



THE IMPORTANCE OF **GEOGRAPHICAL INDICATIONS** TO THE **SUSTAINABLE DEVELOPMENT OF NIGERIA**

August 13, 2020





Organised by

The World Intellectual Property Organization (WIPO) Nigeria Office, in collaboration with the Africa International Trade & Commerce Research (AITCR)



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INTRODUCTION

Mr. Oluwatobiloba Moody, Counsellor, World Intellectual Property Organisation (WIPO), Nigeria Office, Abuja, gave his opening remarks; by thanking everyone in attendance and the eminent speakers that agreed to participate as panellists to discuss the theme “The Importance of Geographical Indications to the Sustainable Development of Nigeria” for the webinar series. The webinar was facilitated and organised by WIPO, Nigeria office, in partnership with Africa International Trade and Commerce Research (AITCR). Mr Moody acknowledged Mr Sand Mba Kalu, Executive Director, AITCR for the excellent work AITCR has been doing over the years to promote GIs in Nigeria. He went further to provide a brief background about the WIPO, Nigeria Office that was established in January of 2020, to promote awareness, training, capacity building in the area of Intellectual Property (IP), as well as WIPO’s Global Services in Nigeria. WIPO, Nigeria office is one of seven external offices established around the world to add effectiveness and efficiency to WIPO’s program deliverables globally. Mr Moody went further to say that the webinar would touch on an essential aspect of sustainable development, noting that this was a key campaign message that WIPO promoted as part of its world IP day activities. Recall, the world IP day for 2020 was themed innovate for a green future. When we think about a green future, we do think about sustainable development. He also said he was delighted with the strides that the WNO had taken since inception and was very grateful for the support the office has received from the government of Nigeria, and stakeholders in Nigeria.

On GIs, he provided some familiar product examples which possessed specific geographical origins as well as qualities or reputations based on those origins, such as, Ijebu Garri or Bendel Garri, or even Ogbomosho mangoes. He questioned the lack of any registered GI’s products in Nigeria, and indicated that answering this question would be one of the key focus areas for the panel speakers.

Mr Sand Mba Kalu, the Executive Director of AITCR, said despite Nigeria being the largest economy in Africa, export is still primarily driven by crude oil accruing about 89.3% of total export in 2019. Several efforts have been made to improve the local inputs of Nigeria export through domestic diversification initiatives away from crude oil, resulting in last year’s non-oil export surge from 4.6% to 10.4% of total export¹. While the increased percentage of non-oil export is considered a pleasing development, it is worrying that about 60% of the total exports were re-exports².



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Mr Mba-Kalu said that the concept of Geographical Indications (GIs) is one among many avenues that can support the non-oil export growth in Nigeria. Geographical Indications (GIs) apply to products whose unique attributes, features or popularity is obtained from their geographical origin. The economic importance of geographical indications and their use in commerce in the modern international market economy has not been harnessed in Nigeria, unlike other jurisdictions. It is no more news that the impact of COVID-19 on the Nigeria economy will be long-lasting. Therefore, strategic diversification and planning are crucial for the economic sustainability of Nigeria.

Findings from a recent study conducted by the European Commission, Directorate-General for Agriculture and Rural Development on the economic value of European Union (EU) quality schemes, Geographical Indications (GIs) and Traditional Specialities Guaranteed (TSGs); revealed that GIs registered in the 28 Member States of the EU, from the 2011-2017 period was 3,153. The estimate of the sales value of GIs in 2017 was EUR 74.8 billion. The total sales value covered by GIs has grown by 37% since 2010³.

Mr Mba-Kalu asked if Nigeria can replicate the EU success story with the cultural rich products in Nigeria that can potentially be attributed to GIs, which could directly support the economic diversification of the country in a sustainable development trajectory. How can Nigeria utilise GIs products to its advantage in international trade, and what are the practical mechanisms required for registering GIs products in Nigeria and the role that GIs could play in Nigeria's sustainable development drive.

Mr Mba-Kalu, invited Dr. Titilayo Adebola, Lecturer in Law and Theme Coordinator, Intellectual Property Law, University of Aberdeen, UK to moderate the session. Dr. Adebola, said she believes GIs is an important category of intellectual property rights that can contribute substantially to the social and economic development of the continent, and Nigeria.

¹ <https://nairametrics.com/2020/04/10/revenue-from-nigerias-non-oil-export-was-highest-in-2019/>

² <https://nairametrics.com/2020/04/10/revenue-from-nigerias-non-oil-export-was-highest-in-2019/>

³ <https://op.europa.eu/en/publication-detail/-/publication/a7281794-7ebe-11ea-aea8-01aa75ed71a1>

WIPO AND GIs: WIPO'S ROLE IN THE GLOBAL ADMINISTRATION OF GIs

WIPO has three main functions in the field of geographical indications (GIs) and collaborates in that respect with its member states. This was enumerated by **Ms. Alexandra Grazioli**, WIPO Director, Lisbon Registry, in her presentation. She noted that first, WIPO manages international treaties that govern the protection of geographical indications. Among them, the Lisbon Agreement that governs a system for international registration and protection of geographical indications: the Lisbon System. Second, WIPO works on the development of the international framework through different committees where delegates meet in Geneva to discuss issues related to intellectual properties, including geographical indications. Thirdly, WIPO assists its member states in developing their national or regional legislative and institutional frameworks for the protection of geographical indications and helps groups of producers to valorise their quality products linked to

In recent years, WIPO revised the international treaty (the Lisbon Agreement) that governs the international registration and protection of geographical indications with the adoption of the Geneva Act of the Lisbon Agreement in 2015. The Lisbon System, with its new Geneva Act, is seen as a convenient tool for member states or intergovernmental organisations which join the Lisbon System because they can, through a single application at WIPO, obtain protection for their geographical indications in the other members of the System. There are currently more than thirty countries covered by the Lisbon System and the Geneva Act; interest by WIPO members to join the Lisbon System is increasing with the development of their GI system and the need to protect their geographical indications abroad. Another exciting part of the Lisbon System is that it provides a clearly defined level of protection for the geographical indications registered in the System,

I also want to mention that with the Geneva Act, the new version of the Lisbon Agreement, that was adopted in 2015, countries, whose design is to protect their geographical indications with the trademark system, can also join the Lisbon System (Geneva Act) and obtain protection in other Lisbon members for their geographical indications. The new version of the Agreement is indeed very flexible in that respect. There are therefore good reasons to think that in future more members will accede to the new Geneva Act of the Lisbon Agreement, and so the Lisbon System will become a truly global system of protection of geographical indications.

which is considered to be a high level of protection compared to international standards. In addition, geographical indications registered under the Lisbon System remain protected over time, as long as they are protected in their country of origin, without the need to pay periodical renewal fees. So from a financial point of view, it is very affordable for GI producers. Any time

origin by the strategic use of geographical indications and other branding tools; those activities and projects can also have a positive impact on sustainable development goals (see the project on the Madd de Casamance⁴). **Ms. Grazioli**, said, WIPO member states have different ways to protect geographical indications – in particular sui generis system or trademark system –, and each member chooses its distinct way to do it.

a new member (a country or an intergovernmental organisation) is joining the System, the protection of the geographical indications already registered under the Lisbon System is potentially extended to that new member with the possibility for that member to issue refusals in case it has an issue with the protection of some geographical indications on its territory (e.g. if the designation is considered to be a generic term on that territory

⁴https://www.wipo.int/wipo_magazine/en/2020/02/article_0006.html

or if it is conflicting with a prior good faith trademarks, etc.). So it is a very dynamic and efficient system when considering protection internationally, while accommodating the specific situation in each member. For those countries which develop the protection of their geographical indications through the trademark system, they may of course use the Madrid System, an international system of registration specific for trademarks also managed by WIPO. However, Ms. Grazioli said I also want to mention that with the Geneva Act, the new version of the Lisbon Agreement, that was adopted in 2015,

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AU CONTINENTAL STRATEGY FOR GIs IN AFRICA

Ms. Diana Akullo Ogwal, is the Policy Officer with the Department of Rural Economy and Agriculture at the African Union Commission (AUC). She provided more profound insight into the activities and objectives of the African Union Continental Strategy on GIs. She said the Continental strategy for GIs (2018-2023) was developed specifically in respond to the global agenda—the Sustainable Development Goals (SDGs), and the African Union agenda: Agenda 2063 wherein GIs contributes to the realisation of one of its flagship programs known as Comprehensive Africa Agriculture Development Program (CAADP). The Continental Strategy for GIs was as a result of the collaborative effort of the Department of Rural Economy and Agriculture (DREA), African Union Member States, Regional Economic Communities (RECs), and other technical and development organisations with expertise in GIs like ARIPO, OAPI, WIPO, FAO and the EU. The formal document was endorsed by Ministries of Agriculture, Rural Development, Water and Environment from all Member States, which was one of the key deliverables at the 5th AU-EU Summit 2017.

Ms. Akullo, in her submission, also said in addition to the two agendas that

necessitated the Continental Strategy for GIs in Africa was developed at the time when African nations were making progressive efforts towards continental integration. The strategy aim is to enable AfCFTA to protect the different GIs products coming from different countries across Africa, so there would not be confusion

in the market. To put it in perspective, **Ms. Akullo** said take Ghana, for example, any first-time traveller to Ghana would want to take back candy, or tea-lover finding him or herself in South Africa would

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like to have a taste of honeybush or rooibos. By implementing the strategy, the AU Commission is stimulating the regional and continental sustainable value chains, which is very vital, while focusing on small scale farmers as primary beneficiaries. Although, the AU Commission responsibility and role is to develop a framework that the Member States can customise for their use, the choice of whether to use the framework or not and how to use it is the decision of each Member State. In conclusion Ms. Akullo said “the AU has put in place a technical committee that oversees all aspects of GIs protection in Africa and has also identified products (5 each from ARIPO and OAPI regions) that can be fast-tracked in a pilot project by the Commission”.

GIS IN NIGERIA, LEGISLATIVE AND POLICY FRAMEWORKS

Dr. Shefiu Adamu Yauri, the Registrar, Trademark Registry of Nigeria, in his submission stated that laws protecting GIs across the world vary to a great extent. He said international, regional and national laws protect GIs under a wide range of. Concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification marks or special laws for the protection of specific geographical indications . He made it known that Nigeria does not currently have a GI specific or stand alone legislation. He underscores the need for a policy or legislative framework that will provide a specific or stand alone GIs protection laws in Nigeria. He explained that concerted efforts are being made to develop a framework or policy for stand-alone and specific GIs protection regime (in addition to the current Certification trademarks system). He said relevant government Ministries, Departments and Agencies (MDA) are collaborating at different levels, with the intension of achieving this objective. He further elaborated that the collaboration between the Federal Ministry of Industry, Trade and Investment, Ministry of Agriculture and the Ministry of Science and Technology will produce a common framework and understanding to present to the Federal Executive Council (FEC) as a joint policy document on specific GIs framework for approval.

He further stated that, although at the moment, GIs can be protected under the Trademarks Act of the Federal Republic of Nigeria 1990. Section 43 of the Trademarks Act, provides protections for GIs by proof of their origin, their community, quality characteristics or method of manufacture, which must be connected to the origin of the products. He posited that additional legislative framework on stand-alone legislation would further strengthen the Country's enormous GIs assets.

Dr. Yauri, went further to mention that Nigeria has about 10,000 geographical indications products. Among them are Benue-yam(which is misappropriated and rebranded as Ghana yams in overseas markets)cotton from Taraba, Potatoes from Plateau region; Sokoto goats skin (misappropriated as morocco leather); the Kebbi Rice (Lake Rice); Abakaliki Rice; Ofada Rice; Ijebu garri; and Gongola highland tea. In Dr Yauri's final remark he said: "Unfortunately, lack of specific GIs protection legislation in the country has made some of these products to exist in the international market as some other country's, as in the example of Sokoto goats skin which is commonly presented as Moroccan Leather(or the popular Benue peps yams) He inferred that Trademarks alone are not enough to protect these products and thus the need for GIs specific framework, alongside the trademarks act, is vital".



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THE PROTECTION OF GIS IN NIGERIA - PRACTICAL EXAMPLES

Dr. Solomon Gwom, a lecturer of law at the University of Abuja, Nigeria, in his submission believes Nigeria has nothing to worry about internationally when it comes to GIS protection because articles 22 and 23 to 24 of the TRIPS agreement have covered that. But he said nationally, Nigeria has multiple GIS protection options to adopt; one, is the trademark system like in the United States of America, Australia, Japan and other countries; two, is the sui generis GIS system just like in the EU and Commonwealth nations; and three, is to adopt both. In his view, the third option would be the best, he opined. He expatiated by saying the trademark Act should be assumed to complement the sui generis system because the trademarks Act on its own does not protect collective marks; it covers only certification marks. Other complementary Trade Acts are the Merchandise Act, which deals with wholesome practices; General Systems Act, which deals with the law that also gives the customs officials the sole authority of satisfying goods that are exported out of Nigeria; the Malpractices Act; the Federal Competition and Consumer Protection

Act of 2009, which deals with antitrust and anti-competitive practices.

Dr Gwom suggested there should be a meeting of stakeholders, that are interested in protecting GIS in Nigeria. These stakeholders should be experts, policy-makers, legislators, farmers, producers, marketers, and other stakeholders should have a conference on the kind of GIS protection we want for Nigeria. How do we protect the GIS: what law would best suit Nigeria in the protection of GIS? What are the pros, what are the cons, what are the costs, or what are the benefits? Because the protection of GIS is costly. And then we have to also look at how does the protection of GIS affect our environment our biodiversity cause here in Nigeria? In **Dr. Gwom** concluding submission, he said, “experts have to be on the ground to ensure that these things (the complexity of institutionalising GIS) do not become something that we regret when we have started it. So there have to be some benefits as well as consideration of the costs of protection on geographical indications”.

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OPPORTUNITIES FOR GIs IN NIGERIA?

One of the most interesting GIs products in Nigeria is the Nsukka yellow pepper, from the Southeastern part of the country, Enugu, which has an aroma that smells like a male goat. It is used as a flavouring for soup or stew. According to Dr. Mark Abani, Founder/CEO MSCA Projects and Board Chairman of AITCR, the pepper even if grown outside the locality does

create a product that is popularly tied to the source and known as Nsukka pepper, similar to the way Cameroon pepper is known. So, to help the local community benefit from their heritage products, it is important to address issues of standardisation and quality.

Dr Abani also raised concern on the irregular cross border trade of potential Nigeria GI products. He said regulatory authorities need to act on this issue because many GIs products often cross the border, to neighbouring countries, and misrepresented as coming from those coun-

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tries in the international market. Unless these issues are appropriately tackled, it could endanger the AfCFTA. Even within the country, products such as Afikpo rice is often misrepresented as Abakaliki rice, they are not the same nor are they from the same source. Ofada rice, an indigenous rice grain from Southwestern Nigeria, Ogun, also needs to be protected as GIs; not just the rice but also, its stew and leaf (which it is served in) because these are all unique attributes that make it unique. GIs protection can have a

not have the unique characteristics like the ones grown in Nsukka. He said findings have shown that the primary reasons for its uniqueness are the traditional ways in which they have grown, the soil nature and composition of the locality. He went further to say that the method of cultivation (ashes from local pounds and local products are used to keep the insects out). So, while several crossbreeds or duplicates may be made from other places, the results are not going to be the same. This is where GIs protection comes in, to

significant impact on not only trade but can also directly impact on Sustainable Development Goals (SDGs), and the development of rural economies. He asserted that Nigeria GI system requires the legislative framework to make the implementation stronger with the practical outcome of creating an avenue that will put more money in the pocket of local producers.

In **Dr Abani's** final remark, he said "Another critical role that GIs would play in Nigeria is to address gender bias and inequality because women cultivate most of these products. Through GIs, these women will be empowered and earn more from their products because the returns will reach them directly as they are producers and in many cases, the breadwinners of their families".



GIs IN TRADE: THE POSSIBLE CONTRIBUTIONS OF GIs TO NIGERIA'S LOCAL ECONOMY

To relay her views on the contributions that GIs could make in Nigeria, local economy. **Ms. Chinasa Uwanna**, a Senior Associate at Banwo & Ighodalo, recounted some examples from her firm's GIs intervention cases—taking a cue from Champagne wine from France and Trinidad tobacco from Cuba. The wine, Champagne, is named after a region in Northeastern France which is now recognised globally as a geographical indication. Champagne is regulated or administered by an association called Comité Interprofessionnel du vin de Champagne, (CIVC). CIVC is a collaborative trade organisation established since 1941 to represent the interests of independent Champagne producers and champagne houses. CIVC work in tandem with another institution

called Institut national de l'origine et de la qualité (INAO), a public administrative institution for the Ministry of Agriculture, Food and Forestry in France. Both are vested with the responsibilities of promoting and controlling the production of wine in various areas, including quality management, reputation building, and international protection. They set strict rules and standards to be met for any producer of the product. Each producer must meet specific prescribed regulations for production and manufacturing, minimum yield per hectare, for all of the varieties of the product. All these make a unique GIs product that is globally perceived to represent luxury and festivity. It is not surprising that several counterfeits of the wine are being made.

She pointed the limitation of a trademark as a system to register GIs in Nigeria; she said CIVC and INAO face challenges in registering 'Champagne' as a trademark in Nigeria because Trademark registration of a name of a location or geographical name is not allowed under our (Nigeria) laws. However, international treaties such as Article 22 and 23 of the TRIPS agreement on GI protection is what products like Champagne, rely on. But TRIPS has not been domesticated in Nigeria, she said, as required by the Nigerian constitution.

The study found that the sales value of a product associated with a GI is on the average, double that for similar products without a certification. The value premium rate stood at 2.85 for wines, 2.52 for spirits and 1.5 for agricultural products and foodstuffs. In explaining the significant impact of GI protection on the economy and value of the EU, she quoted the EU Commissioner for Agriculture, Janusz Wojciechowski, where he said:

"European Geographical Indications reflect the wealth and diversity of products

that our agricultural sector has to offer. Producers' benefits are clear. They can sell products at a higher value, to consumers looking for authentic regional products. GIs are a key aspect of our trade agreements. By protecting products

Ms. Uwanna, concluded by stating that "having a framework that adequately protects GIs in Nigeria, gives us a better chance at generating more income from different sectors of the economy, including but not limited to agriculture, hospitality and tourism. In addition, it will have the ripple effect of creating employment opportunities, preserving traditional knowledge and fostering regional and international cooperation".

A similar case, according to **Ms. Uwanna**, is the Cuban Tobacco. A Cuban company, Habanos S. A. which is the arm of the Cuban state tobacco company, Cubatabaco that deals with the production of tobacco, attempted to register Trinidad as a trademark in Nigeria but was refused by the Trademarks Registry of Nigeria on the grounds that Trinidad was a geographical name. The interesting thing here is that it was the government of that geographical location that was attempting to register the name to protect their geographical indications product in Nigeria.

She referred to recent research published in April 2020 by the European Commission on the economic value of EU quality schemes, geographical indications (GIs) and traditional specialties guaranteed (TSGs). The research revealed that the value of geographical indications from agriculture, food and drink alone, whose names are already protected in the EU was as much as 74.8 billion euros and almost one-fifth of that amount was generated from exports outside the European Union.

across the globe, we prevent fraudulent use of product names and we preserve the good reputation of European agri-food and drink products. Geographical Indications protect local value at global level."

That is how valuable this is; for instance, using Champagne, everyone knows how important and how expensive Champagne is. So imagine if Nigeria can have such protections for her own local internationally, the sort of income that could be generated from such.

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RECOMMENDATIONS ON DEVELOPING A LEGAL/ POLICY FRAMEWORK FOR GIs IN NIGERIA. SOME KEY CONSIDERATIONS

The benefits or gains of an effective GI system is enormous if adequately implemented. GI system can help drive the diversification agenda of the government from crude oil to real agriculture, food and handicraft sectors. This can also be an instrument that will pull over half of Nigeria poor population out of poverty through its inclusiveness and rural farmers architecture: bringing wealth to the rural farmers and producers of GIs products. It would also address the issue of gender-based bias in the area of income, employment as a significant number of producers of GIs products are women. The following recommendations came from the webinar discussion:

- The trademarks Act cannot be relied upon on its own to protect GIs in Nigeria; therefore a sui generis system must be instituted to work alongside the Trademarks Act in the protection of GIs;
- The institutionalisation of adequate legislative and institutional reform that strongly backs the proposed GIs system must be put in place with strict but reasonable terms and conditions;
- To constitute relevant stakeholders (private and public) for as a technical working group to design workable framework;
- Inter-governmental as well as inter-agency collaboration must be maintained and appropriately managed to achieve implementation of adopted policies;
- A Nigeria GI template: Clear and specific terms and definition must be outlined to effectively capture what products qualify as GIs and what does not. Most importantly it must be a flexible tool that takes into account the multidimensional layer of identifying potential GI product;
- Also, a comprehensive mapping of potential GIs products must be carried out and catalogue in a database; and
- Finally, advocacy needs to begin immediately; it does not have to wait until the implementation stage. The advocacy should focus on education, institution reforms and awareness on the importance, benefits and processes for protection of national GIs.

PANELISTS



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