</a>
Montpellier Supagro	international GI expert	Stephane Fournier	<a href="mailto:Stephane.fournier@supagro.fr">Stephane.fournier@supagro.fr</a>
Universite de Vienne	international GI expert	Xiomara Quinones	<a href="mailto:xiomara_fernanda@yahoo.com">xiomara_fernanda@yahoo.com</a>
ORIGIN	international GI expert	Massimo Vittori	<a href="mailto:massimo@origin-gi.com">massimo@origin-gi.com</a>
ORIGIN	international GI expert	Celine Meyer	<a href="mailto:celine@origin-gi.com">celine@origin-gi.com</a>
EU DG-AGRI (DEVCO)		Jules Seitz	<a href="mailto:Jules.SEITZ@ec.europa.eu">Jules.SEITZ@ec.europa.eu</a>
EU DG-AGRI	Head of Unit ACP and Development Issues	Cristina Miranda Gozalvez	<a href="mailto:Cristina.MIRANDA-GOZALVEZ@ec.europa.eu">Cristina.MIRANDA- GOZALVEZ@ec.europa.eu</a>
AFD	PAMPIG focus point	Aurelie Ahmim- Richard	<a href="mailto:ahmim-richarda@afd.fr">ahmim-richarda@afd.fr</a>
UNIDO	Chargée de Programmes	Ebe Muschialli	<a href="mailto:E.MUSCHIALLI@unido.org">E.MUSCHIALLI@unido.org</a>
UNCTAD		Stefano Inama	<a href="mailto:Stefano.Inama@unctad.org">Stefano.Inama@unctad.org</a>
UNCTAD		Pramila Adeline Crivelli	<a href="mailto:Pramila.Crivelli@unctad.org">Pramila.Crivelli@unctad.org</a>
GRET	Responsable de Programme agriculture et alimentation durables	Martine François	<a href="mailto:francois@gret.org">francois@gret.org</a>

FAO HQ	Senior officer, market linkages and value chains team leader	Florence Tartanac	<a href="mailto:Florence.Tartanac@fao.org">Florence.Tartanac@fao.org</a>
FAO HQ	GI expert	Emilie Vandecandelaere	<a href="mailto:Emilie.Vandecandelaere@fao.org">Emilie.Vandecandelaere@fao.org</a>
FAO HQ	Quality and Origin project coordinator	Catherine Teyssier	<a href="mailto:catherine.teyssier@fao.org">catherine.teyssier@fao.org</a>
FAO consultant	Legal advisor, GIs specialist	Monique Bagal	<a href="mailto:monique.bagal@gmail.com">monique.bagal@gmail.com</a>
ETH	GI expert	Dominique Barjolle	<a href="mailto:barjolle@ethz.ch">barjolle@ethz.ch</a>
<b>Regional</b>			
AU	Policy Officer - Crop Production Rural Economy and Agriculture Department African Union Commission	Diana Akullo	<a href="mailto:AkulloD@africa-union.org">AkulloD@africa-union.org</a>
AU	Principal Scientific Officer Human Resources Science and Technology Department African Union Commission P.O Box 3242	Monica Ebele Idinoba	<a href="mailto:IdinobaM@africa-union.org">IdinobaM@africa-union.org</a>
FAO RAF	Officer, Marketing and Value Addition	Moussa Djagoudi	<a href="mailto:Moussa.Djagoudi@fao.org">Moussa.Djagoudi@fao.org</a>
FAO RAF	Officer, Agroindustries and Infrastructure	Dia Sanou	<a href="mailto:Dia.Sanou@fao.org">Dia.Sanou@fao.org</a>
COMESA	Agricultural Economist	Mphumuzi Sukati	<a href="mailto:MSukati@comesa.int">MSukati@comesa.int</a>

CEDEAO/ECOW AS	Agence Régionale pour l'Agriculture et l'Alimentation (ARAA) Chef de l'Unité Technique de Gestion de la Reserve Régionale de Sécurité Alimentaire	Emmanuel Gle	<a href="mailto:emmanuelgle@gmail.com">emmanuelgle@gmail.com</a>
Certification of Environmental Standards.	Senior Standards Expert	Mr. Kalungi Moses	<a href="mailto:kalungi_moses20000@yahoo.com">kalungi_moses20000@yahoo.com</a>
	Former ARIPO officer	Mr. Kujo Mcdave	<a href="mailto:mcdaveap@yahoo.com">mcdaveap@yahoo.com</a>
<b>National</b>			-
<b>Benin</b>			
PNOPPA	Secrétaire Permanent	Toto Bernadin	<a href="mailto:htotober@yahoo.fr">htotober@yahoo.fr</a>
ANAPI	DG / ANAPI	Jean Pierra AKPLOGAN	<a href="mailto:apbalmor@yahoo.fr">apbalmor@yahoo.fr</a>
LADYD	Chercheur	Anne Floquet	<a href="mailto:Anneb.floquet@gmail.com">Anneb.floquet@gmail.com</a>
INRAB	Chercheur	Christophe TOSSOU	<a href="mailto:chritossou58@gmail.com">chritossou58@gmail.com</a>
FAO	FAO representative in Benin	Tiemoko Yo	<a href="mailto:Tiemoko.Yo@fao.org">Tiemoko.Yo@fao.org</a>
MAEP	Point Focal IG-DDP/MAEP	Euloge VIDEGLA	<a href="mailto:vidglaeuloge@yahoo.fr">vidglaeuloge@yahoo.fr</a>
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## **ANNEX 5: TECHNICAL VALIDATION WORKSHOP**

**MAY,31-JUNE, 2 - COTONOU, BENIN**

### **WORKSHOP REPORT AND LIST OF PARTICIPANTS**

#### **Context: why a continental strategy for geographical indications in Africa?**

The African continent has rich natural resources and biocultural diversity which are key assets to be preserved and supported, particularly in a context of climate change and persistent food insecurity.

Geographical indications (GI) refer to goods with specific characteristics or qualities, or a reputation arising essentially from their geographical origin. This distinction can be attributed solely to the product's local characteristics, its history or its distinctive characteristics related to natural or human factors, such as soil, climate, local expertise and traditions.

GI can be used as a tool for sustainable rural development based on their locally adaptable and multifaceted development approach, combining a market dimension (in relation to intellectual property rights) with links to public assets (heritage, food diversity, local expertise and local genetic resources, etc.).

GI for food and non-food goods offer a solution for preserving traditional goods on local markets, and also for better positioning export goods from Africa on international markets. They can be an income creation tool for farmers and economic operators and can accordingly help them to deal with the challenges of integrating their goods in the global market in lean periods and to address food insecurity.

The African Union Commission has, in association with the Regional Economic Communities (REC) and supported by international partners (FAO, EU), recognized the importance of and need for a continental strategy on GI as a means of contributing to the various agendas and programmes for Africa, in relation to agricultural development, in particular for the United Nations sustainable development goals. The African strategy for GI will clearly also contribute to the implementation of the Comprehensive Africa Agriculture Development Programme (CAADP) and the Malabo Declaration approved by the African Union Assembly. The Agenda 2063 aspirations, adopted by the 24th African Union Assembly in 2015 as a continental plan for the next fifty years, serve as a model for the African GI strategy, to guarantee the transformation and sustainable development of the African continent for future generations.

The draft strategy for GI in Africa is a work in progress. It includes a policy framework, along with initial results and activities to serve as a basis for a more detailed action plan. At the end of the process, the final document "A continental strategy for geographical

indications in Africa", which will be approved by the African Union Commission, will comprise the context, policy framework and action plan for the development of geographical indications in Africa.

## Workshop goals

This technical workshop was organized jointly by the African Union and FAO, with the support of the European Union and the technical organization of the GRET and PNOPPA, in Cotonou in Benin on 31 May, 1 and 2 June, to validate this strategy on a technical level before its political approval by the African Union. During the Cotonou workshop a 2017-2022 Action Plan for GI was formulated, which will be discussed for implementation by the African Union.

The workshop was in three parts:

- A first day of plenary sessions to discuss the contents of the strategy, consolidated at the end of the e-consultation, specifically the policy framework presented in part 3;
- A second day dedicated to brainstorming sessions on specific subjects to feed into the draft Action Plan;
- On the third day a field visit was organized to the sugarloaf pineapple production area for which a GI procedure is under way.

## Workshop participants

The participants were experts in GI development in AU countries.

They have exceptional expertise in GI as a tool for sustainable rural development and as a tool for protection, and a good knowledge of the issues associated with GI, regardless of whether they are protected as *sui generis* GI or as a brand in their own countries.

They represent the various stakeholders at a national, regional and international level:

- producers and their representatives;
- other private stakeholders in GI value chains: processors, distributors, certifying bodies;
- NGOs;
- research centres and universities;
- extension services;
- representatives of AU member state institutions;
- AIPO and ARIPO;
- representatives of the REC;
- international organizations such as FAO and the EU.

## The contents of the strategy and the African vision of Geographical Indications

During the first day of plenary discussion, key points were raised in defining the strategy:

1. Regarding the Intellectual property, it is important to recognize the role of:
  - The OAPI and ARIPO, the two regional intellectual property organizations, in the process of formulating the strategy and Action Plan
  - The PIPO (Panafrikan Intellectual Property Organization) in the Action Plan and to explain its articulation with the existing regional organisations
2. The importance of contextualizing factors of success and sharing an African vision of GI:
  - GI goods intended for the international or intra-African market, which have different characteristics from GI goods sold on local and regional markets
  - Cross-border GI goods which, by virtue of their link with a large community or specific to a natural area, can occur in various African countries (ecosystems or sociocultural groups currently extend over several countries)
  - A large number of traditional goods (related to local varieties and breeds, traditional production methods, traditional recipes, etc.) with very local markets (small production surplus volume), closely linked to ethnic or cultural groups now dispersed over vast areas (without any close link to territory)
  - Specific traditional farming systems linked to specific ecosystems (pastoralism, oases, farm forestry, etc.)
3. The importance of implementing the following recommendations:
  - Increasing awareness among the various stakeholders in African countries (economic stakeholders, government authorities, consumers)
  - Building resilience and encouraging public stakeholders to back GI processes as a tool for sustainable rural development (protection and support policies) by incorporating these aspects in national policies
  - Supporting specific research and development combining product and market innovation with maintenance of product identity and specificity
  - Implementing GI development projects to address general problems of developing GI through pilots
  - Implementing consultation / negotiation mechanisms between the various stakeholders in the GI process (including producers, government and local authority representatives and buyers / exporters) to reach a compromise acceptable to all;

#### 4. Legal and institutional aspects:

- Capacity development is required for all stakeholders.
- African states should ensure that the two main tools for protecting geographical indications, namely the *sui generis* system and a trademark law including certification marks, are available.
- Membership of existing international registries (Madrid, Geneva) and other useful alternatives for the international protection of African names (EPA) should be included in the strategy for protecting African names abroad.

### **Thematic workshop report**

Four thematic workshops were organized to make proposals to feed in to the Action Plan:

- Workshop 1: Implementing GI: identification of goods, definition of specifications and registration
- Workshop 2: Links with the market: certification methods and marketing tools
- Workshop 3: Governance of the GI process
- Workshop 4: Towards a common legal and institutional basis?

#### **Workshop 1: Implementing GI: identification of goods, definition of specifications and registration**

- Introductory presentation: Sidiki Camara, head of the Ziama coffee cooperative, Guinea;
- Facilitation and consolidation: Tahirou Kanoute, Cabinet ETDS, Emmanuel Glé, ECOWAS

Deglet Nour dates from Tunisia also served as an example for making recommendations.

#### Lessons learned:

- Oversee the capacity development of Producer Organizations (PO) for the management of GI.
- Encourage research facilities to develop specifications.
- Involve public stakeholders and the private sector (export companies, etc. ).
- PO must be organized and involved.
- Define the role of each stakeholder to avoid disputes.
- Do not forget that GI processes are long (10 years for Ziama coffee as work on coffee quality had begun before the intervention of the PAMPIG Project (Support for the Establishment of Geographical Indications) which was decisive in concluding the matter).
- Clearly define the role of each stakeholder to prevent disputes and duplication.
- Take into account the fact that stakeholders are already organized to consider complementarity with other signs of quality: fair trade and organic for Ziama coffee.

- Do not forget inspection. For Ziama coffee, for example, there are several levels: self-inspection by the producer, set of control tests to assess coffee quality, third-party certification.
- Use the FAO tool for identification of goods.
- For Ziama coffee, focus on roasting, in other words keep the value added at this stage local for part of the marketed coffee.

## **Workshop 2: Market links: certification and marketing tools**

- Introductory presentation: Edgar Déguénon, Coordinator of the Benin AMAP (Smallholder Farming Association) "Les Nouveaux Paysans Bio" [The New Organic Smallholders] using a participatory certification device.
- Facilitation and consolidation: Kalungi Moses, labels expert, and Dominique Barjolle, ETH Zurich.

### The obstacles to certification

- The cost can be high if third-party certification is opted for, particularly if the goods are sold on local markets and if the price per kg is not high (difference between pepper or coffee and vegetables), and also if the consumer perceives little or no difference between the product and its "non-GI" equivalent.

In these situations, the premium received by virtue of the GI does not always fund the third-party inspection.

Some intermediaries (notably pickers as regards Ziama coffee or vegetables) can also object to the GI procedure if they do not believe it is in their interest.

One problem is that participatory guarantee systems (PGS) are not recognized everywhere. They are not legally recognized in exporter countries or even in producer countries. As a result, the procedure remains informal. Experts recommend introducing the legal recognition of PGS in African countries particularly interested in this system. It is not out of the question. Several countries or regions have recognized PGS in their organic farming laws in the same way as Santa Catarina State in Brazil or the Commission for East Africa.

### Solutions provided by PGS

- Lower (monetary) cost of certification (EUR 11 for 6 months per producer in the organic sector in Benin). The cost where producers and sector stakeholders are involved is, however, higher.
- Group certification (see IFOAM reference for organic farming) is an intermediate option that should also be recognized.
- Have the cost of certification funded partly by producers (role of the joint trade organization).

- If GI certification does not provide sufficient added value to fund inspection, consider other additional signs of quality: organic, fair trade, rainforest alliance, or other voluntary sustainability standard.
- The joint trade organization can be a place where margins can be calculated transparently and proportional scales established.
- Do not forget simpler tools such as collective marks, and a GI can then be reached progressively (e.g. Bora Malé rice).
- Need to carry out pilot PGS with original cases, for example GI on local markets, cross-border GI, etc.

The question remains of finding the financial resources for carrying out these pilots in the AU.

A movement to increase the credibility of the participatory guarantee system for GI, as IFOAM does for organic farming, remains to be identified or created. PIPO could perform this role, and could carry out the accreditation of third-party certification bodies for GI.

### **Workshop 3: Governance of the GI system for collective action involving all stakeholders, particularly women, young people and smallholder producers.**

- Introductory presentation: Emmanuel Nzenowo, Penja Pepper GI
  - Facilitation and consolidation: Didier Chabrol, CIRAD, and Bernadin Toto, PNOPPA
- The group emphasized the importance of learning lessons from current experiences. FAO can perform a role in this respect similar to the action undertaken with Penja pepper (capitalization by a trainee provided by the GI organization in the field).
- Beyond the various legal frameworks, promote the method described in the strategy.
  - Encourage the exchange of experiences (North-South and South-South).
  - The role of government authorities should be specified at each level, including the various forms of inspection. The State should be the instigator (e.g. carrying out inventories) and provide financial support for GI organizations at the start of their operations and technical support in particular through the involvement of research, and also have a role in combating theft and fraud.
  - Set up country coordination mechanisms with a defined mandate and operating resources (like the CNIGs [National Council for Geographical Information] of the AIPO).
  - Involve private stakeholders (platforms with all the parties concerned, demonstrate the financial benefits for each stakeholder).
  - Financial resources are necessary:

- A sustainable GI must ultimately be self-supporting but support is needed initially.
- Advocate that each State devotes one line to GI (in the context of farming plans).
- Possibility for contributors to identify and publish projects concerning GI.
- Support research to improve quality and ensure sustainability (climate).
- Include GI in university curricula (agricultural and intellectual property).
- Develop a general communication strategy (decision-makers, legal authorities, journalists, producers and direct stakeholders, consumers, etc.).
- Capacity development of a network of experts on GI by training and information.

#### **Workshop 4: Towards a common legal framework in Africa?**

- Introductory presentation: The example of South Africa, Dirk Troskie
- Facilitation and consolidation: Monique Bagal, lawyer and GI consultant, and Mr Julius Ojok, Legal Counsel, Uganda

#### The main conclusions of the workshop are the following:

- Several countries are not in agreement with the TRIPS requirements, or are not members. Encourage the latter to bring their legislation into line or to become members of the Paris Convention and the TRIPS Agreement, in particular those without a legal framework for GI.
- Encourage States to develop effective protection systems (with all the options) suited to the issue of GI – above all highlight the risks inherent in appointing an individual as GI holder.
- Develop a model law at a continental African level, stating the minimum to be expected nationally. This law would open up the possibility of also protecting designations of origin.
- Inform and make users aware of the protection options of GI, their advantages and their limitations.
- Explore the appropriateness of including GI protection in EPA.
- Encourage member states of the ARIPO and AIPO which have GI legislation to implement GI.

- Develop a network of legal GI experts in Africa, for example via intellectual property and GI fora. These fora should involve several stakeholders linked to GI development including government authorities (Ministry of Agriculture, Intellectual Property Office). Consider a way of involving Producer Organizations in the process? For example the PNOPPA, which is involved in the development of GI as a rural development tool, particularly for smallholder producers.
- Develop a web site with all the laws and policies.
- Publicize the GI mechanism and develop pilot projects to make this information more tangible.
- Develop a strategy for cross-border GI as needed by means of bilateral agreements between countries in the first instance.

## **Consolidation and proposals for the results provided in the strategy**

This consolidation is based on the thematic workshop reports and proposes to supplement the results provided by the African Union strategy.

### Result 1: an African vision of GI

- Increase the importance of the special role of PGS for local markets.
- Have an inventory of potential GI by country (with the support of ministries, farming, business, industry, etc.).
- Distinguish between GI for export and GI for the local market with specific means of support.
- Need for support for initiatives by public or private funding.
- GI procedures take time (10 years for Ziama-Macenta coffee for the first stages concerning quality and recognition of the GI).
- Key role of multi-stakeholder platforms and/or joint trade organizations.

### Result 2: legal and institutional framework

- Availability of protection options to be provided.
- Fraud control to be provided, including by means of existing international registries.
- Common registry with all goods under GI on the continent.
- Set up and strengthen frameworks for cross-border GI.
- Need for pilots to feed into considerations about the legal framework.

- Include PGS and group certification in the legal framework at a national and regional level.

#### Result 3: pilots

- Initiate varied pilot experiences to understand various issues: export, local goods, goods concerning several countries, etc.
- Use existing experiences as a model as far as possible.
- Exchange experiences with organic goods (similarities), North-South or South-South trade.
- Learn lessons from pilot experiences and pass them on (role of FAO, etc.).

#### Result 4: market access

- Invest in local markets, making the link with PGS certification.
- Incorporate group certification.
- Have different stages in working towards GI, if necessary via collective marks.
- Strengthen the role of the GI organization (or GI joint trade organization) for transparent negotiation of margins.
- Take other types of certification into account (organic, fair trade, like Ziama coffee).

#### Result 5: research and training

- Incorporate GI in training courses on agriculture and intellectual property.
- Carry out impact studies.
- Involve research in all stages, particularly in drawing up specifications.

#### Result 6: increasing awareness among stakeholders, including consumers

- Increasing awareness among all stakeholders, including generic advertising for consumers.
- Link tourism to GI.

## **Conclusion and outlook**

The strategy discussed by the various experts (by e-consultation), and then during this validation workshop held at the Cotonou seminar, is a robust document which will now be amended and added to based on the items listed above.

The strategy will then be circulated to workshop participants and more widely to the African Network set up by e-consultation.

It will also be submitted officially to the ARIPO and the OAPI to seek their cooperation, as well as to African Union member states.

The work plan backed by this strategy will be outlined bearing in mind the work done at the Cotonou seminar. It will be the subject of an e-consultation and a technical validation at a workshop to be organized by the end of the year by the African Union.

The strategy document and its work plan will then be officially adopted by the African Union, so that resources can be sought and allocated to implement the strategy and its action plan, particularly the pilot projects.

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## **ANNEX 6: WORKSHOP ON THE GI CONTINENTAL STRATEGY AND ACTION PLAN**

**NOVEMBER 21-25, 2016 - NAIROBI, KENYA**

### **WORKSHOP REPORT AND LIST OF PARTICIPANTS**

#### **INTRODUCTION**

The workshop on GI continental strategy took place from 22 to 25 of November, 2016 at Hilton Hotel in Nairobi, Kenya. This event followed a validation workshop held in Cotonou (Benin) the 31 May, 1 and 2 June 2016 during which four thematic working groups were organized to make proposals to feed in the action plan of the continental strategy. The objectives of the workshop in Nairobi were to finalize the elaboration of a continental strategy for GIs in Africa and to launch the designing of the above-mentioned 5 year action plan.

#### **PARTICIPANTS**

The participants of the workshop were knowledgeable resource persons from the public or private sector. From the public sector most participants came from African Union member's State Ministries of Agriculture and Ministries of Trade and Industry; others from universities or research centres. Additionally, distinguished experts from ARIPO, FAO, EU, and WIPO attended. The private sector was represented by producers and producers' representatives, policy analysts, NGOs and GI consultants.

After introductory speeches given respectively by Prof. Ahmed El Sawahly, Director AU-IBAR, representing African Union, followed by the Representative of FAO, The National Policy Officer and Head of Policy Unit FAO Kenya and the representative of the Ambassador of the EU in Kenya Mr. Alessandro Tonoli. The Representative of the Cabinet Secretary, Ministry of Industry, Trade and Cooperatives of the Republic of Kenya, Mr. Slvance A. Sange, the Managing Director of Kenya Industrial Property Institute officially opened the workshop.

Mr. Julius Ojok, a legal Consultant with OJOK Advocates, based in Kampala Uganda, facilitated the workshop.

#### **ORGANIZATION OF THE WORKSHOP MEETING**

The meeting was divided into six sessions:

- Session 1, plenary: GIs as a tool for rural and sustainable development (support policy)
- Session 2, plenary: GIs as an IPR (legal protection)
- Session 3, plenary: the strategy content
- Session 4, plenary: presentation of the draft Action Plan, the work in groups and organization of the groups
- Session 5, working groups on the five-year action plan
- Session 6, plenary: wrap-up and next steps

## MAJOR OUTCOME OF THE DISCUSSIONS

### Session 1, plenary: GIs as a tool for rural and sustainable development (support policy)

Ms Catherine Teyssier recalled the rationale of FAO's Quality and Origin Program which was launched in 2007 and the associated commitment to develop GIs on the African continent notably:

- Improve food security and strengthen rural development
- Assist member countries and stakeholders in the implementation of sustainable quality linked to the origin systems
- Support both appropriate policies and linkages to markets that enable the preservation and promotion of quality-origin products and bio-cultural resources

Within the Quality and Origin program, five case studies on African GIs have been documented: Rwandan tea, Rice from Kovié (Togo), Violet de Galmi (Niger), Miel de Casamance (Sénégal), Echalote du Pays Dogon (Mali). The methodological tools for GI that have been developed and promoted by the program were mentioned with particular stress on the FAO Guide "Linking people, places and products" and the Webtool for the identification of the link to the origin and potential development.

Another presentation from Mr Geoffrey Ramba (Kenya Intellectual Property Office (KIPI)) informed on the process of registration of GIs in Kenya, the hosting country.

In the second presentation, Ms Teyssier highlighted the lessons learnt from GIs in the world, including success factors (the product typicality, the GI governance, the market linkages, the institutional framework) and opportunities for Africa namely the existing traditional products, the growing interest for such products and the potential of GIs as assets in "decommoditization » strategies. She also mentioned the existing challenges to implement GIs in Africa which contribute to the necessity for a continental strategy: small-scale producers' need for empowerment, capacity-building, education, and training.

### Session 2, plenary: GIs as an IPR (legal protection)

Ms Grazioli introduced the international context of protection of GIs including TRIPS and the recent Geneva Act. The rationale of the adoption of the Geneva act was: inclusiveness of the system i.e the integration of different tools of protection chosen by a given state at the national level (trademarks), the scope of the protection which proves to be unsatisfactory under the TRIPS Agreement.

Ms Bagal gave an overview of the tools to protect GIs in African countries and highlighted the importance to have a common legal framework and a common policy considering not only the specificities of the continent but also the increasing pressure on institutional capacities due to membership in international organizations. The role of regional economic communities (REC) in the implementation of the strategy was also raised especially considering the fact that every African country belongs to at least one REC.

Mr Sackey has presented to the Assembly the role of the African Regional Intellectual Property Organization (ARIPO) in the Promotion of IP for its Member States. During this presentation, ARIPO organs were introduced, as well as the cooperative partners. Additionally, ARIPO framework of protection for geographical trademarks, including the newly adopted Draft Protocol on GIs were presented. Finally, Mr Sackey explained the initiatives to harmonize OAPI/ARIPO systems and build synergies to make the IP system relevant, effective and efficient to promote sustainable cultural, social, technological and economic development in Africa

### **Session 3, plenary: the strategy content**

Ms Akullo has explained the importance and need for a continental strategy on GIs. The rationale of such a continental strategy is threefold:

- Building on existing experiences and capacities developed (e.g OAPI) and allowing this knowledge to be spread out, thanks to a permanent dialogue by national, regional and continental multi-stakeholders and on multi-sectorial platforms ;
- Addressing the shortcomings of international protection of GIs by enforcing convergent rules and practices at the continental level that would encourage trade and improve the positioning of African products on regional, continental and international markets ;
- Contributing to different agendas and programs for Africa related to the agricultural sector development, in particular to the UN sustainable development goals but also to the Comprehensive Africa Agriculture Development Programme (CAADP) and to the Malabo Declaration endorsed by the African Union Assembly.

The endorsement of a shared overarching vision at the continental level is now needed to give political legitimacy to GI projects and policies development.

Ms Teyssier and Ms Bagal presented the recommendations deriving from the draft continental strategy respectively for GIs as a rural development tool and from a legal and institutional perspective.

### **Session 4, plenary: presentation of the draft Action Plan, the working groups and organization of the groups**

Ms Teyssier handled the presentation of the draft action plan and the organization of the working groups scheduled in Session 5.

### **Session 5, working groups**

Each group has worked on two outcomes to provide inputs to the Action Plan: activities, products, timeline, responsibility and budget. The outcomes read as follow:

**Outcome 1: an African vision on GIs** (Convener/Rapporteur: Kujo Mac Dave and Tahirou Kanoute)

**Outcome 2: the legal framework** (Convener/Rapporteur: Monique Bagal and Alexandra Grazioli)

**Outcome 3: the pilots** (Convener/Rapporteur: Dirk Troskie and Dorsaf Benhamed)

**Outcome 4: markets** (Convener/Rapporteur: Emidio Rafael and Samuel Swanga)

**Outcome 5: research, training and extension** (Convener/Rapporteur: Anne Floquet and Rene Tetebaya)

**Outcome 6: awareness-raising of all stakeholders** (Convener/Rapporteur: Bernard Gichovi and Julius Ojok)

The objective was to provide a new version of the table to be included in the Action Plan.

### **Session 6, plenary: wrap-up and next steps**

#### **Outcome 1: an African vision on GIs**

Examples of activities foreseen to consolidate an African vision on the development of GIs which would be integrative of the rural development and food security are:

- Promotion of the African approach by sharing experiences during intergovernmental forums
- Provide an analysis and feasibility study on the multi-stakeholder and multi-sectoral platforms in charge of consultation, information sharing, communication and research coordination

#### **Outcome 2: the legal framework**

Examples of activities foreseen to enable a legal and institutional framework at the national and regional level for the protection of GIs are:

- Conduct status study and gap analysis on legal and institutional frameworks by using and consolidating existing reports
- Develop a model legal and institutional framework for GIs in Africa consistent with international treaties
- Develop and conduct tailor-made or customized training modules on GIs for administrators of the system and users

#### **Outcome 3: the pilots**

Examples of activities foreseen to promote and use the legal and institutional framework:

- Handle the registration and promotion of pilots GIs for key food and handicrafts products
- Establishment of a pool of African GI experts
- Develop international registration of names on specific products (notably export cultures i.e coffee, teas)

#### **Outcome 4: markets**

Examples of activities foreseen to enhance the marketing of GI products are:

- Promote GI on local market with appropriate certification systems and short supply chains in particular participatory guarantee systems
- Strengthening the GI organizations in particular for improving negotiation capacities
- Facilitating regional and international trade agreements for GI products

**Outcome 5: research, training and extension**

Examples of activities foreseen to build research capacities are:

- Define the specific field and action research to be developed to define African GI approach and the different tools or methods associated
- Handle impact studies

**Outcome 6: awareness-raising of all stakeholders**

Examples of activities foreseen to improve awareness and advocacy of the GI among the stakeholders are:

- Develop and conduct tailor-made or customized training modules on GIs for administrators of the system and users
- Conduct a baseline survey to assess the level of awareness on GIs
- Develop information dissemination materials in appropriate languages

**RECOMMENDATIONS FROM THE MEETING**

Delegates applauded the efficient organization of the workshop and appreciated the entire process i.e. content and delivery. Participants showed great interest in working on the document and their skills and experience were of immense help in polishing the Draft Continental Strategy.

At the closing of the meeting Ms Cristina Miranda-Gozalvez of EU pointed out that the quality of work so far done was very comprehensive and welcomed the fact the meeting had specific tasks given to specific institutions and people. She welcomed the AUC vision and highlighted that Europe attaches a lot of importance on GIs since 15% of EU export is GIs. She also noted that funding facilities will in the near future be available and participants should look out for that and try to advocate for the relevance of funding GI projects through those facilities.

Ms. Teyssier (FAO) and Ms. Akullo (AUC) thanked participants for the work in their closing remarks. Ms. Teyssier confirmed the involvement of FAO to support the African Union in this process. Ms. Akullo highlighted the necessary next step to have the African Union continental strategy on GIs endorsed at the political level within the AU. She also noted that the work on the action plan has just begun and she informed the meeting that the AUC, together with FAO would be consulting the various experts and agricultural and intellectual property representatives going forward.

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