

7. PROTECTION OF GEOGRAPHICAL INDICATIONS IN NIGERIA: A LEGAL AND POLICY DEFICIT

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ABSTRACT

The protection of geographical indications (GIs) has become popular around the world. In addition, GIs are a viable intellectual property right that can potentially foster economic development, especially in developing countries. The potential of GI protection to add value and promote rural socio-economic development, and to create value for local communities through products that are deeply rooted in tradition, culture and geography cannot be underestimated, especially when stimulating economic growth through popularizing signs used on products that have specific *geographical* origins and possess certain qualities or a particular reputation. This article explores the state of economic development in Nigeria, and the necessity of GI protection to enhance economic development. It also examines the concept of GIs, and existing policies and statutory frameworks on GI protection in Nigeria. The article finds that, besides section 43 of the Trademarks Act of Nigeria which provides for certification marks and other relative laws, no meaningful effort has been made by the Nigerian government to enact either a *sui generis* legislation or trademark-type protection for GIs. Furthermore, the article examines existing policy gaps responsible for poor GI protection and proffers recommendations for improvement and necessary attitudinal change on part of the Nigerian government.

Keywords: *GI protection, geographical indications, Nigeria, protection, economic development.*

1. INTRODUCTION

The emergence of geographical indications (GIs) as IP rights, and their introduction into the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights

(TRIPS), has resulted in unparalleled recognition of the form of intellectual property (IP) right internationally. However, their protection has been embroiled in many controversies and the means and scope of protection strongly contested, within the broader debate on whether TRIPS has the ability to bring about balanced and equitable economic benefits, and equally good protection for agricultural products such as food and beverages, fish products and handicrafts. Interestingly, in a continent like Africa that is very rich in traditional and cultural heritage, and which has abundant biodiversity coupled with genetic resources, there is likely to be a number of products which could derive much benefit from the protection of GIs. Unfortunately, except in a few African countries,¹ the development and implementation of *sui generis* legislation on GIs on the African continent has been largely unsatisfactory. This is connected with, among other factors, costs and efforts in setting up a sustainable GI system, and also the conflict between African and Western countries over the forms of GI protection which African countries should adopt. On the regional level, however, commendable steps have been taken by the African Intellectual Property Organization (OAPI) and African Regional Intellectual Property Organization (ARIPO).² These efforts have led to the protection of certain agricultural products like Penja pepper and Oku honey from Cameroon, and Ziamacenta coffee from Guinea, among other products.

Nigeria occupies a strategic location on the African continent, and also relative to the world. It has, among other unique characteristics, the largest black population in the world, and stands out as one of Africa's foremost economic giants.³ With the growing importance of protection of GIs at an international level, Nigeria has yet to establish *sui generis* legislation on GIs, nor introduce such legislation into Nigerian legal jurisprudence and economic policy objectives. The only legislation which, at present, could potentially protect GIs is the Trademarks Act.⁴ This Act acknowledges a mark adapted in relation to any goods to distinguish, in the course of trade, goods

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¹ Notably, countries like Morocco, Kenya and South Africa.

² The Bangui Agreement of 1977 establishing the African Intellectual Property Organization (OAPI) applies directly in each Member State. Under the Bangui Agreement (Annex IV), GIs are protected through a *sui generis* system. The agreement has

entrenched a uniform system of protection for intellectual property that has now proven suitable for GIs. Similarly, during the 13th Session of the Council of Ministers of ARIPO held in Accra, Ghana on December 1 and 2, 2011, the Council mandated the ARIPO Secretariat to include Geographical Indications in its overall mandate on intellectual Property. It mandated ARIPO Secretariat to work towards the adoption of appropriate regional legal framework on geographical Indications and, in addition, to assist her member states to adopt appropriate national legislations on geographical Indications.

³ Other economic giants include South Africa, Egypt, Kenya, Ethiopia, Angola, Morocco, Tunisia, Ivory Coast and others.

⁴ Cap T 13 Laws of the Federation of Nigeria, 2004. S 43 of the Act provides for registration of certification marks. There is no provision for collective marks under the Act.

certified by any person in respect of origin, material, mode of manufacture, quality, or accuracy. Other characteristics from goods not so certified can be registrable only as a certified trademark in respect of those goods in the name, as proprietor thereof, of that person. Although the use of certification marks has been successful in the protection of GIs in other jurisdictions like the United States, it does have limitations when compared to broader and redefined *sui generis* legislation on GIs. This situation has resulted in inadequate legislative protection for GIs in Nigeria, leaving room for further reform and enforcement. This research identifies the current lacunae existing in the protection of GIs in Nigeria. It also advocates for the protection of agricultural products and handicrafts in Nigeria through unique *sui generis* GI legislation, as opposed to the current trademark law. It also seeks to explore Nigeria's situation on GI protection through the lens of academic criticism and simultaneously adjust discussions to the possibilities of reform.

2. BRIEF HISTORY AND CONCEPT OF GEOGRAPHICAL INDICATIONS

The history of GIs may be traced to the period when association between the unique qualities of goods and the geographical place of their production became common practice. Although such a practice was common in many parts of the world, it is popularly said that GIs began in France, where French laws were created specifically to protect the regional makers of wines and spirits in the French region of Bordeaux. France has protected its wine regions by means of the law on appellations of origin since 1919.⁵

Another explanation as to GIs' origins comes from the British pre-industrial era, when competition to earn revenues from international trade was at its developing stage, and it became noticeable that the products of particular regions were more popular than comparable

products from other regions, due in large part to their superior quality. This superior quality resulted from natural geographic advantages, such as climate and geology. The international reputation of certain goods secured for these products access to markets well beyond their place of production.⁶ To take advantage of the commercial attractiveness of these reputations, merchants began to brand their goods with marks which designated the place of origin of these products. Soon enough, in order to protect the commercial reputation of these goods, local legislators passed laws to prevent the adulteration of local produce by the addition of inferior goods or ingredients. These laws punished the adulteration of goods and established systems of marking approved local goods with marks certifying their quality. An example is wool marks for cloth, and hallmarks for goods made from precious metals. Associations also began to spring up in aspects where the reputation of goods was attributable to skills and technology. They eventually developed service marks which were placed upon goods produced by their members.

Since then, GIs have become very popular, especially for their enormous contributions to the economic development of nations. Generally, the concept comes from the concept of 'country of origin' or a regional or sub-regional geographic origin, as over time, some locations and regions of countries become synonymous with producing high-quality products.⁷ Also regarded as agricultural law, the law of GIs has recently become a popular aspect of IP for trademark professionals because regional manufacturers and growers are becoming more sophisticated in protecting their hegemony on identifying the origin of their goods.⁸ There could be confusion arising from proper understanding of the nature and application of both GIs and trademarks. They can be better understood in analyzing literature, court decisions and case law.⁹

⁵ M Blakeney, *The Protection Of Geographical Indications: Law and Practice* (Edward Elgar Publishing Limited 2014) 3, 6. Prominent among these protections were the *privilege de la descente* and the *privilege de la barrique*. The former excluded non-Bordeaux wines from the Bordeaux wine market until 11th November of each year. The *privilege de la barrique* on the other hand reinforced the commercial advantage of Bordeaux wines as the only wines entitled to a barrel made of superior wood and of specified dimensions, which gave them an advantage for transportation in the merchant vessels of the time.

⁶ *ibid.*

⁷ 'Conceptual Analysis of Geographical Indications and their Importance' <http://shodhganga.inflibnet.ac.in/bitstream/10603/14514/10/09_chapter%202.pdf> accessed 20 July 2017.

⁸ B Cookson and N Nathanson, 'Geographical Indications, Made in France and Exported Worldwide' (*International Trademark Association*, 15 August 2000)

<<http://www.inta.org/INTABulletin/Pages/GeographicalIndications,MadeinFranceandExportedWorldwide.aspx>> accessed 20 July 2017.

⁹ A trademark is defined by WIPO as a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Similarly, a GI is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. Trademarks are protected by intellectual property rights. Trademarks and GIs are both intellectual property rights. They are trade distinctive signs, but there are several differences between them, especially concerning the legal regime and juridical nature. Articles 22 and 24 of the TRIPS Agreement provide distinct protections for GIs and trademarks respectively. However, with GIs, GIs and appellations of origin are deemed integral parts of indication of source which is type of protection that requires that the product originate in a certain geographical

3. PRESENT STATE OF THE AGRICULTURE, HANDICRAFTS INDUSTRY AND ECONOMIC DEVELOPMENT IN NIGERIA

A. NIGERIAN AGRICULTURAL PRODUCE

Nigeria is roughly twice the size of California and three times the size of the United Kingdom.¹⁰ This makes it one of the largest countries in the West African region with a total geographical area of 923,768 square kilometers and an estimated population of over 192 million people.¹¹ The country is bordered to the south by the Bights of Benin and Biafra, which are on the Gulf of Guinea in the Atlantic Ocean. On the west, Nigeria is bordered by Benin, on the north by Niger, and on the east by Cameroon. In its extreme northeastern corner, Lake Chad separates Nigeria from the country of Chad. Nigeria stretches roughly 700 miles from west to east and 650 miles from south to north.¹²

Owing to the strategic location of Nigeria on the African continent, it has a highly diversified agro-ecological condition which enables the production of a wide range of agricultural products. Hence, agriculture, besides crude oil production, makes up one of the most important sectors of the economy.¹³ The sector is particularly important in terms of its employment generation and its contribution to the country's Gross Domestic Product (GDP) and export revenue earnings. Despite Nigeria's rich agricultural resource endowment, however, the agricultural sector has been growing only at a very slow rate. Less than 50 percent of the country's cultivable agricultural land is presently being utilized.¹⁴ Other major problems are price volatilities and production variability, which is widespread not only in Nigeria but in many parts of the African continent. These have caused volatile and spiking food prices, creating uncertainty and risks for producers, traders and processors, resulting in increased food insecurity for consumers.¹⁵

area. Appellations of origin are usually geographical indications, but some GIs are not appellations of origin. Trademarks and GIs are therefore not in conflict and can instead be viewed as harmonious tools.

¹⁰ T Falola and M Heaton, *A History of Nigeria*, (Cambridge University Press 2008) 2.

¹¹ Nigeria's Population (*Worldometers*, 3 June 2014) <<http://www.worldometers.info/world-population/nigeria-population/>> accessed 10 July 2017.

¹² Falola and Heaton (n 11).

¹³ Agricultural production in Nigeria is not well mechanized. Crude methods are largely employed in food production and at a subsistence level.

¹⁴ Olajide, O.T., Akinlabi B. H and Tijani, A.A, 'Agriculture Resource and Economic Growth In Nigeria,' (2012)*European Scientific Journal* 8(22)105

¹⁵ M Demeke, M Kiermeier, M Sow, and L Antonaci, 'Agriculture and Food Insecurity Risk Management in Africa: Concepts,

A large percentage of the Nigerian population thrives on non-mechanized farming. This type of farming is also not grown on a large scale for sale on the market. A study was conducted to identify types of agricultural commodities in Nigeria by renowned Nigerian research institutions.¹⁶ The study identified 32 commodities which are perceived to have a comparative advantage in the domestic, regional, or world market. The commodities are classified into five categories, namely staple crops (9 commodities), industrial crops (12 commodities), livestock (5 commodities), fishery (3 commodities) and forestry (five commodities).¹⁷

Furthermore, major regional differences were recorded in the returns to investments on agricultural produce. For root and tubers, cassava gives highest returns in North-Central Nigeria, followed by the South-South, South-East, and South-West regions, in decreasing order of returns. Yam produce returns are high in the North-Central region, followed by the South-South region. For cereals, rice produce is discovered to be exclusively in the North-Central region. Maize produce receives better returns in the Northwest, North-Central, and South-West. Millet is profitable only in the North-West and North-East regions. Sorghum and benniseed have better returns in the Northern region. Grain legumes groundnuts, soybeans and cowpeas give high returns in the Northern region. The patterns for cultivation of vegetables reveal that they grow well throughout all mentioned regions in the country. Tree crops such as oil palm have better yield in the South-South and South-Eastern regions. Cocoa stands the high chance of good yield in the Southwestern region, while rubber yields more in the South-South region. In contrast, cashew nut and ginger are commodities traditional to the North-Central and North-West regions. Livestock production like cattle, mutton, and sheep are better farmed in the northern region, while pig and fish farming are more prominent in the South-South region.¹⁸

Lessons Learned and Review Guidelines' (*Food and Agriculture Organization of the United Nations*, 2016) <<http://www.fao.org/3/a-i5936e.pdf>> accessed 20 July 2017.

¹⁶ Institutions involved in the study are International Institute of Tropical Agriculture (IITA), University of Ibadan (UI), University of Uyo (UNUYO), Ahmadu Bello University, Zaria (ABU), University of Maiduguri, UNIMAID, Federal University of Agriculture, Makurdi and Nigerian Institute for Social and Economic Research (NISER).

¹⁷ V M Manyong, A Ikpi, J K Olayemi, S A Yusuf, R Omonona, and F S Idachaba, 'Agriculture in Nigeria: Identifying Opportunities for Increased Commercialization and Investment' (*USAID*, November 2003) <http://pdf.usaid.gov/pdf_docs/Pnadb847.pdf> accessed 20 July 2017.

¹⁸ Ibid.

From the above analysis of agricultural produce in different geographical regions in Nigeria, it is obvious that Nigeria has very rich agricultural potentials capable of boosting economic development, especially when given the proper legal protection.

B. NIGERIAN HANDICRAFTS INDUSTRY

Nigeria, like other African countries, is a country that is renowned for its crafts and the skills of its craftsmen for hundreds of years.¹⁹ Among hand-made possessions around the world, Nigerian and African handicrafts are considered very unique and innovative. There is no comprehensive database of handicraft products currently available in Nigeria, but it can be said that the industry is gaining prominence and great expansion with time. Designs that are uniquely Nigerian usually reflect Nigerian culture and way of life. Such crafts portray the culture of traditional societies in Nigeria and offer a lot of appeal to foreigners, especially those from richer countries who desire to know more about societies through arts and handicrafts. Therefore, with the available varieties of handicrafts in Nigeria and the fact that many countries are interested in Nigerian handicrafts, handicraft exporters stand a great chance of earning substantial income through exportation of arts and handicrafts.

There is also no universally agreed definition of handicrafts. Generally, the term 'handicraft' incorporates a broad range of artefacts, usually produced in the informal sector.²⁰ It "implies handwork and usually suggests dexterity in manipulation of instruments or materials."²¹ In comparison with the term 'craft', "it tends to imply more definite independence from machinery and it more often implies to an activity carried on for other than purely economic reasons."²² Handicrafts are also "sometimes referred to as artisanal products, craft products, traditional creative crafts or works of artistic or traditional craftsmanship."²³ Internationally, there is no general definition of handicrafts. The most common definition is the generic one adopted by UNESCO, where

it defines handicrafts as artisanal products 'produced by artisans, either completely by hand, or with the help of hand tools or even mechanical means, as long as the direct manual contribution of the artisan remains the most substantial component of the finished product. These are produced without restriction in terms of quantity and using raw materials from sustainable resources. The special nature of artisanal products derives from their distinctive features, which can be utilitarian, aesthetic, artistic, creative, culturally attached, decorative, functional, traditional, religiously and socially symbolic and significant.'²⁴

Nigerian handicrafts fall within this definition. The industry has great potential, and is capable of significantly contributing to its GDP. The increasing demand for Nigerian handicrafts in foreign markets has made foreign trade in handicrafts very lucrative. Many traditional handicrafts can be seen in other countries around the world. Other types of African handicrafts, like leather and skin products, are today enjoying increasing demand in parts of Europe and in Asia. Nigerian hand-made men's leather shoes are popular in countries like France, while in Thailand, Belgium, Sweden, Germany and Pakistan, trade in wood carvings is also now very lucrative.

C. ECONOMIC DEVELOPMENT IN NIGERIA

Economic development typically involves improvements in a variety of indicators such as literacy rates, life expectancy, and poverty rates.²⁵ In Nigeria, the country's economic development may be traced back to the early and mid-20th century. Although Nigerian economic development flourished under British colonial rule in the pre-1960 era, it could only be sustained until post-independence, with the institution of military dictatorships in the country.

In the early 1960s after obtaining independence from British colonial rule, the Nigerian government had a very ambitious economic plan that was forged from a strong

¹⁹ B Jules-Rosette, *The Messages of Tourist Art: An African Semiotic System in Comparative Perspective* (Springer Science & Business Media 2013) 30, 70.

²⁰ WIPO, 'Informal Economy' <http://www.ilo.org/ilostatfiles/Documents/description_IFL_EN.pdf> accessed 13 July 2018. The ILO International Labour Organization (ILO) in its Resolutions Concerning Statistics of Employment in the Informal Sector Adopted by the 15th International Conference of Labour Statisticians, January 1993, paragraph 5 describes the informal sector as a part of the non formal school system characterized by certain features like reliance of local available resources and skills and other economic activity that represent an important part of the economy, and certainly of the labor market in many countries, and that plays a major role in employment creation, production and income generation.

²¹ Merriam-Webster's Dictionary of Synonyms (Merriam-Webster, 1984) 829.

²² *ibid.*

²³ 'Intellectual Property and Traditional Handicrafts,' <http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_5.pdf> accessed 13 July 2018.

²⁴ 'International Symposium on "Crafts and the International Market: Trade and Customs Codification": Final Report' (UNESCO, 6 October 1997) <<http://unesdoc.unesco.org/images/0011/001114/111488eodf.pdf>> accessed 21 July 2017, 6.

²⁵ M Kelikume, 'Economic Development and Growth in Nigeria,' *Daily Trust* (12 December 2015) <<https://www.dailytrust.com.ng/news/saturday-comments/economic-development-and-growth-in-nigeria/123963.html>> accessed 21 July 2017.

administrative foundation. In the industrial space, foreign companies then invested in new factories and enterprises in commercially developed areas like Lagos, Kano and Port Harcourt. British holdings in Nigerian trade were also in decline, with the UK holding just over half the stock of foreign investment in 1967. Additionally, foreign capital still dominated large-scale manufacture.²⁶

In 1963 it was estimated that the structure of equity in large-scale manufacture was 10 percent private Nigerian, 68 percent private foreign, 3 percent federal government, and 19 percent regional governments.²⁷ During this period, agriculture was the mainstay of the Nigerian economy. Additionally, about 70 percent of Nigeria's labour force was employed in the agricultural sector.²⁸ This trend was sustained until military rule was entrenched in Nigerian politics in the early 60s to 1999. Consequently, the agricultural, industrial and other sectors were neglected by successive military regimes and the country thrived on a mono-economy with revenues derived solely from crude oil exports.

Crude oil was first discovered in commercial quantity in Nigeria in 1956, while actual production started in 1958. It became the dominant resource and source of Nigerian revenue in the mid-1970s. On-shore oil exploration accounts for about 65 percent of total production and it is found mainly in the swampy areas of the Niger Delta, while the remaining 35 percent represents offshore production and involves drilling for oil in the deep waters of the continental shelf.²⁹ Thus, since that period, the level of dependence on crude oil exports has risen exponentially.

Currently, the situation is no different. Agriculture presents a vast opportunity for wealth, especially given Nigeria's vast swathes of arable land upon which most known agricultural crops can be grown; it was thus an unwise decision on the part of the Nigerian leadership to, over the years, focus solely on crude oil exports at the expense of the technological, agricultural, and other sectors. Today, owing to lack of economic diversification, serious macroeconomic challenges (among others) continue to plague the Nigerian economy, which is in a painful recession for the first time in over fifty years. GDP growth for 2016 is estimated at -1.5 percent, with a slight recovery expected in 2017.³⁰ This trend has been largely attributed to corruption, a continued decline in oil prices, foreign exchange shortages, disruptions in fuel supply and sharp reduction in oil production, power shortages,

and insecurity in some parts of the country, as well as a low capital budget execution rate. The 2017 outlook is for a slow economic recovery. Growth is projected at 2.2 percent as economic policy reforms begin to take hold and a coherent set of policies to address the macroeconomic challenges and structural imbalances is implemented.³¹

In this regard, the federal government of Nigeria has developed a framework in the Nigeria Economic Recovery and Growth Plan, which spans from 2017 to 2020.³² The plan focuses on five key areas, namely: improving macroeconomic stability, economic growth and diversification, improving competitiveness, fostering social inclusion, and governance and security. Whether the goals of this national plan are achievable remains to be seen. However, there is great optimism, and even recorded successes like the rise in rice production which has significantly curbed Nigeria's reliance on rice imports. However, even with priority recently given to the agricultural sector by the Nigerian government, there seems to be no clear direction towards taking advantage of the benefits of GI protection as clear policies or laws on GIs have yet to be put in place.

4. EXISTING LEGAL FRAMEWORKS SIMILAR TO GI PROTECTION IN NIGERIA

Currently, Nigeria does not have *sui generis* legislation on GIs. Similarly, there is no existing articulated government policy in place for GIs. However, certain legislation analogous to GI protection, or which offers an alternative to GI protection does exist. Some of these alternatives are at different stages of enactment, yet to become law. Brief discussions shall be made below on these.

A. EXISTING LAWS

Laws under this category are extant laws with binding force in Nigeria. They are all included in the laws of the Federation of Nigeria. Besides the Trademark Act, these laws are seemingly dormant in terms of enforcement, due to existing weak, corrupt government institutions and also a poor will for enforcement.

(i) THE TRADEMARKS ACT

The major legislation in Nigeria on trademarks is the Trademarks Act.³³ The Act is of British origin, dating back to the early 19th century British colonial period in Nigeria. It has 69 Sections and has not undergone any significant reforms since its commencement.³⁴ The Act defines

²⁶ R Bourne, *Nigeria: A New History of A Turbulent Century*, (Zed Books 2015) 106.

²⁷ *ibid.*

²⁸ R O Ekundare, *An Economic History of Nigeria 1860-1960* (Richard Clay 1973) 15

²⁹ *ibid.*, 16.

³⁰ Nigeria Economic Outlook (*Focus Economics*) <www.focus-economics.com/countries/nigeria> accessed 21 July 2017.

³¹ *ibid.*

³² *ibid.*

³³ Trademarks Act, Cap T 13, Laws of the Federation of Nigeria 2004.

³⁴ M Mordi, 'Towards Trademark Law Reform in Nigeria: A Practitioner's Note' (2011) 1 NJIP 193, 197, 217 <[https://kipdf.com/towards-trademark-law-reform-in-nigeria-a-practitioner-s-note-mark-](https://kipdf.com/towards-trademark-law-reform-in-nigeria-a-practitioner-s-note-mark)

'Trademark' as, 'except in relation to a certification trade mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under section 43 of this Act.'³⁵ Section 43 of the Act makes provision for registration of certification marks.³⁶ Interestingly, the Act recognizes only certification marks and has no provisions on collective marks. Certification marks are defined as distinctive signs used to indicate compliance with standards and characteristics pre-established by the owner of the mark in respect of origin, materials, mode of manufacture, quality, accuracy or other characteristics but are not confined to any membership.³⁷ They are registered in the trademarks register and the owner is usually an independent enterprise, institution or governmental entity that is competent to certify the products concerned.³⁸ This definition is broader than the concept of GIs.³⁹

There are existing controversies and confusion as to whether a country should rely on either certification marks or GI protection or both.⁴⁰ The choice of regime for standards organizations becomes a question of practical realities as well as organizational goals. The certification mark regime may be preferred if the owner organization places great importance on being perceived as an

independent, unbiased standards-setter. The trademark regime may be preferred if an organization desires ease of administration and greater flexibility and control over use of its mark and will use the mark itself in connection with a product or service it offers to third parties. To identify the best regime, there needs to be an assessment of activities, materials, services and the market, and also consideration of how a beneficiary and his constituents will use the mark.

(ii) MERCHANDISE MARKS ACT

The Merchandise Marks Act was introduced to Nigeria from the British in 1955.⁴¹ It has 18 sections relating to fraudulent marks on merchandise or goods, trade descriptions and trademarks. The Act defines a 'false trade description' as 'a trade description which is false or misleading in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false or misleading in a material respect; and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description...'.⁴² It further defines 'goods' as 'anything which is the subject of trade, manufacture or merchandise. It also defines other terms like name person, manufacturer, trade description and trademark.'⁴³ Section 3 of the Act describes offences that may be committed as to trademarks and trade descriptions. The Act, among other provisions, further

mordi_5ad5c4fb7f8b9a22358b45e9.html > accessed 23 July 2017.

³⁵ Trademarks Act (n 29), S 67(1).

³⁶ Section 43(1) defines a certification mark as 'a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, method of manufacture, quality, accuracy or other characteristic, from goods not so certified shall be registrable as a certification trade mark in Part A or the register in respect of those goods in the name, as proprietor thereof, of that person: Provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified...'

³⁷ WIPO, 'The Relevance of Collective Marks, Certification Marks and Geographical Indications :WIPO Training of Trainers Program for SMEs, Kuala Lumpur,' 21 February 2011<http://www.wipo.int/edocs/mdocs/sme/en/.../wipo_smes_kul_11_ref_theme_07_01.ppt> accessed 12 July 2018.

³⁸ Certification Marks (WIPO, 10 May 2003) <http://www.wipo.int/sme/en/ip_business/collective_marks/certification_marks.htm> accessed 24 July 2017.

³⁹ Mrinalini Kochupillai, 'Geographical Indications and Certification Trademarks – Same Difference?' (*Spicy IP*, 16 November 2007) <<https://spicyip.com/2007/11/geographical-indications-and.html>> accessed 13 July 2018. Thus, while a certification application can include, for example, region or location or origin, materials of construction, method or mode of

manufacture or provision, quality assurance, accuracy of the goods or services or any definable characteristic of the goods or services. It can also certify manufacture or provision of services by members of a union or other organization to certain standards. A GI, on the other hand, is only an indication (or certification) of the geographic origin of goods and quality or characteristics of the goods that are directly attributable to the geographic origin.

⁴⁰ Recent Developments at the International Level In the Field of Trademarks (WIPO, 29 September 2003)

<http://www.wipo.int/edocs/mdocs/sme/en/wipo_wasme_ipr_ge_03/wipo_wasme_ipr_ge_03_2.pdf> accessed 24 July 2017.

See also: Giulio Enrico Sironi, 'Protection of Trademarks and Geographic Indications' (27 October 2010)

<www.ipkey.org/en/ip-law-document/download/1864/2159/23> accessed 2 August 2017 ;

Larysa Kushner, 'Adding Value with Collective Marks, Certification Marks and Geographical Indications' (WIPO, 22 November 2010)

<www.wipo.int/edocs/mdocs/sme/en/wipo_smes_waw_10/wipo_smes_waw_10_ref_theme_05_01.pdf> accessed 2 August 2017.

⁴¹ Commencement part of the Merchandise Marks Act, Cap M 10, Laws of the Federation of Nigeria, 2004

⁴² Merchandise Marks Act (n 36), S 2.

⁴³ *ibid*.

provides for instances of forging trade marks,⁴⁴ rules as to evidence,⁴⁵ issue of and proceedings on search warrant.⁴⁶ The purpose of this legislation is to sanction individuals or trade bodies from employing deceptive practices to take advantage of commercial activities.

(iii) TRADE (GENERALIZED SYSTEM OF PREFERENCES) ACT

The purpose of this Act is 'to appoint the Nigerian Customs Service as the certifying authority in Nigeria in respect of goods exported from Nigeria and intended to benefit under the Generalized System of Preferences of the United Nations Conferences on Trade and Development.'⁴⁷ The Act has 7 sections, and covers matters such as the appointment of the certifying authority,⁴⁸ verification of applications and issue of certificates,⁴⁹ the power to require supply of further information,⁵⁰ regulations made by the Minister of Trade and Investment,⁵¹ and offences.⁵²

(iv) TRADE MALPRACTICES (MISCELLANEOUS OFFENCES) ACT

The Trade Malpractices (Miscellaneous Offences) Act⁵³ was enacted with an aim to criminalize certain acts that relate to trade, especially trade-related malpractices. According to Section 1(1) of the Act:

Notwithstanding anything to the contrary in any law, as from the commencement of this Act, any person who-

- (a) labels, packages, sells, offers for sale or advertises any product in a manner that is false or misleading or is likely to create a wrong impression as to its quality, character, brand name, value, composition, merit or safety; or
- (b) for the purpose of sale, contract or other dealing, uses or has in his possession for use any weight, measure, weighing instrument or measuring instrument which is false or unjust; or
- (c) for the purpose of sale, contract or other dealing, uses or has in his possession for use, any weight, measure, weighing instrument or measuring instrument not stamped or marked as required under the Weights and Measures

Act or any other law in respect of which no certificate of verification is in force; or

- (d) sells any products by weight or measures in any warehouse, market, store or other public place and refuses to weigh or measure the product in the presence of the person to whom the product was delivered when requested to do so by that person; or
 - (e) with intent to defraud, alter any weight, measure, weighing instrument or measuring instrument stamped or marked pursuant to the Weights and Measures Act or uses in any sale, contract or other dealing, any such altered weight, measure, weighing instrument or measuring instrument; or
 - (f) sells any products by weight, measure or number and delivers or causes to be delivered to the purchaser a less weight, measure or number, as the case may be, than is purported to be sold or corresponds with the price charged; or
 - (g) in connection with the sale or the exposing or offering for sale of anything, makes any misrepresentation howsoever or does or omits to do any act, matter or thing calculated or likely to mislead the seller or purchaser or prospective seller or purchaser, as the case may be, as to its weight or measure or as to the number to be sold or offered for sale; or
 - (h) advertises or invites subscription for any product or project which does not exist, commits an offence under this Act and is liable on conviction to a fine of not less than N50,000.
- (3) Except where the context otherwise requires, any word or expression used in this section shall have the same meaning as assigned thereto under the Weights and Measures Act.

Section 2 provides for the establishment of a Special Malpractices Investigation Panel by the Federal Ministry of Commerce headed by a person from the Ministry of Commerce which shall consist of one person to represent the Ministry of Internal Affairs, the Ministry of Health, the

⁴⁴ Merchandise Marks Act (n 36), S 4.

⁴⁵ Merchandise Marks Act (n 36), S 9.

⁴⁶ Merchandise Marks Act (n 36), S 11.

⁴⁷ Commencement part of the Trade (Generalized System of Preferences) Act, Cap T 11, Laws of the Federation of Nigeria, 2004. The was enacted after the 1968 United Nations Conference on Trade and Development (UNCTAD Conference) which recommended the creation of a Generalized System of Tariff Preferences under which industrialized countries would grant autonomous trade preferences to all developing countries. Thus, in 1971, the GATT Contracting Parties unanimously

adopted the enabling clause which created the legal framework for the Generalized System of Tariff Preferences, and authorizing developed countries to establish individual Generalized Schemes of Tariff Preferences.

⁴⁸ Trade (Generalized System of Preferences) Act (n 42), S 1.

⁴⁹ Trade (Generalized System of Preferences) Act (n 42), S 2.

⁵⁰ Trade (Generalized System of Preferences) Act (n 42), S 3.

⁵¹ Trade (Generalized System of Preferences) Act (n 42), S 4.

⁵² Trade (Generalized System of Preferences) Act (n 42), S 5.

⁵³ Cap T 12 Laws of the Federation of Nigeria, 2004.

Ministry of Petroleum Resources, the Ministry of Solid Minerals Development, the Ministry of Industry, the Ministry of Science and Technology, the Ministry of Finance, the Central Bank of Nigeria and the Standards Organization of Nigeria.

Reports from the panel shall be submitted to the Attorney General of the Federation who may prosecute the offenders accordingly.⁵⁴ Also, for the purpose of prosecuting offences under the Act, the Act shall be read together with the Weights and Measures Act,⁵⁵ so that where there is a conflict between the provisions of this Act and the said Act, the provisions of this Act shall prevail.⁵⁶

B. PROPOSED LEGISLATION

(i) THE NIGERIAN INTELLECTUAL PROPERTY COMMISSION (NIPCOM) BILL

The Nigerian Intellectual Property Commission (NIPCOM) Bill was one of the proposed bills meant to be passed into law at the National Assembly or the Legislative chambers in 2012.⁵⁷ The Nigerian government approved the establishment of the Nigerian Intellectual Property Commission on 10 March, 2009. This would be made possible through the passage of the NIPCOM Bill.⁵⁸ The proposed bill is meant to enable legislative reforms in Nigerian IP development by unifying the IP system under one administration, in accordance with best practices and to enable the country to harness the benefits of IP for economic development. Although the bill has passed its second reading at the House of Representatives of the National Assembly of Nigeria, it has yet to be fully passed into law.⁵⁹ This is a major development, but much more needs to be done in terms of legitimization and implementation.

(ii) A BILL FOR AN ACT TO ENCOURAGE COMPETITION IN THE ECONOMY BY PROHIBITING RESTRICTIVE TRADE PRACTICES, CONTROLLING MONOPOLIES, CONCENTRATIONS OF ECONOMIC POWER AND PRICES AND FOR CONNECTED PURPOSES, 2011

Competition in markets promotes efficiency, encourages innovation, improves quality, boosts choice, reduces costs, and leads to lower prices of goods and services. It also ensures availability of goods and services in abundance of acceptable quality at affordable prices. It is also a driving force for building up the competitiveness of domestic industry. Businesses that do not face competition at home are less likely to be globally competitive. Competition ensures freedom of trade and prevents abuse of market power and thereby promotes economic efficiency.

Nigeria does not yet have a codified set of laws on competition in the marketplace. The absence of specific legislation could be justified by the initial status of government monopoly over certain commercial enterprises like telecommunications, electricity, etc. Hence, there was little or no need to regulate competition since key aspects of the economy were monopolized by government. However, in industries where competitive commercial activity existed, specific regulatory bodies were set up to encourage healthy competition.⁶⁰ Currently, the proposed bill currently before the National Assembly combines the regulation of competition and consumer protection. The current bill is for an Act 'to repeal the Consumer Protection Act and also to establish the Federal Competition and Consumer Protection Commission and the Competition and Consumer Protection Tribunal for the development and promotion of fair, efficient and competitive markets in the Nigerian economy'. It is still pending before the legislative chambers in Nigeria.

5. ADVANTAGES OF GI PROTECTION IN NIGERIA

Criticisms and commendations alike have trailed efforts to protect GIs in developing countries, both at national and at international levels.⁶¹ Nonetheless, in the era of globalization where so much has been done to reduce and remove barriers between borders in order to facilitate the flow of goods, capital, services and labor for the continued development of a global common market, there is no harm in taking advantage of the benefits of GI

⁵⁴ Trade Malpractices (Miscellaneous Offences) Act (n 48), S 3, 4.

⁵⁵ Weights and Measures Act, Cap W 3, Laws of Federation of Nigeria, 2004.

⁵⁶ Weights and Measures Act (n 50), S 6.

⁵⁷ O T Omahi, 'Proactive Legal Reforms through Nigerian Universities and Nigerian Bar Association Push: A Case for Intellectual Property Commission (NIPCOM) Bill' (2012) 6(2) The Journal of Jurisprudence and Contemporary Issues 7.

⁵⁸ S Ebhuomhan, 'FG Replaces NCC with NIPCOM' (*The Nigeria Business*, 10 March 2009) <<http://www.thenigeriabusiness.com/eco264.html>> accessed 25 July 2017.

⁵⁹ The second reading took place on the floor of the National Assembly on 19th January, 2017. Furthermore, constitutionally, the law will require presidential assent to be legitimate.

⁶⁰ T Osinowo, 'Competition Law In Nigeria' *This Day* (21 October 2014) <www.vitaveritasllp.com/competition-law-in-nigeria/> accessed 25 July 2017.

⁶¹ I Calboli and N W Loon, *Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific* (Cambridge University Press 2017) 9, 10; Marsha A Echols, *Geographical Indications for Food Products: International Legal and Regulatory Perspective* (Kluwer Law International 2008) 307, 308. Cf I Calboli and D Gervais, 'Socio-Economic Aspects of Geographical Indications,' (*WIPO*, 2016) <http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_bud_15/wipo_geo_bud_15_9.pdf> accessed 14 August 2017.

protection to facilitate national growth and economic development. Being an underdeveloped nation, Nigeria can reap the below-mentioned advantages of GI protection. GIs have become an important intellectual asset for agricultural development. It is also a powerful marketing tool for creating wealth for agricultural producers. Additionally, it offers consumers the assurance of product authenticity and quality, and guarantees sustainability and consistency of both the product and incomes. It also serves as a value-added tool that grants producers bargaining power in the market place and further helps carve a market niche for agricultural products.⁶²

Other advantages of GIs are that they have notable developmental characteristics as they uniquely emphasize local production and local characteristics. If properly harnessed, this leads to higher quality, unique products for consumers.⁶³ Therefore, GIs increase revenues for local producers and satisfy the needs of more conscious and demanding customers. As already stated, a GI signals a link not only between a product and its specific place of origin, but also with its unique production methods and distinguishing qualities. GIs are often a key to higher and more stable export earnings, and can make a positive contribution to rural development, the preservation of diversity, product quality and local jobs.

GIs could also enhance regional cooperation, especially with other African countries. Such cooperation will boost agricultural production and creativity in the handicrafts industry, and ultimately economic development. The protection of GIs in Africa is also said to likely preserve the agri-food system and its incidental social networks, provide economic sustainability, and produce benefits such as enhanced incomes for producers, creation of employment and in turn improvement in the quality of life thereby providing the impetus for a more dynamic economy and overall development.⁶⁴

6. CHALLENGES OF GI PROTECTION, LEGAL GAPS AND THE WAY FORWARD

Currently, there is no universal mechanism of protecting GIs which all countries adopt in their national legislations. However, the framework for the protection of GIs is provided by Articles 22 to 24 of the TRIPS agreement. It is quite challenging for all countries to establish a predictable multilateral system of rules to protect IP rights, and this challenge undermines the objectives of TRIPS. Developing countries find it cumbersome to establish proper GI protection because of lack of expertise and resources. Consequently, the benefits of GI protection, from many perspectives, seem to favor developed countries more than developing countries. But this does not in any way suggest that developing countries like Nigeria cannot enjoy the benefits of GI protection. On the whole, there is a need to critically carry out an assessment, including the cost and benefit implications associated with establishing a viable GI protection system.

There are many challenges in setting up a viable GI protection system or its equivalent. Not all of such challenges can be discussed in this paper. However, major challenges shall be identified and discussed. One major challenge identified in setting up a proper GI protection system in Nigeria is corruption. This challenge is not unique to Nigeria but to many other countries as well. The systematic level of corruption in Nigeria has kept it in the doldrums of poor infrastructural and institutional decay.⁶⁵ Hence, concerted efforts, conscious commitment and a strong political will are required to minimise corruption in Nigeria. This will strengthen existing institutions and make possible an efficient GI system.

Insecurity is another major challenge in Nigeria. In recent times, Nigeria has witnessed an unprecedented wave of crisis and insecurity, leading to loss of lives and destruction of properties. Food security is directly threatened as a result of this development. Keeping

⁶² Bernard Gichovi, *GIs: The Kenyan Experience with a Special Focus on Kenya Coffee* (European Commission, 11 November 2011)

<https://ec.europa.eu/agriculture/sites/agriculture/files/events/2011/gi-africa-2011/gichovi_en.pdf> accessed 14 August 2017.
<www.ec.europa.eu/agriculture/sites/agriculture/files/events/2011/gi-africa-2011/gichovi_en.pdf> accessed 14 August, 2017.

⁶³ B D Lange, 'Geographical Indications In Africa? A Possibility for Small-Scale Farmers and Producers In Least-Developed African Countries to Gain Access to Modern Markets' (*Wageningen University and Research Centre*, 9 November 2016) <<http://edepot.wur.nl/171656>> accessed 14 August 2017, 24.

⁶⁴ Falola and Heaton (n 11).

⁶⁵ MacDave Appiah, 'Geographical Indications: The State of Play in Africa' (*European Commission*, 10 November 2011) <<http://www.ec.europa.eu/agriculture/sites/agriculture/files/e>

vents/2011/gi-africa-2011/appiah_en.pdf> accessed 18 August 2017.

⁶⁵Impact of Corruption on Nigeria's Economy (PWC, 2016) <<https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf>> accessed 23 November 2017. Transparency International ranks Nigeria 126th out of 176 countries in its 2016 rankings. Contrarily, in 2017, the Transparency International corruption perceptions index ranks Nigeria number 148 out of 180 countries. See: 'Nigeria' (*Transparency International*, 15 January 2017) <<https://www.transparency.org/country/NGA>> accessed 23 November 2017 and Transparency International, 'Corruption Perceptions Index 2017,' <https://www.transparency.org/news/feature/corruption_perceptions_index_2017> accessed 13 July, 2018.

peace within the borders of a country has a direct nexus with GI protection. This is because objects of potential GI protection can thrive only in places where there is no insecurity. For example, acts by terrorist groups like Boko Haram and frequent bloody clashes between Fulani Pastoralists and farmers over cattle grazing⁶⁶ have significantly affected food production and the handicrafts industry, particularly in affected regions of North Eastern Nigeria. Therefore, there is a need for the Nigerian government to pay more attention to the security challenges which the country faces.

Additionally, one challenge faced in putting in place GI legislation is the type of legislation to be enacted. The question arises whether the existing Trademarks Act can be amended, particularly Section 42, to capture or incorporate complete GI protection; or whether an entirely special law on GIs should be passed into law. This will be an issue for legislators and stakeholders to decide. It obviously will involve painstaking and careful deliberations as to which approach is best for the country. However, if the extant Section 42 of the Trademarks Act is to be maintained for the same protective purpose as a *sui generis* GI law, challenges to be encountered will include: issues of prior trademark registrations where potential Nigerian GI producers may be confronted with registered trademarks which contain their GI names in neighbouring countries; difficulty in applying trademark or certification marks on agricultural products and handicrafts; and the hurdle of registration of composite GI names where a product originates from two regions, among other challenges. By and large, the scope of protection offered by the existing Trademarks Act in Nigeria to protect GI names is not as comprehensive as the EU's GI system. More so, there will be a need for the establishment of an office to cater for matters related to GIs, as the Trademarks, Patents and Designs Registry is already overburdened with trademarks, patents and design issues.⁶⁷

The political will to enact *sui generis* legislation or legislation akin to it seems absent, and it would be an exaggeration to characterize all actions of the Nigerian government as unsatisfactory in terms of legislative enactments and policy formulations. However, on GI or similar protection, there exists policy inconsistency and poor leadership at virtually all levels.

7. CONCLUSION

The benefits of GI protection in developing countries cannot be underestimated. A country like Nigeria, with all its potential and strategic position in the African continent, can benefit greatly from GI protection with careful planning and pragmatic execution. This paper points to the fact that existing legal regimes for protecting potential GIs in Nigeria are insufficient when compared to existing protection in other jurisdictions. This is owing to both inaction on the part of the Nigerian government, and unwillingness to follow the path of proper GI protection. Leanings tilt towards adopting either the *sui generis* legislation approach or an amendment of the existing Trademarks Act to embrace completely legislations that favor GI protection. However, Nigeria presently faces serious challenges which makes it difficult to properly implement and sustain a commendable GI system. Such challenges include corruption, insecurity, low technical capacity to implement such a system as well as the financial and administration costs associated with setting up a GI system.

Creating awareness among the largely illiterate Nigerian population is a key challenge that should be overcome by the Nigerian government if such an endeavour would be successful. Also, sourcing funds and good capacity building would also make such an establishment successful. There is also the important step of engaging in wide legal reforms in order to conform most laws to modern GI protections. These, and other inputs, are important if Nigeria will succeed in its desire for a system for the protection of GIs. Nigeria does stand to benefit much from GI protection because of its potential to improve the livelihoods of many of its citizens, including farmers, in many ways. However, much will depend on the will of government to act genuinely in the interest of national and economic development.

⁶⁶ C Bartolotta, 'Terrorism in Nigeria: the Rise of Boko Haram' (*World Policy*, 19 September 2011) <www.worldpolicy.org/blog/2011/09/19/terrorism-nigeria-rise-boko-haram> accessed 23 November 2017. See also Philip Ademola Olayoku, 'Trends and Patterns of Cattle Grazing and Rural Violence in Nigeria (2006 – 2014)' in Marc-Antoine Pérouse de Montclos (ed), *Violence in Nigeria: A Qualitative and Quantitative Analysis* (Leiden, African Studies Centre 2016).

⁶⁷ Trademarks, Patents and Designs Registry, Commercial Law Department' <<http://www.iponigeria.com/#/>> accessed 13 July 2018. The Commercial Law Department of the Nigerian Federal Ministry of Industry, Trade and Investment has the trademarks, patents and designs registry which administers protection of trademarks, patents and designs. Many have criticized the consolidation of all the registries as burdensome and ineffective.

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