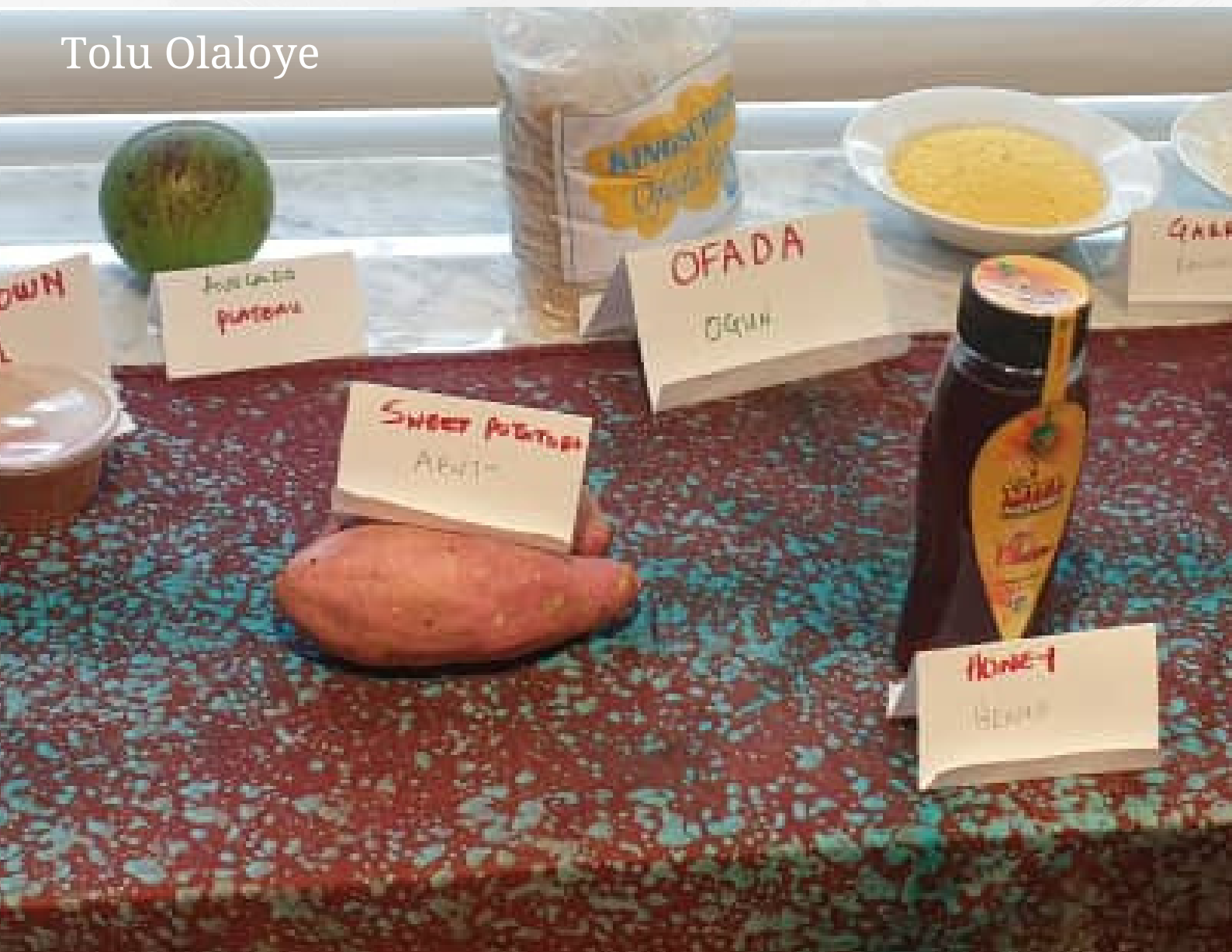


ECONOMIC BENEFITS OF ESTABLISHING LAW FOR THE PROTECTION OF GEOGRAPHICAL INDICATIONS (GIS) IN NIGERIA.

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INTRODUCTION

A Geographical Indication (GI) is a mark which identifies a product as originating from a specific geographical region, where a given quality, reputation, feature or attribute of such product is essentially due to its origin from the specific region. [1]

Examples include Gruyere Cheese from Switzerland, Tequila from Mexico, Havana Tobacco from Cuba, Darjeeling Tea from India, Ijebu Garri and Ofada rice from Nigeria and Penja pepper from Cameroun.

In order to properly function as a Geographical Indication (GI), the designating mark must identify the product as originating in a given place. [2]



Photo Credit: Taken at the First National Capacity Building Workshop on the Establishment of GI laws in Nigeria. April 22nd, 2021.

GIs are usually but not exclusively applied to spirits, wines and agricultural products. A GI may also be used on a product whose specific qualities are due to human factors found in its particular place of origin – qualities such as a specifically curated manufacturing process. [3] Thus, handcraft, which are generally made using local natural resources, with knowledge and skill usually embedded in the traditions of the local producing community can also be protected by GIs. [4] An excellent example is the GI “Swiss” for watches made in Switzerland.

While the terms GI and “Appellation of Origin” may be used interchangeably, an Appellation of Origin is generally a more stringent form of GI, requiring an absolutely exclusive relationship between the product and the geographical location of its production: the features of a product protected as an Appellation of Origin must result exclusively from its geographical origin. On the other hand, for a GI to be effective, a single criterion attributable to geographical origin – such as **product quality or durability** – will suffice. Appellations of Origin are often found in sui generis intellectual property systems. [5]

[1] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [TRIPS Agreement].

[2] WIPO, “Geographical Indications. What is a Geographical Indication?” Available at https://www.wipo.int/geo_indications/en/ (last accessed 1/11/2021)

[3] WIPO, “Geographical Indications: An Introduction.” Available at <https://www.wipo.int/publications/en/details/s.jsp?id=4562> (last accessed 1/11/2021)

[4] *ibid*

[5] *ibid*

UNDERSTANDING THE CONCEPT OF GI PROTECTION

The entire essence of Geographical Indications (GIs) is to enable those who have the right to use them, prevent their use by any third party whose products do not conform to the applicable standards, or whose product originates from outside the geographical area delimited as the source origin of the product. [6]

However, a GI right does not enable the holder to prevent a third party from manufacturing the same product using the same techniques, and probably even the same raw materials as those set out in the standards for that GI. For instance, anyone can export the materials used in producing Champagne from France to Nigeria and, using the exact techniques used by the original producers of Champagne, create a product that is an exact replica of Champagne in every material feature including taste, appearance, and colour. However, such a person cannot call his product “Champagne,” neither can he call it “Champagne-like” on its label. He must not appropriate the name “Champagne” in any way but must find an alternative title for his product. This is because the “Champagne” label ***can only be used on a wine product if the grapes and wines are produced under strict regulations in the French region of Champagne, 90 miles northeast of Paris, France.***

In other words, GIs do not necessarily protect the process of production *stricto sensu*, but the **specific geographical location of production**. The process of production is protected, or more accurately, guaranteed as a means of ensuring the quality and standard of designated products. GIs do not create an IP right in the process of production of designated products.

GIs are protected and enforced globally through a sometimes-confusing array of laws, rules and practices adopted by different countries and regional systems, based on individually different legal traditions, historical and economic experiences. These can however be classified into 4 broad categories:

1. Sui Generis systems;
2. Collective or Certification marks;
3. Methods focusing on business practices, including administrative product approval schemes;
4. Unfair Competition laws. [7]

[6] Supra, n.3

[7] Supra, n.1

These are besides the existing international framework for the protection of GIs, composed mainly of 5 treaties:

1. The Paris Convention for the Protection of Industrial Property, 1883 (as revised);
2. The Madrid Agreement on the Repression of False or Deceptive Indications of Source on Goods, 1891;
3. The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958;
4. The Geneva Act of the Lisbon Agreement, 2015;
5. The World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), 1994.

Of particular importance are the TRIPS Agreement, and the Geneva Act of the Lisbon Agreement. The TRIPS Agreement, which is the most extensive multilateral treaty on the protection of intellectual property, sets out the minimum standards of protection to be provided by each member State for GIs. It defines goods which qualify for GI protection, [8] seeks to protect the public from misleading geographical labels, [9] and establishes greater protection for wines and spirits. [10]

The Geneva Act of the Lisbon Agreement provides producers of quality products linked to origin, with faster and cheaper access to the international protection of their product's distinctive designations through a simple application with the World Intellectual Property Organization (WIPO) and the payment of only one set of fees. [11]

GIs are a form of IP but unlike other forms of IP, they are regionally or collectively owned and administered, with the emphasis of protection being ***on the geographical region in question and by consequence***, the traditional knowledge and processes involved in the creation of the goods, instead of the goods themselves.

The protection and enforcement of GIs not only ensures the authenticity and quality of goods on the market, it also encourages rural development of the source communities by creating a market for their goods, increasing financial rewards of production, and encouraging government and private investment in the communities. Extensive national GI protection also creates significant economic value, often creating a vast international market for the goods in question.

[8] TRIPS Agreement, Article 22

[9] *ibid*

[10] *Ibid*, Article 23

[11] WIPO, "Ghana Joins Geneva Act of WIPO's Lisbon Agreement." Available at https://www.wipo.int/lisbon/en/news/2021/news_0011.html (last accessed 1/11/2021)

ECONOMIC SIGNIFICANCE OF GIS

The globalization of production, consumption and exchange means that the ability of local markets to compete globally is now highly dependent on their capacity to leverage their own cultural and territorial specificities to create goods whose inherent value lies in its uniqueness to them. [12]

GIS have the potential to be powerful drivers of economic growth. **They promote the economic value of designated products, thereby creating significant wealth for the producing region.** By preventing counterfeiting of the products and punishing “free-riders,” GIS create global recognition of the products, global awareness of the source region and importantly, a valuable international market for the designated products. These can lead to increased income generation in the source region, increased employment opportunities, increased tourism potential, and increased international reputation of the source Country. Importantly also, by rewarding the production of goods and crafts fashioned from traditional knowledge and processes, GIS protect culture and tradition from erosion by providing strong incentives for their continued practice and deployment.



[12] R. Crescenzi, F. De Filippis, M. Giua, C. Vaquero-Pineiro. “Geographical Indications and Local Development: the strength of territorial embeddedness. 29 July 2021. Available at <https://doi.org/10.1080/00343404.2021.1946499> (last accessed 1/11/2021)

GIs are also a **solution to the problem of information asymmetry in international or foreign markets**: This is the case where a purchaser has no or wrong information on the geographical origin of a product, where such geographical origin is directly connected to the quality of the product. By resolving the information asymmetry problem, and establishing a clear link between product quality and geographical origin, GIs give purchasers the power to choose goods with specific origins and thereby create an export market for locally made products. In the Nigerian context, this is of particular importance to the agricultural sector as it will create wealth in rural areas, strengthen the agricultural sector, and aid the decades-long effort at economic diversification.

GIS IN NIGERIA

Nigeria abounds with a multitude of products with potential for GI designation. With over 250 distinct indigenous cultures – each with traditions centuries old – the local peoples of Nigeria have long evolved unique agricultural and manufacturing processes to create goods and craft that are unique to them and their local communities. Examples of such products include: Ose Nsukka (Nsukka yellow pepper), Kilishi, Ijebu Garri, Aso Oke, Adire, Yaji, Fura, Kunun Gyada, Ofada Rice etc.

It is important to state at this point that GIs as a legal concept or instrument are practically nonexistent in Nigeria. There is no mention of it in any local law or statute. There is no local agency or organization of the State that caters to GIs. Of over 1000 GI protected products in Africa, not a single one is from Nigeria.

IMPORTANCE OF ESTABLISHING A SUI GENERIS LAW FOR GEOGRAPHICAL INDICATIONS IN NIGERIA

There is no law presently in force in Nigeria for the protection or enforcement of GIs. Also, public awareness of GIs and their benefits are abysmally poor. The only recognition GIs may find in the Nigerian body of law is from a roundabout **interpretation of Section 43 of the Trademarks Act, 1965** which provides protection for Certification Marks; and the prohibition of false or fraudulent marks on goods contained in the Merchandise Marks Act. [13] There is no express provision or even mention of GIs in the Nigerian body of laws. There is also no administrative body or policy of State for the recognition, promotion and enforcement of GIs.

Sui Generis legislation is essentially purpose built legislation designed to cater to the legislative requirements of a nation, or to more closely reflect its values, history or socio-political situation

[13] Cap M10, LFN 2004

The phrase “*sui generis*” [14] classifies such legislation as being different, unique and separate from any pre-existing class or body of laws.

To establish a truly effective Intellectual property (IP) system for the regulation, protection and enforcement of GIs, the State has to go beyond mere ratification or domestication of international treaties – which it has not even done. A *sui generis* law has to be enacted.

The law will first and foremost provide for the creation of a register where all products to be protected and their associated regions will be registered. To be truly effective, the law should mandate that such register contain the name of the product, its designation, the delimitation of the geographical source area, proof that the product indeed originates from that area, the method of achievement of the product, and the links between the quality of the product and its geographical source environment. [15] Since **uniformity of standards and quality are the bedrock of GIs**, the law must provide for a system of controls and regulation for the registration of the specific marks and appellations to be used, standardization of quality, export provisions etc. These are besides the prohibitory and penal provisions which are crucial to the enforcement of GI rights.

Recognizing the vast differences in the socio-political and socio-economic context of rural producing communities in Nigeria, the *sui generis* law in setting up controls and regulations or standards may contain measures designed to aid disadvantaged communities in leveraging their products.

For instance, the law may have to recognize the extreme insecurity in some agrarian communities in north-eastern Nigeria, the difficulties created by the great distance and cost of transportation from these communities to export locations, the remoteness of some of these villages, and the high incidence of illiteracy among indigenes. It may do this by, among other things, making statutory provision for government-paid interpreters and negotiators to aid the local people in getting fair financial rewards for their products.

The most important benefit of having a *sui generis* GI system however is that it creates a very specific right over the GIs in the register, to the appropriate producing communities. This right enables these communities to leverage their products and tradition for economic gain locally and internationally, which leads inevitably to improved rural development and job creation.

Bursting at the seams with over 250 different indigenous traditions – traditions often manifested in art, culture, agriculture, handcrafts and fashion and rooted in a fixed geological context that aid the cultivation of unique agricultural produce – Nigeria is a hotbed of products with potential for large international markets. Products like Ose Nsukka, Ofada Rice and Adire have already found reasonable international appeal, and one can only wonder how much of the international market these, among others, may have been able to attract if they had sufficient backing as GIs.

[14] Latin for “Of its own kind.”

[15] See the provisions of European COUNCIL REGULATION (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, Articles 4 and 5

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The good news is that recently, the European Union Intellectual Property Office, the AfriPI Project, The Africa International Trade and Commerce Research (AITCR) and the IP First Group organised the first National Capacity Building Workshop on Geographical Indications (GI) for public sectors and policy makers in Nigeria, April 22nd, 2021. The participants at the workshop discussed the prospects and benefits of developing an enabling legal and institutional environment for the protection of GIs in Nigeria. Minister of State from the Federal Ministry of Industry Trade and Investment, Haija Mariam Yalwaji Katagum, gave the welcome address whilst the keynote speech was delivered by Honourable Alhaji Muhammad Sabo Nanono, Minister of Agriculture and Rural Development and John Clarke, Director, Directorate General for Agriculture and Rural Development (European Commission).

This has further birthed the Technical Working Committee for the establishment of GI law in Nigeria.

There is definitely a sliver lining in view for the establishment of sui generis law in Nigeria.

PROVEN ECONOMIC BENEFITS OF GIS

The essential economic benefits of GIS lie in its **attribute of quality differentiation**. By attributing a specific quality to a specific type of product from a specified geographic location; the producers of the product gain an advantage of product differentiation and brand recognition not unlike the benefits conferred by Trademarks on their proprietors.

GIS also have a **positive effect on prices**. Since purchasers are able to recognize a specific qualitative advantage from buying the product, producers can charge a premium for them which results in increased wealth creation. [16]

The potential contribution of GIS to a nation's income cannot be overstated. In 2017, the total sales value of GIS in the European Union was estimated at 74.8 billion Euros. [17] Of this figure, intra-EU trade accounted for 14.47 billion Euros, while exports to non-EU countries were worth 16.95 billion Euros. 44% of exports to non-EU States came mainly from France (Champagne and Cognac), 20% from Italy (Grana Padano, Parmigiano Reggiano and Prosecco) and 19% from the UK (Scotch whisky). [18]



Photo Credit: Taken at the First National Capacity Building Workshop on the Establishment of GI laws in Nigeria. April 22nd, 2021.

[16] CE Vandecastelaere et al. "Economic Importance of Geographical Indications: Worldwide Evidences from 9 Case Studies" July 2018. Available at <https://www.researchgate.net/publication/334315797_Economic_Impacts_of_Geographical_Indications_Worldwide_Evidences_from_9_Case_Studies> Last accessed 1/11/2021

[17] Publications Office of the European Union. "Study on Economic Value of EU quality schemes, geographical indications (GIS) and traditional specialities guaranteed (TSGs)." 2021 <<https://op.europa.eu/en/publication-detail/-/publication/a7281794-7ebe-11ea-aea8-01aa75ed71a1>> Last accessed 1/11/21

[18] ibid

CONCLUSION

On November 3, 2021, Ghana deposited its instrument of accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications 2015. As a consequence, the Act will enter into force with respect to Ghana, on February 3, 2022. This accession will allow Ghana to protect its GIs without necessarily enacting a sui generis law to that effect. Nigeria has not even ratified this treaty.

Nigeria offers little to no protection for GIs. Despite being a signatory to the TRIPS Agreement, it has not been domesticated into Nigerian law and therefore carries no statutory authority in Nigeria. The same goes for the Paris Convention. [19]

The failure of Nigeria to recognize its own local products as GIs which can be promoted internationally has left a powerful tool for economic and rural development in limbo. Local products with potential for GI designation are routinely mass produced and exported outside their areas of origin, with no benefit to the local indigenous communities. The result is the proliferation of fakes, and poor uniformity of quality.

With the already established unreliability of the Petroleum Sector as the main driver of the economy, Nigeria needs other sources of revenue to maintain the integrity of its economy. Agriculture – by leveraging on GIs, can be a viable source of sovereign wealth and foreign exchange. It can also solve the problem of mass exodus from rural areas through wealth creation and increased opportunities for profitable employment.

The first step however is the creation of the appropriate legal environment for the recognition and protection of GIs locally. This legal environment would include adequate control mechanisms to supervise the creation of GI designated products, standardize quality, and promote local GIs at international forums. **The next step would be to onboard all agencies of government and the private sector stakeholders to drive public awareness of GIs and promote their adoption locally.**

Also, export rules should be tweaked to favour or incentivize the exportation of GI designated products, so as to foster the creation of an international market for the products. Membership of a sub-regional IP organization will also help promote the cause of Nigerian GIs internationally.

Geographical Indications are however never success stories overnight. It takes years of work, State investment, public sensitization and enforcement.

[19] Section 12 of the 1999 Constitution of Nigeria provides that no international treaty can have force of law in Nigeria unless same is locally enacted into law by the National Assembly

It also involves the deployment of significant funds by the government for the creation of the administrative agencies and controls, and empowerment of the local source communities to produce goods that would meet up to international standards.

It is my hope that the Nigeria Government will see the economic benefits of GI and further support organizations (the European Union Intellectual Property Office, the AfriPI Project, The Africa International Trade and Commerce Research (AITCR) Intellectual Property Law Association (IPLAN), Nigeria Bar Association, SBL IP Committee and The IP First Group) already working on sui generis law for Nigeria and finally establish a GI law for Nigeria.



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