# A CONTINENTAL STRATEGY FOR GEOGRAPHICAL INDICATIONS IN AFRICA

## SUMMARY

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RATIONALE: A USEFUL DEVELOPMENT TOOL AND A POLITICAL MOMENTUM
Demand for local products is growing as urban population is increasing in Africa. More specifically, there is an increasingly growing middle class in Africa that leads to the rise for quality agricultural products in domestic markets. Handicrafts are not leftover. Urban consumers seem to be willing to (re)discover their roots and traditions not only through their food practices but also through their use of crafts. The creation of the “Label Benin” for quality products on the Beninese local market illustrates this trend and the importance of origin.

Based on this observation, the African Union Commission (AUC), together with Regional Economic Communities (RECs) and supported by partners at international level (FAO, EU), has recognized the importance and need for a continental strategy on GIs. The rationale of such a strategy is threefold:
- Building on existing experiences and capacities developed, in particular within OAPI, and allowing this knowledge to be spread out, thanks to a permanent dialogue by national, regional and continental multi-stakeholders and on multi-sectorial platforms;
- Addressing the shortcomings of international protection of GIs by enforcing convergent rules and practices at the continental level that would encourage trade and improve the positioning of African products on regional, continental and international markets;
- Contributing with GI approaches to different agendas and programs for Africa related to the agricultural sector development, in particular to the UN sustainable development goals but also to the Comprehensive Africa Agriculture Development Programme (CAADP) and to the Malabo Declaration endorsed by the African Union Assembly.

The endorsement of a shared overarching vision at the continental level is now needed to give political strength to GI projects and policies development. The continental strategy process relies on the involvement of African key players, at continental and regional levels, among which the African Union member States and the regional organizations specialized in Intellectual Property tools including GIs, OAPI and ARIPO. Therefore the document “A continental strategy for Geographical Indications in Africa” will be endorsed by the Africa Union Member States, more precisely by the “Specialized Technical Committee” of the African Union.

In 2017, a number of technical assistance projects have been implemented in Africa to support GI development; several studies on potentials have been conducted and led to the identification of a great number of products. As a matter of fact, the challenges related to GIs that are common to all African countries in relation with rural development, legal protection and marketing, have also been highlighted. The strategy document seeks to rationalize and address them.

FORMULATION PROCESS
The continental strategy process relies on the involvement of African key players at continental and regional levels – the AU and RECs; the ministries and institutions responsible for or involved in GI issues at national and local levels; and research and development actors.
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In order to ensure transparency and a consultative process, the GI strategy has been developed through the following steps.

1. In November 2014, under the joint Africa-EU partnership, AUC organized a consultative training on GIs in Nairobi. The main output of the training was the first draft outline for a continental strategy on GIs. DREA contacted FAO headquarters in 2015 to organize technical support to draft the strategy.

2. In January 2016, the initial workshop was held at FAO, Rome, to agree on the overall objectives of the strategy and the formulation process, in the presence of the AUC representative responsible for GI activities; FAO staff responsible for the Quality and Origin Programme; European Commission representatives responsible for international relations and GIs for ACP countries; and GRET, the French NGO contracted by FAO to facilitate the formulation process.

3. Official letters were sent by AUC to OAPI and ARIPO to engage these organizations officially as key players in the strategy formulation (beginning of March).

4. A first proposal of the strategy was drafted by a working group composed of AUC, FAO and GRET representatives (February–March 2016).

5. In April 2016, e-consultations were organized. About 100 experts and stakeholders completed the draft proposal to revise or complete the background information and give their opinions on the content.

6. From 31 May to 1 June 2016, a validation workshop took place where the consolidated proposal finalized through e-consultation was presented, discussed and approved by key stakeholders and representatives. The workshop also identified the first elements to be included in the action plan.

7. From 22 to 25 November 2016, a workshop was organized in Nairobi, to present and discuss the strategy with AU member states. The first draft of the action plan was also presented for inputs from AU member states and GI experts.

8. The strategy will be presented to the AU Specialized Technical Committee on political endorsement and published in 2017.

9. The draft action plan will be shared with the e-consultation experts, and the agriculture and IP representatives of AU member countries, to be consolidated with their inputs during the second semester of 2017.

10. A workshop will then be organized for the validation of the action plan.

GEOGRAPHICAL INDICATIONS AS A TOOL FOR SUSTAINABLE RURAL DEVELOPMENT

The African continent certainly offers potential for GI development, as a result of its natural resources, climatic conditions, soils richness and know-how of the population. In the light of preliminary inventories carried out in the framework of different projects in Africa, it is assumed that the continent has immense pool of traditional products with important economic, social and environmental contributions.

Regarding markets, African consumers represent an important asset for GI product development. Demand for local products is growing as both the urban population and the population in general are increasing in Africa. More specifically, there is a growing middle class in Africa (globally the fastest growing) that taps into the increasing domestic market for quality goods and particularly agricultural products. African GI products also have a high potential for export markets, especially key commercial products that can engage in a strategy of differentiation or “decommoditization” to resist against international price fluctuations (e.g. coffee, cocoa).
An opportunity worth mentioning is the momentum for developing GI processes to benefit from current good dynamics on this theme in Africa, both in the private and public sectors. In fact, motivation of producers and institutional support are two key success factors.

The PAMPIG project, led by OAPI and funded by AFD\(^5\), which supported GI strategies for three pilots (Ziama Macenta coffee, Penja pepper and Oku white honey), succeeded in developing capacities both in the territories and at regional level.

Lessons learnt from GI experiences in the world and in Africa show that GIs can be a tool for sustainable rural development as far as certain conditions are taken into account in their implementation namely: the product typicality, the GI governance, the market linkages, the institutional framework, the investments capacity of producers and the territorial dynamism.

One of the major factors which limits the success of development projects in Africa is the weak absorptive capacity of small scale producers or of fragmented organizations characterized by conflicts among the structures and lack of trust. When they are organized enough, producers often face weak technical skills relating notably to food safety issues. While packaging represents often an unbearable investment cost, the lack of financial capacities prevents them from enforcing packaging and marketing strategies. Therefore, many products are sold in bulk which is not in favor of the GI process and its ambition to inform the consumer. Moreover, in the food sector, producers lack resources to invest in technology and enforce proper control over food products in the downstream trade segments, where quality may be negatively affected by noxious packaging and storage practices and voluntary frauds.

One specific GI challenge is the lack of awareness of all stakeholders. Beyond producers’ capacities, GI strategies are complex, as they require multidisciplinary (agronomic, technologic, economic, legal, etc.) and multi-stakeholders (private, public) approaches, at each stage of the process: identification of potentialities, qualification and definition of the rules, marketing, control and certification. Institutional capacities are not yet in place to support an appropriate management of GIs. Notably, while they guarantee the credibility of the GI tool, certification, inspection and controls systems are often lacking: when certification bodies exist, an important issue is the certification cost, either for producers in case of private certification or for public authorities in case of public system. Besides, control bodies need to be accredited but accredited certification bodies are often missing. And yet, on export markets, a third party certification by accredited bodies is necessary.

GI development in Africa is a driver to address many development issues and also increase food security, provided that food GIs on local markets are accessible to the majority of consumers. When GI products are intended for the export market, they can contribute to food security by improving farmers’ income through linkages to remunerative markets.

The development of a tailor-made strategy based on an African vision is key in order to take into account the African specific context, its strengths and weaknesses. Together with solid partnerships, this tailor-made strategy shall help to improve the development framework of GIs in all countries in Africa thanks to an integrative approach of their implementation but also thanks to the synergies created among countries and partners and technical assistance projects. Therefore, further projects can act as drivers to enforce the African tailor-made strategy on GIs in Africa. In this perspective, ad hoc policies are necessary to promote GI as a tool for sustainable development. New instruments may be designed and officially recognized to address the shortcomings of controls (participative guarantee system-PGS)\(^6\).

\(^5\) French Development Agency

\(^6\) IFOAM definition: “Participatory Guarantee Systems (PGS) are locally focused quality assurance systems. They certify producers based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange”. Among stakeholders, consumers can play an important role.
The process, for food or nonfood products, can interestingly be coordinated with the UNESCO World heritage – and number of sites has been recognized in Africa – as well as the Globally Important Agricultural Heritage Systems (G.I.A.H.S)\(^7\) of FAO, defined as remarkable land use systems and landscapes which are rich in globally significant biological diversity. Finally, important synergies can be created in Africa by combining GI with other voluntary standards, in particular fair trade and organic, which are highly demanded on international markets.

In order to contribute to sustainable rural development, the African approach to GIs should focus on equitable distribution of income among the different actors in the product supply chain. However, there is a risk of the bulk of the economic gain being appropriated by groups with superior bargaining power. It is thus vital to include mechanisms to ensure the equitable sharing of benefits from GIs.

On the other hand, the design of a tailor-made strategy for GI implementation in Africa shall not overshadow the importance of the legal tools of protection and their efficiency to protect operators against misleading practices. The protection of GIs could give African countries a natural competitive advantage as they apply mainly to agricultural and cultural products. It is however true to point out that unless African countries attach the requisite importance to the legal implications to geographical labelling in their individual countries, the anticipated gains and benefits would be reduced.

**EXISTING LEGAL AND INSTITUTIONAL FRAMEWORK**

Most African countries are members of the World Trade Organization (WTO) and as such, they are intended to enforce legal tools for the protection of geographical indications. However, pursuant to article 1 of the Agreement on the Trade related aspects of intellectual property rights (TRIPS), WTO member-States have a lot of discretion about the options of protection for origin-products provided they are compliant to TRIPS. The options of protection for origin-products usually range from unfair competition to trademark law through specific legislations so-called “sui generis” laws. In this strategy GIs refer indifferently to one or the other options of protection.

The strategy offers an analysis of the options chosen by African countries to protect GIs. It shows a clear trend to choose sui generis framework of protection. A cursory look at the laws suggests that there are gaps in the existing GI legislations of several countries in Africa. Frequent problems identified are of different nature: non-Compliance with TRIPS, the trademark tool as the only option for protection, the limited scope of protection, the limited scope of application, the absence of secondary legislation to implement GIs, or, where applicable, the absence of a legal framework for the protection of GIs.

As a reminder, the actual legal framework deriving from TRIPS is considered to be unsatisfactory for GIs at least in view of the interest of African countries. Yet not all African countries have seized the opportunity to enforce higher standards of protection\(^8\) within their territory, or to adhere to alternative routes of protection – that, incidentally are more protective of their interest – such as the Lisbon Agreement or the newly adopted Geneva Act of the Lisbon Agreement on the protection of geographical indications and appellations of origin or even Economic Partnership Agreements to protect list of names on the European market. Therefore, implementing TRIPS is just one step. African countries could make better use of existing flexibilities in relation to intellectual property protection and enforcement by better integrating the development aspects of GIs.

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\(^7\) Currently recognized in Africa: Ghout System (Oases of the Maghreb, Algeria; Oldonyonokie/Olkeri Maasai Pastoralist Heritage in Kenya; Shimbue Juu Kihamba Agroforestry Heritage Site and Engaresero Maasai Pastoralist Heritage Area in Tanzania; Gafsa Oases (Oases of the Maghreb) in Tunisia; Oases System in Atlas Mountains of Morocco (Oases of the Maghreb).

\(^8\) Which meets their particular needs.
Indeed, the choice of the legal option to protect GIs may have an economic efficiency especially looking at the peculiar challenges that African operators face. Therefore the strategy presents the advantages and disadvantages of each option of protection; it also initiates discussions on the best tool to capture the value-added of the GI in presence of fragmented production (trademark licenses); it raises the issue of substantive examination to avoid cases where indigenous community has been slower than a private company in registering a name.

From an institutional point of view, a part from South Sudan and the Sahrawi Republic, all countries in Africa have general intellectual property offices in charge of registration. Only few countries have created specific bodies in charge of geographical indications. At this point in time, about half of the member states have set up a GI Committee, thereby triggering debate about who should chair it. Procedures of registration vary from one country to another: sometimes the law demands a code of practice; sometimes the law does not require a code of practice but in practice the producers must submit specifications in the request. Sometimes, the law only requests the applicants to mention what are the characteristics linked to the origin. There might be different procedures of examination (substantial, formal). Where only formal examination applies, one might think that the name is appropriated by whoever applies first and fulfill the requirements of registration for a GI and not by those who can prove to the state the genuine link between qualities of the product and its origin to justify the reservation of the name. The same comment applies wherever the law allows that a natural person has legal standing to apply for a GI.

Furthermore, fees are expensive depending on whether you register a trademark or a GI. This state of fact does not always consider that fees may challenge the ability of producer’s organizations to protect their names and promote them on the market. On the one hand, the *sui generis* system usually implies a single registration of the name. On the other hand, it does not always result in *ex officio* protection of the name by the public authorities directly. It sometimes implies that repression of fraud would be achieved through public interventions. In order to as much as possible approach African needs, and not forgetting the issue of affordability - consideration should be given to enforcing renewal of the protection of GIs to ensure the budgetary sustainability and efficiency of the institutions.

Delay to oppose the registration of a name varies depending on the countries and might not always be accessible to producer’s organizations (published in the official journal/gazette or in newspaper). But there is no centralized point of information on registered names available for all African operators. This state of fact makes it urgent for existing means of repression of fraud to be efficient. The means for repression of fraud are usually anti-counterfeiting agencies that collaborate with other public institutions. As a matter of fact, we do not report seizure of goods bearing false or deceptive indications. Based on the level of awareness on the GI issue, one may assume that the customs officials or the authority in charge of repression of fraud inside the country are not equipped to deal with misuses of names on product. They do not benefit from the existence of a list of names protected for the regional or the continental level.

Litigations on GIs are quasi-non-existent inside the countries. Nonetheless, it is assumed that the rules of competencies of courts vary from one state to another. The treatment of misuse of a GI may be approached differently depending of the rules of competencies. This uncertainty is not (yet?) rectified by the existence of a regional or continental court like the Common court of justice and arbitration of the Organization for the harmonization of African Business Law. Therefore, there are as many interpretations of GI protection possible as the number of existing courts at the national level.

National regulatory frameworks of African countries on GIs are still evolving. A number of conditions suitable for the sound development of GIs on the African continent from the legal perspective already exist, notably the existence of political will and support policies. At the same time, African countries
face challenges that can be addressed in the framework of a continental policy implementation on GI implementation. Within Africa, cooperation mechanisms and/or dialogues between the regions for capacity building and sharing of best practices on GIs are recommended with a view to achieve a progressive harmonisation and mutual recognition of African legal frameworks of protection of GIs. The main challenge of the Continent is to ensure that the appropriate and relevant institutional frameworks are put in place through the assistance and policy direction of relevant state institutions and governments at large.

**SCOPE AND STRATEGIC OUTCOMES**

The GI African strategy concerns all products related to agriculture including livestock, fisheries, arts and crafts, medicinal plants, cuisines and textiles, forest and wood, edible insects. It covers all regions of the African continent and all members’ countries of the African Union.

In this strategy, GIs don’t refer to particular legal protection means, but encompass both *sui generis* and trademark legal approaches.

The GI African strategy provides an analysis of the African context regarding GIs, both as a sustainable rural development tool and as a legal tool, and main recommendations and the elaboration of the six following strategic outcomes:

- **Outcome 1**: an African vision on GIs as a tool contributing to sustainable rural development and food security and a GI African approach are developed and shared.

- **Outcome 2**: A legal and institutional framework is enabled at the national and regional levels for the protection of GIs

- **Outcome 3**: the development and registration of GI products as pilots and drivers for rural and sustainable development are supported, to provide learning and demonstrative effects.

- **Outcome 4**: market development for GI products is promoted through innovative approaches on local markets, through regional trade among the RECs and on export markets (EU in particular as GIs are there an established market tool).

- **Outcome 5**: research, training programs and extension are encouraged to ensure the identification, development and diffusion of the best African tailored practices and to contribute to the African approach, in a context of climate change. As a lot of research work has been undertaken by non-African institutions, co-operation between African and non-African experienced institutions should be facilitated.

- **Outcome 6**: awareness of all stakeholders, including consumers, is created, communication among stakeholders and information to a wider audience is insured.

**NEXT STEPS**

The continental strategy for Geographical Indications in Africa will be endorsed by the Africa Union Member States, more precisely by the “Specialized Technical Committee” of the African Union. It will also be presented as a deliverable of the EU-AU Conference scheduled on July 2, 2017 in FAO, Rome and then of the EU-AU Summit in November 2017 in Addis Abeba. This endorsement will give an international visibility to the AU initiative.

The outcomes of the Strategy are the basis for a more detailed action plan which is being developed in a separate and complementary document. This work on the action plan will involve all relevant stakeholders, at the institutional level (ministries of agriculture, intellectual property offices, OAPI, ARIPO) and at the expert level (national, regional and international).
The Agriculture and Food Security requests the 2nd Specialized Technical Committee on Agriculture, Rural Development, Water and Environment to Note and Recommend the followings:

1. GIs Strategy

The Commission requests the STC to take note of the development of an elaborate continental strategy for the development of GIs in Africa and the plan for an Action for its implementation

2. Going forward

(i) The Commission request the STC to endorse the strategy to provide political impetus for its implementation

(ii) The Commission requests STC to support popularization of the Strategy in respective Member States as a tool for marketing and Africa’s transformation