INTERNATIONAL JOURNAL OF
SCIENCE ARTS AND COMMERCE

ANALYSING LEGAL FRAMEWORK GOVERNING PROTECTION OF GEOGRAPHICAL INDICATIONS IN TANZANIA

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ABSTRACT

The paper aimed at analyzing the existing legal framework regulating protection of geographical indication in Tanzania. Analysis was conducted in line with the best practice and international standards regarding protection of geographical indication. Based on the aforementioned objective, the study employed doctrinal and comparative legal research. The study therefore, finds out that, the current Tanzanian legal framework for GIs protection is largely ineffective as a stand-alone system, offering only incidental and partial protection. While certain laws provide auxiliary safeguards, they fall short of delivering the collective rights, automatic recognition, and proactive enforcement that GIs require. The absence of sui generis GIs legislation leaves producers without strong collective ownership rights. Therefore, the study recommends for enactment of sui generis law to address the highlighted gaps. Such reform would not only ensure full compliance with international obligations but also unlock the economic, cultural and developmental benefits of GIs for Tanzania.

Key words: *Sui generis*; Geographical Indication; Legal Protection; Tanzania.

1.1Introduction

Tanzania like many other countries is having variety of agricultural products and food staffs with unique and distinctive quality which qualify for intellectual property rights protection. Without legal protection, unscrupulous businesses could falsely market products as originating from a specific place, misleading consumers and potentially offering inferior goods. Unauthorized use of these products by others can diminish the value of the genuine product, damage the producer's reputation and reduce their market share.[1]

In order to promote these investments, state must take initiatives to prevent consumer deception, safeguards producers' investments and promotes fair competition by ensuring that only authorized producers can use the products. International and Regional instruments provide for protection of these properties based on the aspect of geographical indications. Geographical indications (GIs) have been seen as a useful intellectual property right for developing countries because of its potential to localize economic control, promote rural socio-economic development and enable economic returns to holders of traditional knowledge.[2]

While international communities extend protection to geographical indications as part of intellectual property as provided in Paris Convention,[3] and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), 1995;[4] Tanzania had no specific legislation governing protection of Geographical indications of origin despite of being a member state to the said Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). Absence of protection to this category of Intellectual Property Rights (IPR), affect the value and protection of unique agricultural products locally produced in Tanzania due to its unique characteristics.[5]

Several studies have been conducted on aspect of geographical indication in Tanzania, however, most of them are policy-based studies focused on social science research methods rather than doctrinal research. Even those few of them that employs doctrinal legal study, their focus is either limited on institutional framework of legal framework without comparing to best practice

[1] Ndunguru A & Mwanga E**,** (2023), Institutional Framework for Protection of Geographical Indications in Tanzania: Examining the Challenges and Way Forward towards Effective Protection of Geographical Indications in the Country. *International Journal of Business, Management, and Economics,* 4(1). 73 - 87. DOI: https://doi.org/10.47747/ijbme.v4i1.1080

[2] Ndunguru, A. F et al, (2024). Reviewing the Standards for Protection of Geographical Indications in Tanzania: A case of Kyela Rice. *International Journal of Business, Management, and Economics,* 5(4): 353 – 362. DOI: https://doi.org/10.47747/ijbme.v5i4.2112 p. 354

[3] Art 1(2) and 10 of the Paris Convention, 1883

[4] TRIPS, art 22-24

[5] Sheldon, L. (2014) "The protection of geographical indications for agricultural products in Africa using trademarks and sui generis legislation, LL.M Dissertation, University of the Western Cape.

and international standards on protection of geographical indications. For instance, Ndembeka[6] conducted study on legal challenges and not legal framework, while Ndunguru[7] premised his study on institutional framework. On the other hand, Mwakaje[8] study focused on analysis of legal framework in compliance with EAC framework rather than international standards in general. East Africa Community has no a comprehensive legal framework regulating protection of GI. Therefore, this study focuses to assess as to what extent the existing legal framework protects the geographic indications in Tanzania by viewing both strength and weakness of the current legal regime in comparison with international standards.

1.2 Theoretical Framework Governing Protection of Geographical Indications

The subject of protection of geographical indications attracts considerable attention, particularly the need to recognize the value of a product's origin and the unique link between that product and its geographical environment. There are several interrelated theories underpinning the subject of legal protection of geographical indication. It is important to analyse the relevant theories that provides frameworks to ensure fairness while addressing the complexities of the need to protect geographical indication.

1.2.1 Economic Theories

The rationale for the legal protection of Geographical Indications (GIs) is often rooted in economic theory. Unlike other forms of intellectual property, such as patents or trademarks that are justified through individual innovation or brand identity, GIs are collective rights grounded in the association between products and their places of origin.

Unlike patents and copyrights, which are justified by incentivizing innovation and creativity, GIs are collective rights rooted in the nexus between product and place.[9] Different scholars argue that the legal recognition of GIs can correct market failures, protect community heritage, and foster rural development.[10] However, these arguments are often constructed in the abstract and need to

[6] Ndembeka E G**,** (2021), Legal challenges in protecting geographical indications for enhancing agricultural competitiveness in Tanzania: A case study of Kyela-rice, LL.M Dissertation, Mzumbe University, Tanzania.

[8] Mwakaje, S. J. (2021). Protection of Geographical Indications and Cross-Border Trade A Survey of Legal and Regulatory Frameworks in East Africa. *Journal of World Intellect Property*: 1–14, https://doi.org/10.1111/jwip.12204.

[9] Joseph Ochieng, 'Coffee and Geographical Indications: Opportunities for East Africa' (2006) *African Journal of Economic Policy* 13(2) 57.

[10] *Ibid.*

be tested against the realities of developing countries such as Tanzania to see whether they can correct market failure and protect community heritage.[11]

The study relied on the economic theories as a foundation of the study. The focus has been placed to analysis the strength and weakness of the existing legal protection with the view to disclose the potential gaps and how to bridge them. Effective legal protection of geographical indication is strongly supported by economic theories. It provides several justifications for the protection of GIs, ranging from correcting market failures caused by information asymmetry to fostering rural development.

Economic theories supporting Geographical Indication (GI) protection highlight its ability to solve information asymmetry by signaling product quality and origin, thereby benefiting consumers through trust and aiding producers with collective branding and higher prices.[12] Furthermore, economic theories provides for economic efficiency, by providing consumers with reliable quality information, which increases market value and premiums for producers; fair competition, preventing misleading marketing and protecting producers from unfair imitation by non-originating competitors; and cultural preservation, by safeguarding traditional knowledge, craftsmanship, and the reputation tied to specific regions. Consequently, these theories justify the need for legal frameworks, such as sui generis systems, that protect GIs and ensure benefits flow to the local communities that produce them.[13]

In Tanzania, the development potential of GIs is evident. Kyela Rice is a staple with distinct qualities tied to Lake Nyasa's ecology. A formal GI could enable producers to gain better domestic and regional market positioning, while preserving cultural practices of rice cultivation.[14] However, the risk remains that without equitable governance, GI rents could bypass rural farmers and benefit only intermediaries.

1.3 International Legal framework regulating Geographic Indication

Internationally, the regulation of GIs has evolved through a fragmented but progressive trajectory, beginning with the Madrid Agreement on Indications of Source (1891), followed by the Lisbon Agreement on Appellations of Origin (1958) and its Geneva Act (2015), and culminating in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1995) under the World Trade Organization (WTO). While TRIPS has established the most comprehensive multilateral framework for GIs, other instruments such as the Lisbon Agreement,

[11] Rangnekar, D. (2004). *The socio-economics of geographical indications*. UNCTAD/ICTSD Issue Paper.
[12] *Ibid.*
[13] Mwali C. A**,** (2018), Geographical Indications a Source of Competitiveness for Ldcs: Cases of Zambia and Mozambique, WIPO-WTO Colloquium Papers, 2018 Africa Edition.
[14] United Republic of Tanzania, *Agriculture Sector Development Strategy (ASDS II)* (2015/16–2024/25) 45.

the Geneva Act and Bangui Agreement continue to provide enhanced, though limited, protection for members regarding protection of GI in their member states.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995, represents the most comprehensive multilateral framework on intellectual property rights (IPRs). As opposed to Lisbon agreement and Madrid agreement, TRIPS agreement incorporated the term geographical indications (GIs) into a binding international trade treaty applicable to all WTO Members.

The TRIPS agreement is widely regarded as a turning point in international GI protection. The agreement creates a minimum global standard and resolved long-standing gaps left by earlier instruments, such as the Madrid Agreement (1891) and the Lisbon Agreement (1958). The instrument define the term geographical indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.[15] This definition is broader than that of the Lisbon Agreement, as it recognizes not only product characteristics but also reputation as sufficient grounds for protection.[16]

The TRIPS Agreement provides unprecedented global recognition of geographical indications, introducing a broad definition and creating binding obligations to all WTO members.[17] It impose legal obligation to state parties to prevent the use of GIs in a manner that misleads the public or constitutes unfair competition.[18] Similarly, it also offers absolute protection**,** prohibiting use of a GI for wines and spirits even without consumer confusion, and even if accompanied by qualifiers such as "kind," "style," or "imitation.[19]

However, TRIPS has also been criticized for its two-tier protection system, limited enforcement mechanisms, and failure to adequately address the interests of developing countries. Conversely, TRIPS grants higher protection to wines and spirits seems to favor European producers rather that developing countries, which often export agricultural and artisanal goods. Therefore, provision of additional protection of wines and spirits seems to be discriminatory. It requires that member nations enact laws to prohibit the use of GIs in relation to wines and spirits that do not originate in the indicated regions. It implies that even in the absence of any risk of deceptive or unfair competition, wines and spirits ought to be protected.[20]

Therefore, the international legal framework for the protection of geographical indications (GIs) is a complex issue comprises of treaties, conventions, and bilateral arrangements that reflect the

[15] TRIPS Agreement, art 1
[16] *Ibid.*
[17] Michael B, *The Protection of Geographical Indications: Law and Practice* (Edward Elgar 2014) 56.
[18] TRIPS Agreement, art 22
[19] *Ibid*, art 23
[20] Michael B, t*he Protection of Geographical Indications: Law and Practice* (Edward Elgar 2014) 56.

tension between national interests, international trade liberalization, and cultural heritage preservation. Each instrument provides a distinct layer of protection, yet none offers a universal, fully harmonized regime. Most of these instruments provide partial but essential protection for GIs in different level and scope of application. They secure recognition, facilitate trade, and preserve cultural heritage. Yet their effectiveness is undermined by limited membership, asymmetrical bargaining power, and uneven levels of protection. The future of GI protection lies in a hybrid approach: strengthening multilateral commitments under TRIPS and tailoring domestic laws to empower local producers. Only through such integration can GIs truly serve as tools of economic development, cultural preservation, and fair trade in both developed and developing countries.

1.4 Legal Protection of Geographical Indications in Tanzania

In Tanzania, there is no single statute governing protection of geographical indications rather is based on the plethora of legal instruments. This part analyzes the existing legal framework regulating protection of geographical indication in Tanzania including but not limited to the Constitution in the United Republic of Tanzania, Merchandise Marks Act, Fair Competition Act and Trade and Service Mark Act.

1.4.1 Constitutional Protection of Geographical Indications

The Constitution of the United Republic of Tanzania, 1977[21] stands as the supreme law of the land,[22] providing the overarching framework within which all legal rights and obligations are defined.[23] The Tanzanian Constitution does not expressly mention intellectual property (IP) rights, let alone geographical indications. But it embeds principles of economic development and the safeguarding of national resources.[24] For instance, Article 9 obliges the state to direct its policies towards ensuring that the exploitation of national resources benefits the people of Tanzania. Given that GIs often relate to agricultural products (such as coffee, tea, or cloves) and traditional knowledge, one could argue that constitutional principles indirectly support the protection of GIs as tools for safeguarding community interests, promoting local economic development, and preserving cultural heritage. Nonetheless, these provisions are couched as directive principles of state policy, which are non-justiciable and therefore cannot be directly enforced in court. This limits their practical role in providing effective GI protection.

The Constitution of the United Republic of Tanzania does not provide explicit protection for geographical indications. Its role is largely indirect, offering a general framework through

[21] Cap 2 [R.E 2023]
[22] The Constitution of the United Republic of Tanzania, 1977, Cap 2 R.E 2023, art 64(5).
[23] *Ibid*, art 12-25
[24] *Ibid*, art 9

property rights,[25] development objectives,[26] and cultural considerations. The actual protection of GIs is left to statutory law and Tanzania's international obligations under treaties such as TRIPS. Thus, while the Constitution can be said to provide a foundational but weak and indirect framework, it does not guarantee robust or enforceable protection for GIs. A constitutional amendment explicitly recognizing intellectual property rights, including GIs, would significantly strengthen the legal foundation and elevate GIs to a higher status of protection within Tanzania's legal system.

1.4.2 Statutory Protection of Geographical Indications

The protection of geographical indications (GIs) in Tanzania is not governed by a single dedicated statute but is governed by scattered across several legal instruments, notably the Merchandise Marks Act[27] the Trade and Service Marks Act[28] and the Fair Competition Act.[29] Collectively, these statutes provide a fragmented and indirect framework for GI protection. While they share certain areas of overlap, they also reveal significant gaps, which hinder the effective safeguarding of Tanzania's unique agricultural and cultural products. All three statutes converge in their focus on preventing consumer deception, albeit through different approaches.

The Merchandise Marks Act prohibits the application of false trade descriptions, including misstatements about geographical origin.[30] The Act provides a narrow and indirect form of protection for GIs by prohibiting false trade descriptions relating to geographical origin. While this aligns with consumer protection goals and partially fulfils Tanzania's TRIPS obligations,[31] it does not address the collective and economic dimensions of GI protection. Through Merchandise Marks Act, producers are unable to secure exclusive rights over geographical names.

Similarly, the Fair Competition Act, 2003[32] is principally concerned with promoting and safeguarding competition and consumer welfare. Although the Fair Competition Act does not expressly create a sui generis framework for GIs, it contains provisions that can indirectly serve to protect them. It addresses misleading market practices, including passing off and false advertising through prohibition of conduct that misleads consumers as to the "character, suitability or geographical origin" of goods.[33]

[25] *Ibid*.
[26] *Ibid*, art 9
[27] Cap 85 [R.E. 2023].
[28] Cap 326 [R.E. 2023].
[29] Cap 285[R.E. 2023].
[30] Merchandise Marks Act, Cap 85 [R.E. 2023], s 8.
[31] TRIPS, art 22(2)(a)
[32] Cap 285 [R.E. 2023]]
[33] The Fair Competition Act, 2003, s. 16

The Fair Competitions Act provides only indirect protection of geographical indications through its prohibitions on misleading conduct[34] and false trade descriptions.[35] This protection is limited in scope and fails to capture the positive protection, collective, and developmental aspects of GIs. Unlike a sui generis geographical indication law, the Fair Competitions Act does not create enforceable exclusive rights for producers, nor does it facilitate the economic potential of GIs in promoting Tanzania's agricultural and cultural heritage.

Additionally, the Trade and Service Marks Act prohibit the registration of marks that are misleading as to the geographical origin of goods and collective certification.[36] In Mainland Tanzania a collective certification can practically be used to protect a geographical indication (GI). Thus collective/certification marks are regarded as an established route to secure GI type protection where a sui-generis GI law is absent. However, there is no reported Tanzanian case law where a GI has been protected specifically by a collective/certification mark. Tanzanian courts have instead applied ordinary trade-mark and passing-off doctrines to block misleading uses of place-names. A frequently cited authority on opposition practice is *Tanzania Distilleries Ltd v Vitamin Foods*[37] where the court reviewed Registrar procedures and registrability issues showing the opposition/cancellation machinery is effective for policing deceptive marks.

Despite this shared concern with misrepresentation, all three statutes primarily provide negative protection of GI in Tanzania, they prevent false or misleading use of geographical names but do not create positive, exclusive rights for producers of goods originating from specific regions. Under the Trademark and Service Marks Act, GIs can only be indirectly protected as certification or collective marks, which requires proactive registration by producer associations.[38] Similarly, while the Merchandise Marks Act criminalizes false origin labelling, it does not establish any registry of GIs, leaving producers unable to claim ownership rights over geographical names.[39] Similarly, the Fair Competitions Act also lacks a mechanism for proactive recognition of GIs, limiting protection to reactive enforcement against deceptive conduct.[40] This shared shortcoming represents a major gap, since it undermines the potential of GIs to function as a developmental tool by conferring enforceable rights on producer communities.

1.4.3 Registration and Enforcement of GIs in Tanzania

The study of various laws establishing institutions dealing with protection of geographical indications does not have specific provision giving powers to the institutions to deal with registration of geographical indications. BRELA and Fair Competition Commission have no

[34] *Ibid*, s. 10
[35] *Ibid*, s. 16
[36] Fair Competition Act, Cap 285 [R.E. 2023], ss 10, 16.
[37] *(1989) Ltd* (High Court, Feb 18, 1999)
[38] Trade and Service Mark Act, ss 37–40
[39] Merchandise Marks Act, s 8.

mandate to receive an application for registration of geographical indications because there are no enabling laws. It is not also clear as to whether beneficiaries of GI are legally obliged to register their GI in Tanzania.

It must be noted that registration of GI gives the proprietary right to sue for infringement. The registration of a geographical indication, if valid, gives to the registered proprietor of the geographical indication and the authorized user or users thereof the right to obtain relief in respect of infringement. This was stated in the case of *Scotch Whisky Association v. J.K. Enterprises,*[41] where the court confirms that the Registered Proprietor under the GI Act has an independent legal standing to enforce GI rights. This strengthens their ability to take legal action without needing to rely on authorized users. Absence of enabling provision to register geographical indication limit the proprietary right to sue for infringement.

The absence of a clearly designated authority for GI administration weakens enforcement. The scattered mandates of BRELA (for trademarks), the Fair Competition Commission, and customs authorities under the Merchandise Marks Act demonstrate that no single body is empowered to register, monitor, or enforce GIs comprehensively. This institutional vacuum limits the effectiveness of existing mechanisms and leaves producers vulnerable to misappropriation of names and reputations that are central to their livelihoods. The effective protection of geographical indications requires the availability of institutional mechanism of monitoring compliance with the specifications and standards of production in order guarantee consumers authenticity of the product.

1.5 Conclusion

Therefore, the Tanzanian Merchandise Marks Act, Trade and Service Marks Act and Fair Competition Act, provides overlapping but limited protection for geographical indications. While they collectively prohibit misleading and false use of geographical names, they fail to create a robust framework that grants positive rights to producers or promotes GIs as tools of economic development. They partially fulfill the Tanzania's TRIPS legal obligation under article 22, but the gaps particularly the absence of a sui generis GI regime leave Tanzanian products vulnerable to misappropriation. Additionally, none of them recognizes GIs as a distinct category of intellectual property with positive, enforceable rights. The gap between economic theory which assumes effective legal enforcement and collective organization and legal reality poses significant challenges for the Tanzanian GI landscape.

1.6 Recommendations

[40] Fair Competition Act, Cap 285 [R.E. 2023], ss 10, 16.
[41] 2023 SCC OnLine MP 5352

The study therefore recommends the amendment of the United Republic of Tanzania Constitution, 1977 as amended from time to time, to explicitly recognizing intellectual property rights, including GIs, would significantly strengthen the legal foundation and elevate GIs to a higher status of protection within Tanzania's legal system. Moreover, the study recommends the enactment of *sui generis* GI legislation to ensure that Tanzania's unique agricultural and cultural products receive effective legal recognition and global competitiveness. The legislation must cover among other things, provide positive protection including but not limited to rights and duties of producers and consumers, registrability tests and procedures, Scope of protection, remedies for wilful misuse, duration of protection as well as competent authority to enforce it. Such reform would not only ensure full compliance with international obligations but also unlock the economic, cultural, and developmental benefits of GIs for Tanzania.

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