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The legal construction of geographical indications in Africa

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Abstract

This paper discusses how African organisations and countries construct their geographical indication (GI) systems. It makes three primary arguments. First, that the nascent GI agenda in Africa is driven by the European Union (EU) to principally promote European interests. Nonetheless, African countries can benefit from GI regimes by crafting laws that promote African interests. Second, that simply embracing the introduction of GI laws will not result in the EU's promised socioeconomic development in Africa. This is because multifarious factors including infrastructure, investment, branding, marketing and security are required to realise successful GI regimes. Third, that African countries must leverage contextually customised GI regimes to maximise the potentials they present. Contextually customised GI regimes can engender socioeconomic development. Beyond the EU's agenda-setting technologies, international affiliations and treaty boundaries shape GI laws in Africa, which inform the marked variation in its GI systems. This variation reflects the dissonance in international treaties for GIs. While African countries align with demandeurs that espouse stronger GIs laws at the international level, the only regional instrument on GIs in Africa is its Continental Strategy for GIs. In examining examples from the Organisation Africaine de la Propriété Intellectuelle, the African Regional Intellectual Property

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Organisation, South Africa, Kenya and Nigeria, this timely paper maintains that although GIs present promises of socioeconomic development, policymakers, lawmakers and relevant African stakeholders must caution against their often-overlooked pitfalls. As ultimately, it is the responsibility of Africans, not foreigners, to guarantee the generation of thriving GI ecosystems for African products.

KEYWORDS

Africa, ARIPO, geographical indications, Kenya, Nigeria, OAPI, South Africa

1 | INTRODUCTION

This paper is dedicated to the nascent construction of geographical indication (GI) systems in Africa. Africa is adopted as a case study to uncover the European Union (EU)'s agenda-setting for GIs, which influences law-making at domestic levels. Foregrounding Africa's participation in the GI discourse at the international level and its law-making at domestic levels reveal how European countries mobilise to valorise socially generated place-based products that reify local cultures and traditions to promote their preferences. In unpacking the trajectory of the international legal architecture for GIs, the paper underscores how, like certain categories of intellectual property rights (IPRs) such as plant variety protection, European interests shape international and domestic laws for GIs. Hence, while the overt narrative for the burgeoning international interests in GIs in Africa is the promotion of socioeconomic development, one of its covert motivations is the introduction of Europe-styled laws and bilateral agreements that protect profitable European GIs in Africa. The paper argues that African countries can repurpose the EU GI agenda setting technologies to drive African interests by instituting required customisations such as contextually appropriate GI laws and associated frameworks, including effective infrastructure, investment, branding, marketing and security to foster socioeconomic development.

The substantive analysis and arguments in this paper are presented in three parts. Part I maps the international treaties relevant to GIs, from the nineteenth century Paris Convention for the Protection of Industrial Property of 1883 (Paris Convention) to the 21st century Geneva Act of the Lisbon Agreement on Appellations of Origin and GIs of 2015 (Geneva Act). Colonisation and membership of these international treaties historically triggered the introduction of GI laws in Africa. This part uncovers the chequered history of international protection for place-based products culminating in the emergence of GIs as a distinct category of IPRs. Part II assesses the promises and pitfalls of GIs in Africa, drawing examples from around the region and beyond. This part cautions against the uncritical embrace of GIs in Africa, which may obscure the legal, political, social and economic costs as well as the consequences of introducing GIs. Part III examines the GI legal landscape in Africa, teasing out the actors that contribute to the *status quo* on the subject. This part considers the African Union's Continental Strategy for Geographical Indications in Africa 2018–2023 (Continental Strategy), the legal frameworks for GIs in the two intergovernmental intellectual property organisations in Africa, the African Intellectual Property Organisation (OAPI) and the African Regional Intellectual Property Organisation (ARIPO), alongside examples from three selected emerging economies in the region, the Republic of South Africa (South Africa), the Republic of Kenya (Kenya) and the Federal Republic of Nigeria (Nigeria). The paper concludes with a synthesis of its core analysis.

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2 | THE INTERNATIONAL LEGAL ARCHITECTURE FOR GIS

The international legal architecture for place-based products includes the: (i) Paris Convention for the Protection of Industrial Property of 1883 (Paris Convention), (ii) Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891 (Madrid Agreement), (iii) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 1958 (Lisbon Agreement), (iv) Agreement on Trade-Related Aspects of Intellectual Property Rights of 1995 (TRIPS), and (v) Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications of 2015 (Geneva Act).[1] This part discusses relevant provisions from these treaties and succinctly considers salient debates related to GIs. Commencing with the central provisions of the treaties uncover the varied conceptualisations and characterisations of legal protection for place-based products, which are vital to understanding the reasons for the debates on the subject and differences in domestic laws, covered in Parts II and III.

This part is divided into two. Part 1.1 focuses on the international treaties administered by World Intellectual Property Organisation (WIPO). These treaties were (mostly) adopted during the colonial era and introduced in Africa through colonial administrations. The discussions under these treaties show how the definitions and debates relating to legal protection for place-based products expanded and evolved over centuries. Crucially, the historical definitions and debates that evolved from European national laws and preferences shape the foundation and legal frame for 'GIs' as furnished under TRIPS. Part 1.2 reveals a forum shift from WIPO to World Trade Organisation (WTO) and the ground-breaking initiation of 'GIs' as a distinct category of IPRs under TRIPS as well as polarised debates on the subject. The broadly worded definition of 'GIs' mirrors the evolution of definitions as discussed in Part 1.1. While the broad definition of GIs under TRIPS offers WTO member states latitude in the form of protection they introduce at regional or national levels, Parts 1.2 and 1.3 unpack how the EU exports its GI preferences globally without accentuating the associated legal, political, social and economic factors it utilises to implement its laws.

2.1 | WIPO: Paris convention, Madrid agreement, Lisbon agreement and Geneva act

The first encounter of African countries with western conceptions of private rights over intellectual assets was through their colonial administrators. Colonial administrators introduced national IPRs laws by transplanting or directly applying their laws in the colonies. For example, Britain opted for transplantation of its laws while French laws applied directly in most Francophone African colonies, with its National Institute for Intellectual Property (INPI) serving as the chief IPR authority. IPRs were not simply a peripheral part of the colonial legal apparatus, but a fundamental tool in the commercial superiority sought by European authorities in their interactions with one other in regions beyond Europe.[2] Put differently, colonial administrators introduced IPRs to enhance their trade relations in the process of empire building. Indeed, the European colonial administrators exerted the IPR portfolios of their colonies against their counterparts as a mark of commercial control. Clearly, the European colonial administrators did not introduce IPRs to promote domestic creativity or innovation in their colonies. In fact, the IPRs laws were not intended for the benefit of the colonial *subjects*. The detailed discussions of the treaties below outlining references to specific provisions, illuminate the complex process led by Europe, that birthed the contemporary discourse on GIs.

2.1.1 | Paris convention 1883: Indications of source and appellations of origin

This section discusses the Paris Convention, which was the first international treaty to recognise and protect place-based products by characterising them as 'indications of source' and 'appellations of origin'. In the late 19th century,

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the earliest international IPR treaty, the Paris Convention was negotiated and adopted to enhance the protection of—mostly European—IPRs in foreign jurisdictions. In addition to the Paris Convention, the negotiations for the Madrid Agreement, Lisbon Agreement and Geneva Act discussed below were dominated by Europe, especially France.[3] No African country participated in the negotiations for the Paris Convention, however, Tunisia became a member through accession in 1884.[4] The Paris Convention provided for the protection of place-based products by specifying 'indications of source' and 'appellations of origin' as objects of industrial property, although it governs only the former as outlined below.

Article 1(3) of the Paris Convention provides that industrial property should be understood in its broadest sense and should apply not only to industry and commerce proper, but also to agricultural and extractive industries and to all manufactured or natural products such as beer, cattle, flowers, flour, fruit, grain, minerals, mineral water, and wines. In the Guide to the Application of the Paris Convention, Georg Bodenhausen explained that the purpose of the provision was to avoid excluding from the protection of industrial property, activities or products that would otherwise run the risk of not being assimilated to those of industry property.[5] Importantly, the inclusion of indications of source, appellations of origin and the extension of industrial property to agricultural products has taxonomic repercussions as it stamped the juridical recognition of placed-based products as a separate category of international IPRs.

I examine pertinent provisions on indications of source under the Paris Convention because they establish the normative foundations for contemporary legal protection of place-based products. Articles 9 and 10 of the Paris Convention provide for the seizure of goods in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant. The roots of these provisions are traceable to France, particularly, Article 19 of the French Law of 1857. Article 10bis of the Paris Convention further provides for effective protection against unfair competition. Unfair competition encompasses any act of competition contrary to honest practices in industrial or commercial matters. In particular, the following three acts are prohibited. (i) Acts that create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor. (ii) False allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor. (iii) Indications or allegations, which when used in the course of trade, is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods. These provisions on unfair competition reveal intersections between indications of source and other areas of the law, such as contracts, consumer protection, criminal law and torts/delict. The breadth of unfair competition provisions offers members of the Paris Convention the scope to interpret it as appropriate when disputes arise. Debates and discontent about the scope and shortcomings of the indication of source provisions in the Paris Convention prompted the amendments in the Revision Conferences of Brussels (1900), Washington (1911), the Hague (1925), London (1934) Lisbon (1958), and Stockholm (1967).[6]

2.1.2 | Madrid agreement 1891: False and deceptive indications of source

This section discusses the Madrid Agreement, which builds on the recognition and protection of place-based products by prohibiting 'false and deceptive indications of source'. Following the provision of Article 19 of the Paris Convention that permits member countries to craft other special agreements for the protection of industrial property, the Madrid Agreement was adopted in 1891. The Madrid Agreement provides for the repression of 'false' and 'deceptive' indications of source as inspired by the French and British proposals to expand the scope of Article 10 of the Paris Convention (presented at the Rome Conference of Paris Convention in 1886). Tunisia was the only African country that participated in the negotiations for the Madrid Agreement; French Diplomats represented it.[7] Article 1 (1) of the Madrid Agreement provides that 'all goods bearing a false or deceptive indication by which one of the countries to which the Agreement applies, or a place situated therein, is directly or indirectly indicated as

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being the country or place of origin shall be seized on importation into any of the said countries'. Article 1 (1) of the Madrid Agreement covers a wider range of misleading conducts as it does not require the trade name provisions like Article 10 of the Paris Convention.

Although both the Paris Convention and Madrid Agreement fail to define 'indications of source', the following definition can be deciphered from the treaties. An indication of source is a sign, or an expression, employed to specify that *goods* or *products* originate in a specific place, country or region, without affirming claims of quality or reputation.[8] To confirm, while an indication of source communicates the origin of a product, it does not denote that any special qualities, characteristics or reputation of the product is attributable to the place of origin. Indications of source could be names of countries, symbols or emblems that evoke indirectly the geographical origin of the products. For example, the mention on a product of the name of a country, such as 'made in Germany', 'product of Belgium', the use of a symbol such as the Eiffel tower to identify products from France or Tartan to identify products from Scotland.

A false use of indication of source occurs when the sign on the product misleads consumers about its designated place of origin. In *Scotch Whisky Association v Barton Distiling Company* (1973), the United States District Court for the Northern District of Illinois held that a label using the phrase 'Blended Scotch Whiskey' to identify a whiskey including spirits not produced in Scotland was a false designation of origin under the Lanham Trademark Act of 1946 and the Paris Convention.[9] Other examples of false indications of source include using Cyrillic characters on non-Russian made Vodka and the using Cologne Cathedral images on non-Cologne made products.[10] However, in clarifying that the generic use of former indications of source (genericity) does not constitute false designations of origin, the Court of Justice for the European Union (ECJ) in *Commission of the European Communities v Federal Republic of Germany* (2008), held that a geographical designation could, over time and through use, become a mere name in the sense that consumers cease to regard it as an indication of the geographical origin of the product, and come to regard it only as an indication of a certain type of product.

The Madrid Agreement addresses genericity, which remains a hotly contested topic. Article 4 of the Madrid Agreement provides that 'the courts of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this Agreement, regional appellations concerning the sources of products of the vine being, however, excluded from the reservation specified by this Article'. This means that a national court can decide that a particular term is generic and its use on products that originate from a place other than that mentioned on the product is not misleading. However, as proposed by the French delegate during the negotiations, wines are excluded from this judicial prerogative. As we will see below, the special status for wines is replicated in TRIPS.

2.1.3 | Lisbon agreement 1958: Appellations of origin and the multilateral registration system

This section discusses the Lisbon Agreement which clarified the definition of 'appellations of origin' and introduced the multilateral registration system for place-based products. Debates about genericity, exceptions to genericity for wines, the links between products and place, as well as the type of international protection afforded for appellations of origin introduced above continued into the twentieth century and culminated in the adoption of the Lisbon Agreement.[11] Unlike the Paris Convention and Madrid Agreement which fail to define indications of source and appellations of origin, the Lisbon Agreement develops appellations of origin as a distinct conceptual category for the protection of place-based products and offers a definition. Meanwhile, Morocco was the only African signatory to the Lisbon Agreement at its adoption on 31 October 1958.[12] Inspired by French laws and experiences, Article 2 of the Lisbon Agreement defines an appellation of origin as the 'geographical denomination of a country, region or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors'.

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An often-cited justification for appellations of origin is *terroir*, loosely translated to mean the 'total elements of a vineyard' or 'the interplay of natural elements that make up the myriad environments in which vines grow'.[13] The discussion on *terroir* marks an epistemic watershed in the international legal architecture for place-based products as it connects products to provenance.[14] *Terroir* connotes a land/quality nexus that makes products unique and entitles local producers to the exclusive use of the product name.

Under the Lisbon Agreement, products protected by appellations of origin are required to be direct geographical names of countries, regions or localities where distinguishing qualities and characteristics of the products exclusively or essentially result from the said geographical environments. For example, Parma Ham (Prosciutto di Parma) for ham from Italy, Jaffa for oranges from Israel and Bordeaux for wine from France. The difference between 'indications of source' and 'appellations of origin' is that the qualitative link between the product and place of origin is imperative in the latter case. In addition to the definition of appellation of origin, Article 3 of the Lisbon Agreement prohibits the usurpation or imitation of registered appellation of origin, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as 'kind', 'type', 'make', 'imitation', or the like. The Lisbon Agreement establishes a multilateral register and registration system for appellations of origin, administered by the World Intellectual Property Organisation (WIPO).

Two significant effects of the multilateral registration system are as follows. First, Article 6 of the Lisbon Agreement provides that an appellation which has been granted protection in one of the countries of the Union, cannot, in that country, be deemed to have become generic, as long as it is protected as an appellation of origin in the country of origin. Exceptions to this provision could apply, for example, in cases of acquiescence. In *Pilsen Urquell v Industrie Poretti SpA*, the Corte Suprema di Cassazione (Italy's Supreme Court of Cassation), held—disputably—that Article 6 is a presumption, subject to a challenge on genericity. Second, Article 7 (1) of the Lisbon Agreement provides that the appellation of origin will remain protected and registered under the Lisbon Agreement without requiring renewals, as long as it remains protected in its country of origin.

2.1.4 | Geneva act 2015: Appellations of origin, GIs and the multilateral registration system

This section discusses the Geneva Act, which updates and expands the Lisbon Agreement as covered above. While the Lisbon Agreement applies only to appellations of origin, the Geneva Act extends its coverage to GIs.[15] The Geneva Act provides for the protection of appellations of origin and GIs, thereby mirroring the international developments on IPRs for place-based products, including the introduction of GIs as a separate category of IPRs under TRIPS, as discussed below.[16] Also like TRIPS and in contrast to the aforementioned treaties, more African States participated in the diplomatic conference for the adoption of the Geneva Act. Delegates from six African countries, Algeria, Burkina Faso, Democratic Republic of Congo, Gabon, Togo and Tunisia attended the conference along with special delegates from OAPI. These delegates, with the exception of Algeria, Tunisia and OAPI, signed the Geneva Act.[17] As one of its novelties, OAPI was an eligible signatory because the Geneva Act extends its membership qualification to both States and intergovernmental organisations. Article 1 of the Geneva Act defines Contracting Party as State or intergovernmental organisation party to the Act (See also Article 28.1(iii)).

Article 2.1(i) of the Geneva Act provides that it applies in respect of '*any denomination* protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation' (emphasis added). Article 2.1(ii) further provides that it applies in respect of '*any indication* protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of

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the good is essentially attributable to its geographical origin' (emphasis added). This twofold coverage is inspired by the TRIPS framing of GIs. However, it differs from TRIPS, because it obligates members to protect both registered appellations of origin and GIs. Remarkably, Article 2.2 of the Geneva Act recognises the possibility of trans-border geographical areas of origin.[18] This means that more than one country can file applications for the protection of appellations of origin and GIs for the same goods.

To enhance the protection it offers, the Geneva Act builds on the multilateral register for GIs introduced under the Lisbon Agreement. Whereas the Lisbon Agreement provides for only competent authorities, in the name of natural persons or legal entities, to file applications for international registration, Article 5.2 (ii) of the Geneva Act also provides for competent authorities to file international registration in the name of beneficiaries. Beneficiaries along with natural persons and legal entities have a right to defend their rights in cases of invalidation of an international registration. Put differently, after international registration and recognition of appellations of origin and GIs in Contracting Parties, beneficiaries, natural persons and legal entities can ask for the cancellation of an international registration. Beneficiaries are natural persons or legal entities entitled under the law of the Contracting Party of Origin to use an appellation of origin or GIs.

The Geneva Act provides tripartite rights on usurpation that develop on the Lisbon Agreement. Article 11 of the Geneva Act provides for Contracting Parities to provide legal means to prevent the use of appellations of origin or GIs, in respect of the following. (i) Goods of the same kind as those to which the appellation of origin or the GIs apply, where they do not originate in the geographical area of origin or do not comply with any other requirements for using appellations of origin or GIs. (ii) Goods or services that are not of the same kind as those to which the appellation of origin or GI applies, if such use would indicate or suggest a connection between those goods or services and the beneficiaries of the appellations of origin or the GIs, and would damage their interests, or where applicably, impair or dilute in an unfair manner, or take unfair advantage of their reputation. (iii) Any other practice liable to mislead consumers as to the true origin, provenance or nature of the goods. In addition, the Act provides that Contracting Parties can refuse or invalidate the registration of a latter trademark if use of the trademark would result in one of the situations covered above. According to Article 11.2, the rights on usurpation also apply to the use amounting to imitation of appellation of origin or GIs, even if the true origin of the goods is indicated, or if the appellation of origin or the GI is use in translated form or is accompanied by terms such as 'style', 'kind', 'type', 'make', 'like', 'imitation', 'method', 'as produced in', 'similar' or the like. The Geneva Act introduces the three latter terms, 'method', 'as produced in' and 'similar', which expand the scope of the right on usurpation. These terms are neither contained in the Lisbon Agreement nor TRIPS.

Remarkably, in addressing one of the long-standing deliberations on place-based products and demands from the United States, Article 13 of the Geneva Act states that the provisions of the Act will not prejudice a prior trademark applied for or registered in good faith, or acquired through use in good faith, in a Contracting Party. In other words, if an application for an appellation of origin or GI is in conflict with a prior trademark—barring those registered or acquired in bad faith—the priority principle operates, and the prior trademark would supersede. This provision allows latitude at national levels by recognising the coexistence of trademarks, appellations of origin and GIs. TRIPS discussed below also offers latitude in the choice of legal instruments to implement its provisions on GIs.

A recurrent theme running through these treaties and the debates that animate them, is Europe's attempt to strengthen the protection of place-based products as reflected in the historical evolution and expansion in interpretation for 'indications of source', 'false and deceptive indications of source', 'appellations of origin' to the introduction of 'multilateral registration systems'. One advantage of stronger protection systems for Europe is the promotion of global trade for its diverse agricultural products, wines and spirits. While a more flexible multilayered approach to protection was adopted through the compromise TRIPS provisions detailed below, the examples from Africa, confirm how the EU exports its preferences outside the boundaries of the WIPO and WTO-administered treaties.

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2.2 | WTO: The agreement on trade-related aspects of IPR

In shifting IPRs treaties and governance from WIPO to the WTO, TRIPS reconstructed the international IPRs framework by connecting minimum IPRs standards to the multilateral trading system.[19] Building on the fragmented and contested European-styled conceptual structures for the protection of place-based products analysed in Part 1.1, (excluding the Geneva Act, which was adopted after TRIPS), TRIPS introduces GIs as a distinct category of rights within the IP canon.[20] African countries contributed to the GIs discourse in the Uruguay Round of Multilateral Trade Negotiations following its introduction by the European Commission (EC) in July 1988 (MTN.GNG/NG11/W/26). To be concrete, Egypt, Nigeria, Tanzania and Zimbabwe were among the 14 'developing countries' that jointly submitted draft legal texts on GIs in May 1990 (MTN.GNG/NG11/W/73).[21] The GI provisions in TRIPS, which were agreed as a compromise, subject to review, stem from the indications of source and appellations of origin provisions in the Paris Convention, Madrid Agreement and Lisbon Agreement. However, as established with the historical analysis presented in Part 1.1 above, the overarching objective of introducing the multilayered GI protection in TRIPS was to safeguard the interests of European producers, especially those of wines and spirits, who were given special protection.[22]

2.2.1 | TRIPS 1995: GIs

This section discusses GIs as established under TRIPS. Article 22 of TRIPS defines GIs as '*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' (emphasis added). This definition of GIs goes beyond indication of source provided in the Paris Convention and Madrid Agreement, but it is not as restrictive as appellations of origin in the Lisbon Agreement. Unlike appellations of origin, it is not mandatory for the GI to be the name of a country, region or locality. Furthermore, whereas appellations of origin require the quality and characteristics of the products to be exclusively or essentially attributable to the geographical environment, TRIPS allows flexible conditions by providing GIs for goods that have a given quality, reputation or other characteristic that is essentially attributable to their geographical origin. This means goods that meet only one of these conditions fulfil the requirement for the grant of GIs. Article 22 of TRIPS invites members to offer 'any legal means' to (i) prevent the misleading of the public as to the geographic origin of the goods, (ii) prevent any use of the GIs that constitute acts of unfair competition and (iii) refuse or invalidate the registration of trade marks that contain or consist of GIs, which may mislead the public. TRIPS gives WTO members latitude to choose any suitable legal apparatus to implement its GIs provisions, provided that they contribute to social and economic welfare as well as public interest (Articles 7 and 8, TRIPS).

Notably, TRIPS provides two additional layers of GIs protection; one for wines and spirits, the other for only wines. On the first additional layer of protection for wines and spirits, borrowing from Article 3 of the Lisbon Agreement, Article 23.1 of TRIPS prohibits the use of GIs identifying wines and spirits for wines and spirits not originating in the place indicated by the GI, even where the true origin of the good is shown, or the GI is used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like. Article 23.2 further provides for the refusal or invalidation of trade marks that contain or consist of GIs identifying wines or spirits. On the second additional layer of protection for wines, Article 23.3 and 23.4 of TRIPS provides for the protection of homonymous GIs for wines as well as further negotiations in the Council for TRIPS to establish a multilateral system of notification and registration of GIs for wines.[23]

WTO members have diverging positions on the multilateral register. African countries and other Global South countries alongside the EU argue for the expansion of the multilateral register and the extension of strong protection for products other than wines and spirits, which would attach premiums to their rich traditional products and related traditional knowledge (TN/C/W/52 2008).[24] Conversely, Australia and the US reject these proposals.

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Instead, they propose a voluntary system where notified GIs would be registered in a database (TN/IP/W/10/Rev.4). These positions embody the perennial debates on GIs, coined Old World versus New World debates.[25]

2.2.2 | Old world versus new world debates

In brief, Old-World countries, otherwise known as *demandeurs*, are those with long histories and rich traditional products, such as Continental European Countries (with France at the forefront) alongside Asia and Africa (with India and Kenya as exemplars) that push for stronger IPRs for place-based products. While New World countries are those with less competitive traditional products, such as Argentina, Australia, Canada, New Zealand, and the United States. These countries resist the push for stronger IPRs systems for place-based products, favouring trademarks as adequate protection systems, especially for nonalcoholic agricultural products. To be clear, the New World does not entirely reject GIs. In fact, leading New World protagonists, the United States and Australia have national GIs systems and bilateral agreements for wines and spirits that protect products such as Bourbon whiskey and Tennessee whiskey in both countries. What the New World rejects is the extension of stronger GIs, currently reserved for wines and spirits, to nonalcoholic agricultural products and the proposals to introduce higher absolute standards for GIs in international law.[26] For example, the New World rejects the proposals to extend Article 23 of TRIPS as a general minimum standard applicable to all GIs.

These Old World versus New World debates, which distinguish GIs from other categories of IPRs, remain unsettled. Nonetheless, Europe has embarked on self-serving agenda-setting missions to export its GI preferences globally, including to its *demandeur* counterparts in the Global South as analysed in this paper. As Susy Frankel crisply explicates, the EU usually presents its GIs policy to its trading partners in three steps (Frankel, pp. 147–148). First, multiple GIs have worked in Europe. Second, there are one or two instances of GIs working for developing countries. Third, because GIs with commercial value are exposed to misuse and counterfeiting, GI protection EU style should be the global legal norm to prevent this misuse and counterfeiting. While these statements are factual, they intentionally fail to detail the rigorous and resource-intensive multifaceted factors required to build successful GIs.

Apart from the machinery of international treaty membership discussed above, the EU's technologies for agenda-setting include bilateral and plurilateral GI agreements or broader trade agreements alongside funding capacity building and technical assistance programmes.[27] In exposing germane gaps in the EU's GI export pitch, the next part highlights some of the promises and pitfalls of GIs for *demandeurs* in Africa. This is important because although the socioeconomic promises of GIs are well disseminated, its pitfalls, including marginalisation of small producers, racial and gender inequalities as well as (Europe's) uneven playing fields, are often overlooked.

3 | THE PROMISES AND PITFALLS OF GIS IN AFRICA

Before drawing attention to examples of GI law-making and laws from around Africa as set out in Part 3, this part assesses the underexplored promises and pitfalls of GI regimes in Africa. One of the often stated and widely circulated arguments invoked in favour of the promotion of GI systems is its potential to increase trade revenue and promote rural development.[28] Anchored on twin advantages of Africa's expansive arable agricultural land and rich traditional knowledge, this argument is recounted by the African Union in its Continental Strategy, African regional IPRs institutions, alongside technical and development partners, including the EC, FAO and WIPO. A premise for this argument is the incentive-oriented theory of IPRs, which posits that IPRs incentivise innovation. This argument advances that the exclusive rights granted under GI systems would motivate producers to invest in the development of products because of the profit assurance stemming from both the monopoly and attendant premium prices.[29]

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Another related premise for the socioeconomic development argument is that GIs promote tourism to the regions where production takes place.[30] This would benefit not only the producers but other sectors of the economy such as hotels, private accommodation rentals, transportation, restaurants, local food stalls and gifts/souvenir shops. For example, Scotch Whisky distilleries are highly visited tourist attractions in Scotland, along with the Edinburgh Castle and National Museum of Scotland. The Scotch Whisky industry is estimated to provide 5.5 billion GBP in gross value added to the UK economy.[31] The industry supports about 42,000 jobs across the United Kingdom, including 11,000 directly in Scotland and 7000 in rural communities. Impressively, there were 2.2 million visits to Scotch Whisky distilleries in 2019, making them the third most popular tourist attraction in Scotland.

While the increase in trade revenue, rural development and tourism are potential outcomes of GIs, these cannot materialise in isolation; a variety of other factors are necessary to realise these potentials. Indeed, the success of GIs protection and enforcement in Europe cannot be replicated in Africa, without customisations to suit national contexts. For example, many African countries still struggle with accessing power (electricity) to process and store products, efficient transport networks to move products and to facilitate tourism as well as safe and welcoming communities to promote tourism. To put this in perspective, although *Kilishi* is a potential GI product from Nigeria, it is produced in the Northern part of the country, which is mired in political instability and insurgencies. North-East Nigeria is home to the Boko Haram extremist group that is hostile to western influences. There are recurring incidents of kidnapping in that region, including the widely reported kidnap of female students from a government-owned secondary school in Chibok, Borno State, Nigeria. Moreover, there are poor transportation networks around the sites of production. In simple words, the current realities in some parts of Northern part of Nigeria make them unsafe tourist destinations and unsuitable sites to invest in GI related activities.

Indeed, national legal and institutional contexts fundamentally determine whether the introduction of GIs result in the promotion of rural development. For example, drawing from a robust empirical study on Ethiopian Coffee and Ghanaian Cocoa, Chidi Oguamanam and Teshager Dagne argue that the success of GI systems would likely depend on the economic implications of designing and promoting the GIs.[32] These include the establishment of institutional, legislative and organisational structures while maintaining the quality, reputation or characteristics of the products and developing product awareness in international markets. In essence, in addition to effective laws, successful GIs systems require multidisciplinary (including agronomic, technological, economic and legal) and multistakeholder (private and public) collaborations to identify and register products.

Furthermore, while a region or area might have an abundance of potential products, small-scale farmers and artisans that are integral to GI production actors may lack the resources to meet the GI standards of production, packaging, storage and transportation. An example of this situation discussed in the Continental Strategy is the case of Penja pepper in Cameroon, where the Code of Practice specified that conditions to qualify for the GI included washing of the pepper with clean water. Some small-scale producers were at the risk of exclusion because they lacked access to clean water.[33] Although these small-scale farmers and artisans may be substantial contributors to the production of agriculture-related GIs, they are not always equal beneficiaries of the rewards.

Beyond the significance of supportive national frameworks, it is essential to highlight local social relations of power and connected social justice issues around GIs. Attention should be paid to the avenues through which GIs may foster social inequalities and exacerbate the marginalisation of actors in commodity value chains. These includes colonial and postcolonial labour relations that have entrenched racialised and gendered dispossession. Taking the example of Rooibos tea (from South Africa), GIs have been used as a tool to continue actions that obscure exploitative conditions of labour and unequal access to land. This is obliterated from mainstream narratives, such as the following narrow account by WIPO: 'For generations, Rooibos has provided a healthy, aromatic tea for people all around the world and an important economic resource for farmers and producers in South Africa. With its importance reverberating throughout the tea and IP world, it is poised to bring about change that will positively benefit a people, a legal system, and a nation'.[34]

WIPO presents a skewed representation of GIs for Rooibos tea, stemming from its suggestion of the unity of a people and a nation.[35] While Rooibos was identified as ideally suited for GIs because of the connection of the tea to

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its territory based on ecological characteristics, local production practices and local culture, WIPO's limited portrayal ignores the colonial histories and postcolonial continuities of social discrimination, dispossession and racial legacies underpinning its cultivation. Rooibos tea is grown in the Cederberg mountains, around 200 km north of Cape Town, where the apartheid racial legacy persists. The rooibos growing area is 80% mixed race, 15% white and 5% black. The White farmers are mostly landholders, while the tea is picked by the landless mixed-race farmworkers, hired seasonally and descendants of an exploited class of captive labour created by a colonial plantation society. The GIs primarily benefits the white landholders and large corporate processors of the tea. While there is value in promoting GIs in Africa, a nuanced interrogation of ththe e consequences of commodification of products is imperative to ensure that the GI systems are accompanied by norms and practices that address the range of interlinked social justice concerns.

Since most of the world's GIs are European, questions arise as to how African products can compete with these well-known products globally and in domestic markets. The EU has 1612 wine products, 1384 agricultural products and foodstuffs, and 243 spirit drinks registered in its EU GI register.[36] African countries have about 186 GIs registered around Africa; South Africa and Kenya have 88 and 3, respectively, Nigeria has none.[37] With regard to the quantity of products, the EU will clearly benefit more from stronger GI systems and enforcement in Africa. In relation to competition for agricultural products in global markets, Global South countries persistently posit that the removal of agricultural subsidies in the Global North would enhance international competition for agricultural products. However, the EU firmly disburses agricultural subsidies. With Europe's agenda-setting technologies deployed in Africa as discussed below, European producers would benefit from the adoption of GI laws and policies in Africa as it provides a lucrative market for their products. Conversely, majority of the place-based products in Europe are for European products.

Many African products would not enjoy reciprocal benefits in European markets due the limited number of registered GIs, high cost of production and the competitive advantages Europe has in place for its producers. Still, as Europe has the longest experience in GIs globally, Africa can draw lessons on GI systems from Europe. Africa has the prerequisite natural and human resources for building GIs. The continent can benefit from this unique category of IPRs if its policymakers rise to their responsibilities by providing the associated conditions and factors required to have thriving GI systems. The ideal GI strategy would be for African countries to develop products that attract international demands (like Rooibos) and to protect those products around Africa as well as in global markets. The formal GI status on these products would be leveraged to demand higher prices, which would benefit producers and contribute to socioeconomic development.

4 | THE GIS *STATUS QUO* IN AFRICA

Having traced the international legal contours of GIs centred on the EU's agenda-setting in Part I and its promises and pitfalls in Part II, this part examines norm-taking at regional, subregional and national levels in Africa. Since the fragmented international architecture discussed in Part I allows latitude in the choice of legal systems for the protection of place-based products, there are varied systems around Africa, including *sui generis* GI systems, trademarks (certification marks and collective marks), unfair competition and anticounterfeit laws. Driven by trade policy agendas and building on colonial legacies, European countries have influenced their African counterparts to introduce domestic GI systems over the years through socialisation technologies such as capacity building and technical assistance programmes.[38] One notable policy outcome of the EU and Africa's collaboration is the Continental Strategy, which presents the AU's vision for GIs and has precipitated the introduction (and plans to introduce) GI regimes around the region. In examining the GI developments around Africa, this paper posits that although African governments were basically absent from framing the international GI architecture, they can develop a bottom-up approach to interpreting and implementing their treaty obligations by customising the laws introduced to suit domestic contexts. Similarly, as sovereign states, African governments can strategically control

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their approach to receiving 'capacity building' and 'technical assistance programmes' from Europe by ensuring that they produce outcomes that benefit Africa, thereby avoiding or limiting the pitfalls of GIs as assessed in Part II above.

This part begins by examining the Continental Strategy. Next, it analyses the GIs provisions in the two principal intergovernmental organisations for IPRs in Africa: OAPI and ARIPO.[39] With a combined membership of 37 countries, comprising 17 OAPI and 20 ARIPO contracting parties, the developments in these organisations can shape GI development in Africa. It further considers examples from South Africa, Kenya and Nigeria, respectively. These carefully selected examples offer insights into the operationalisation of Europe's agenda-setting. South Africa, Kenya and Nigeria are apposite examples because they are the largest and most dominant economies in Southern, Eastern and Western Africa, respectively. Even though they are the leading economies in their subregions, their legal frameworks and international relations statuses vis-à-vis GIs are significantly different. Interestingly, neither South Africa nor Nigeria are members of two subregional IP organisations: OAPI and ARIPO. However, South Africa has the highest number of registered GI products in Africa. Within Africa, South Africa also has the highest number of bilateral/economic partnership agreements on GIs with the EU. Conversely, Nigeria neither has registered GI products nor bilateral/economic partnership agreements on GIs with the EU. For its part, Kenya is a key interlocutor for the Africa Group on GIs and other IP issues at the Council for TRIPS as well as a member of ARIPO. Accordingly, it provides a valuable counterbalance to the South African and Nigerian examples.

4.1 | Continental strategy for GIs in Africa 2018–2023

In recognising Africa's rich natural resources and biocultural diversity, the African Union Commission (AUC) is committed to promoting the proliferation of GI regimes around Africa (African Union 2017). However, as discussed in Part II, to deliver the inclusive and sustainable socioeconomic development projected, it would be imperative for the AU to increase the volume of African products protected around the region and in international markets to ensure the benefits of stronger GIs regimes in the region is not skewed exclusively in favour of foreign products. Only a limited number of the existing GIs from Africa are protected in foreign jurisdictions. As published in the *Official Journal of the European Union* on 31 May 2021, Rooibos/Red Bush was the first African food to have received the status of a Protected Designation of Origin in the EU register. On 10 March 2022, Poivre de Penja/Penja Pepper was also registered as a Protected GI in the EU register. Furthermore, as highlighted in Part II, the AU should also secure the interests of vulnerable or marginalised stakeholders throughout GI ecosystems, especially women and indigenous communities.

One of the AUC's Department of Rural Economy and Agriculture's (DREA) operational actions as stated in its 2014–2017 Strategic and Operational Plan is to create awareness about GIs (African Union 2014). The AUC welcomed support to pursue this action from the EU and FAO. Pursuant to this support, the AUC and EU produced the 'Joint Declaration—The 5th College-to-College Meeting of the EC and the African Union Commission (Declaration)' in 2011. The Declaration underscores the need to support African farmers, fisherfolk and agri-food producers who wish to utilise GI systems.[40] In the Declaration, the EU indicated interest in disseminating knowledge, sharing experiences and addressing challenges to the introduction of GIs systems. To avert the dangers of narrow narratives and to champion the interests of Africa, the AU should contribute to ensuring balanced information on GIs is disseminated.[41]

Unfolding at an opportune time when there is a revival of pan-Africanism, the EU's propositions on GIs align with the AU's progressive promotion of regional integration, inclusive growth, sustainable development and its wide-ranging commitments to agricultural transformation, continental integration and the United Nations Sustainable Development Goals. The AU's extensive domestic efforts to promote agricultural transformation and continental integration include its Comprehensive Africa Agriculture Development Programme (CAADP), the Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved

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Livelihoods 2014, Agenda 2063 and the African Continental Free Trade Area (AfCFTA). Accordingly, the AUC—DREA in collaboration with regional economic communities (RECs)—particularly the Economic Community of West African States and the Common Market for Eastern and Southern Africa—alongside technical and development partners designed the Continental Strategy as a background to the detailed action plan for the development of GIs in Africa and comprehensive logical framework.

Adopted in October 2017, the Continental Strategy envisions an improved enabling environment for successful GIs development in Africa to foster sustainable rural development and increase food security. The central goal of the Continental Strategy is to promote and mainstream GIs in the political agenda of AU member states and regional institutions to contribute to inclusive and gender-equitable sustainable rural development, safe and quality nutrition, food security and improved livelihoods. Its central objective is to provide guidance to the AU, RECs, regional institutions in charge of GIs, member states and other stakeholders involved in GI promotion and protection to contribute to sustainable rural development in Africa. Evaluating and prioritising the domestic contexts in Africa can certainly contribute to the success of the AU's goal and objective.

Ultimately, in adopting and implementing the Continental Strategy, the AU presents its position on GIs and advertises Africa's interest in contributing to the international GIs discourse and market. The Continental Strategy identifies six strategic outcomes. (i) An African vision on GIs. (ii) The introduction of legal and institutional frameworks at national and regional levels to protect GIs. (iii) The development and registration of GI products as pilots and drivers for rural and sustainable development. (iv) Market development for GIs products through innovative approaches on local, regional and export markets. (v) Research, training programs and extensions to ensure the identification, development and diffusion of best African tailored practices to contribute to the African approach. (vi) Promotion of awareness to all stakeholders. These well-crafted strategic outcomes offer laudable benchmarks to review the AU's contributions, which should be internally driven and appraised periodically.

The Continental Strategy heralds a new epistemic era on GIs for Africa as before its adoption, the AU had not articulated its vision for GIs despite its members active participation in GIs debates at the international level, including the Council for TRIPS.[42] In addition, while there are multiple organisations governing IPRs in Africa, including the two principal intergovernmental organisations, OAPI and ARIPO, the AU's Continental Strategy advances a coherent position on GIs. This coherence should be fostered as it aligns with the AU's overarching integration agenda. As examined next, OAPI and ARIPO are key entry points for external influences on IPR regimes in Africa because of their extensive membership. Indeed, membership of these organisations, especially OAPI, can have decisive impacts on the way GI regimes operate at the national level.

4.2 | Subregional Intellectual Property Organisations in Africa

Africa has two principal intergovernmental organisations governing IPRs: OAPI and ARIPO. These postcolonial organisations were established with the support of European countries and international actors such as WIPO to administer IPRs systems on behalf of their member states, albeit in different ways. While OAPI (covering mainly Francophone Africa) operates a uniform IPRs framework, ARIPO (covering mainly Anglophone Africa) operates a flexible system where member states can choose which legal instrument to adopt. OAPI and ARIPO are also signatory to some of the international instruments discussed in Part 1 as analysed below. Bolstered by the EU's support, OAPI and ARIPO have demonstrated commitment to promoting GIs in Africa. As is consistently argued in this paper, these organisations should circumspectly receive the support offered by designing effective GIs laws and associated frameworks to encourage its socioeconomic promises of GIs and avoid its pitfalls in member states. However, despite their impressive collective membership of 37 countries (17 OAPI members and 20 ARIPO members) about 18 African countries, including South Africa and Nigeria do not belong to either institution. Nevertheless, they both have observer statuses in ARIPO. Therefore, although these organisations are useful entry points for the EU's agenda setting on GIs, the different systems operated, especially ARIPO which offers flexibility,

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and the nonmembership of some key countries requires targeted interventions at national levels as presented in the examples of South Africa, Kenya and Nigeria in Part 3.3 below. The GI provisions in OAPI and ARIPO are discussed in turn.

4.2.1 | OAPI: Trade marks and sui generis GI system

This section discusses GI laws and examples of registered products from OAPI. To start with, OAPI's uniform IPR regime is driven predominantly by its colonial affiliation along with its extensive economic and political dependence on France. Established by the Bangui Agreement of 2 March 1977, OAPI provides an industrial property system for its 17 mostly Francophone member states as outlined in Annex III and Annex VI of the Bangui Agreement.[43] OAPI members are all signatory to the Bangui Agreement and its uniform IPRs provisions are directly applicable in all member states. To foster uniformity, the OAPI Secretariat located in Yaounde, Cameroon, undertakes formal and substantive examination for the registration of different categories of IPRs and administers them on behalf of its members. Accordingly, the GI laws delineated below are fully applicable to all OAPI members. Three key definitions and provisions related to GIs in the Bangui Agreement as well as their links to selected international treaties discussed in Part 1 are discussed next.

First, Article 32, Annex III provides that 'to facilitate the development of commerce, industry, crafts and agriculture, the State, public companies, unions or groups of unions and associations or groups of producers, manufacturers, craftsmen and tradesmen may, provided that they are officially recognised and have legal status, *own collective marks for goods or services*' (emphasis added). Second, Article 1, Annex VI, Bangui Agreement defines GIs as 'an indication that serves to identify a product as originating from a territory, a region, or a locality within that territory, in those cases where the quality, reputation or other specific characteristic of the product may be essentially attributed to such geographical origin' (Products include natural, agricultural, craft or industrial products). Third, mirroring the Lisbon Agreement, Article 15, Annex VI, Bangui Agreement prohibits the use of terms such as 'kind', 'type', 'make', 'imitation', or 'like' to accompany the names of commercial products other than the registered GI. For example, the registration of products such as 'Oku-like white honey' or 'Penja-kind white pepper' will be prohibited.

In essence, OAPI members have two options for protecting place-based products: collective trademarks and a *sui generis* system. Galmi purple onion (from Niger), Belle de Guinee (from Guinea) and Dogon Shallot (from Mali) are registered as collective marks under OAPI while Penja pepper (from Cameroon), Oku white honey (from Cameroon) and Ziama-Macenta coffee (from Guinea) are registered as GIs. The examples of GI products from OAPI member states can be linked to external support especially from France. OAPI has collaborated with and received technical assistance from several French institutions to promote GIs including French National Intellectual Property Institute (INPI), French National Institute of Origin and Quality (INAO), the French Agricultural Research Centre for International Development (CIRAD) and the French Development Agency (AFD) (Dagne, 2016).

For example, AFD funded the 'Project to Support the Establishment of Geographical Indications in African Countries (PAMPIG)' with a EUR 1 million grant and technical assistance from CIRAD. OAPI launched PAMPIG in 2008 with the goal to register between two and five GI products in OAPI member states.[44] OAPI has registered three out of the six products identified by the project, namely Oku white honey, Penja pepper and Ziama Macenta coffee. The second phase of the PAMPIG Project, with a start date of 23 October 2017 and end date of 22 October 2021 aimed to build on the success of the first phase by doubling the number of products registered to six. External support from France has clearly been responsible for the registration of GIs under OAPI, which if well managed can generate the promised socioeconomic development. For example, the price of Oku white honey increased from 600 FCFA per kg before its GI status in 2012 to 950 FCFA per kg after its GI status in 2017.[45]

This part does not delve into questions about the quantity of products protected to probe EU's benefits from the GI regime (e.g., how many EU GIs are protected in OAPI member states and vice-versa? How many EU GIs are exported to OAPI member states and vice versa? How are EU GIs enforced in OAPI member states and vice versa?).

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Instead, it draws attention to the need for OAPI and its member states to ensure optimum operationalisation of the GIs at national levels to protect all stakeholders, especially those that are vulnerable. For instance, following registration of Oku White honey as GIs, concerns about the fragility of forest resources and conservation of the forest landscape for production have been raised.[46] In contrast to OAPI, ARIPO discussed next, has only one registered GI.

4.2.2 | ARIPO: Trade marks and (proposed) *sui generis* GI system

This section discusses GI laws and examples of registered products from ARIPO. Like OAPI, ARIPO's IPR regimes have been driven by support from the EU and WIPO. Established by the Lusaka Agreement of 1976, ARIPO seeks to harmonise the IPRs laws in its 20 mostly Anglophone member states.[47] The Banjul Protocol on Marks 1993 (Banjul Protocol), one of its four IPRs Protocols, provides for the protection of place-based products through collective or certification marks.[48] ARIPO member states have the option to cherry-pick IPRs Protocols. In other words, unlike OAPI, signing or acceding to ARIPO Protocols is voluntary; membership of ARIPO does not automatically bind members to its Protocols. There are currently 12 contracting parties to the Banjul Protocol: Botswana, Kingdom of Eswatini, The Gambia, Kingdom of Lesotho, Liberia, Malawi, Mozambique, Namibia, Sao Tome and Principe, United Republic of Tanzania, Uganda and Zimbabwe.[49] ARIPO registers and administers the collective and certification marks on behalf of its contracting parties through its Secretariat in Harare, Zimbabwe. The Secretariat conducts the formal examination, while the substantive examination is handled by national offices.

ARIPO has initiated the process of designing and adopting a *sui generis* GIs system. At the 13th Session of the ARIPO Council of Ministers held in December 2011, the ARIPO Council of Ministers directed the ARIPO Secretariat to incorporate GIs in its IPRs framework.[50] To strengthen its initiatives on GIs, ARIPO signed a Memorandum of Understanding with the EC Directorate-General for Agriculture and Rural Development in 2012, through which it committed to cooperate on matters related to GIs and to build capacity among its administrators and stakeholders to develop a harmonised GIs system. Unlike the traction in OAPI, GI development in ARIPO is slower. With the support of the EU Intellectual Property Organisation (EUIPO) and the EU funded AfrIPI (Intellectual Property Rights & Innovation in Africa), Cabrito de Tete is the first—and only—*sui generis* GI registered in an ARIPO member state. Registered as a GI on 15 June 2020 in Mozambique, Cabrito de Tete is a local goat breed, from Tete province of Mozambique. One of the potential pitfalls that could arise from the success of having a GI for Cabrito de Tete is the rapid increase in goat breeding which could contribute to exacerbating climate change and global greenhouse gases. Goats, like other ruminants such as cows and sheep, generate methane (a potent greenhouse gas) in two key ways: through their digestion process and through their waste. As discussed at the United Nations Climate Change Conference 2021 (COP26), to mitigate climate change and reduce greenhouse gas emissions, it would be important for countries to improve sustainable (agricultural) production. Thus, Mozambique should assess and address the environmental impacts of its GI for Cabrito de Tete in the coming years.

Meanwhile, ARIPO's flexible membership style of means that despite the EU's promotion of GIs within the organisation, member states that are not signatory to the relevant trademark protocol (Banjul) and the proposed *sui generis* GI protocol will be excluded from its GI system. In addition, as earlier mentioned, since some African countries are not members of either OAPI and ARIPO, the EU engages in direct interventions promotional activities at national levels as seen with the examples of South Africa, Kenya and Nigeria below.

4.3 | The republic of South Africa, the republic of Kenya and the federal republic of Nigeria

The legal systems for protecting place-based products in South Africa, Nigeria and Kenya are discussed next to showcase law-making and developments at national levels. To provide graphic backgrounds, the analysis for each

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country covers the geographical contexts, international obligations, national laws and examples—or potential examples—of GI products. The examples of products covered include food, agricultural products, drinks and crafts produced through traditional and modern techniques throughout the selected countries. South Africa and Kenya have long established GI law-making relationships with Europe and international institutions. While Nigeria's GI law-making relationship with Europe and international institutions substantially commenced in 2020. Crucially, the examples from South Africa, Kenya and Nigeria, like OAPI and ARIPO above, restate (i) how the GI agenda in Africa is driven by the EU and European countries to promote their interests, particularly international trade, (ii) how GI laws alone cannot promote socioeconomic development and (iii) why African countries need to customise their GI laws to fit local contexts to avoid pitfalls of GI regimes. Although international IPRs laws, including those covering place-based products as discussed in Part 1.1, were introduced in African countries through colonial administrations without the colonies' consent or contribution, these countries remained members of the organisations and also signed subsequent instruments such as TRIPS in postcolonial times. While not delving into the politics, power and colonial continuities underpinning Europe's dominance of the GI agenda at the global level, GIs remain one of the categories of IPRs that can contribute to vast socioeconomic prosperity in Africa if the regimes are crafted and implemented appropriately.

4.3.1 | The republic of South Africa

The example from South Africa shows how keen the EU is to protect and enforce its GI products in foreign markets when it is profitable for its member states. As South Africa is an active actor in the global wine market, the EU has extensive bilateral agreements with the country to protect its GIs especially wines and spirits. Clearly, the EU cleverly adopts targeted strategies to promote its domestic interests. With the bilateral agreements in place, non-EU producers are prohibited from selling wines or spirits that infringe EU GIs in South Africa. Although South African place-based products are also protected in the EU through bilateral agreement, EU products have competitive advantages in both the EU and South Africa because of the subsidies and other support the EU grants its farmers and producers. This reveals the roles of the associated factors necessary to promote GIs including government investment. For example, through its Common Agricultural Policy (CAP), the EU supported its farmers with 57.98 billion EUR in 2019. A total of 14.18 billion EUR was dedicated to rural development, 2.37 billion EUR to market measures and 41.43 billion to income support.

South Africa is an upper-middle-income country, located at the Southern tip of Africa. It has an extensive interior plateau, surrounded by hills and narrow coastal plains, with a 1,212,470 km^2 land area; 79.4% of which is agricultural land and 4620 km^2 water. It is referred to as the 'Rainbow Nation' to celebrate its cultural and ethnic diversity.[51] This diversity along with embedded traditional knowledge and the country's natural resource endowment inform the existence of a wide variety of unique food, drinks, artworks and handiwork, which could qualify as GIs. South Africa is a founding member of TRIPS and became a party to the Paris Convention on 1 December 1947. It fulfils its TRIPS obligations relating to GIs through overlapping trade mark and *sui generis* laws. These laws include the Merchandise Marks Act No 17 of 1941 (Merchandise Marks Act), Trade Marks Act No 194 of 1993 (Trade Marks Act) and Liquor Products Act No 60 of 1989 (Liquor Products Act).[52] It also published its Regulations Relating to the Protection of GIs Used on Agricultural Products Intended for Sale in the Republic of South Africa on 22 March 2019 (GI Regulation).

Section 6 (e) of the Merchandise Marks Act prohibits the application of false trade descriptions to goods used in connection with businesses. According to the Merchandise Marks Act, a trade description includes any description, statement or other indication, direct or indirect, as to the place or country in which goods were produced, or as to the mode of producing any goods. False trade description includes any trade description, which is false in a material respect with regard to the goods to which it applies, and consists of every alteration of a trade description, through addition or effacement. Following reports that a French trader appropriated South African 'Rooibos', a distinct,

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red-coloured tea, which grows exclusively in the Cedarberg biosphere of the country, the South African Government announced that Rooibos is a prohibited mark under the Merchandise Marks Act. This was to ensure the protection of the name both in South Africa and beyond.[53]

The Trade Marks Acts provides for the registration of both certification marks and collective marks. Section 42 of the Trade Marks Act defines a certification mark as 'a mark capable of distinguishing, in the course of trade, goods or services certified by any person in respect of kind, quality, quantity, intended purpose, value, geographical origin or other characteristics of the goods or services, or the mode or time of production of the goods or of rendering of the services, from goods or services not so certified.' Certification marks are owned by a legal person, usually a certifying body, and licensed to others that meet specified standards. With a similar definition, albeit restricted to group ownership, Section 43 of the Trade Marks Act provides that a collective mark is 'a mark capable of distinguishing, in the course of trade, goods or services of persons who are members of any association from goods or services of persons who are not members thereof.' The certification marks and collective marks provisions are similar to those in Kenya and Nigeria below.

Modelled on EU laws, the Liquor Products Act provides a *sui generis* GIs system for wines and liquors.[54] The Liquor Products Act delineates the requirements for the production of wines, spirits, grape-based liquors, spirit-based liquors, alcoholic fruit beverages and alcoholic products. For example, Section 5 of the Liquor Products Act provides that wines shall be produced from fresh grapes of a prescribed cultivar that are in such as condition, that after having been pressed, alcoholic fermentation can occur in the undiluted juice. In addition to these laws, South Africa has a series of bilateral agreements with European countries. This is noteworthy because South Africa is a significant actor in the global wine market. According to the International Organisation of Vine and Wine, South Africa produces about 4% of the global wine production, that is, about 1.05 billion litres of the 26.7 billion litres global wine production. For its part, the GI Regulation introduces a register and registration process for GIs, which allow for the registration of both domestic and foreign GIs in South Africa.

Following its strong contributions to the global wine market, long before the adoption of TRIPS, South Africa signed a bilateral agreement in 1935 with France to recognise and protect inter alia Champagne and Burgundy.[55] Similarly, in 2012, South Africa and the European Community signed an Agreement on Trade in Wine and Trade in Spirits.[56] Article 7.1 of the Trade in Wine Agreement provides that both parties agreed to ensure the reciprocal protection of registered wines originating in their territories, with each party committing to provide appropriate legal means to ensure effective protection. Article 7.3 (c) further prohibits the unauthorised use of indications protected by the agreement when accompanied by expressions such as 'kind', 'type' 'style' 'imitation', or 'method.' In particular, as per provisions of Article 9, the parties agreed that 'Port' and 'Sherry', which are protected GIs in the EU, would also be accepted as protected in South Africa. This means that all non-EU producers would be prohibited from producing and marketing wine with those names and expunged from the South African markets.

Furthermore, South Africa, alongside Botswana, Eswatini, Lesotho, Mozambique and Namibia, signed a trade agreement, the SADC-EU Economic Partnership Agreement (EPA), which entered force in October 2016.[57] The SADC-EU EPA includes a bilateral Protocol (Protocol 3) on trade in wine and spirits between South Africa and the EU. Under Protocol 3, South Africa protects 251 EU GIs for food, wines and spirit, including Roquefort (from France) and Feta (from Greece). To reciprocate, the EU protects 105 GIs from South Africa, including the registered wines and liquor under the Liquor Act alongside three nonalcoholic agricultural products, Rooibos, Honeybush (unique tea from the Eastern Cape and Western Cape regions) and Karoo Meat of Origin (unique lamb meat from the Karoo region). As the SADC-EU EPA seeks to develop GIs in South Africa, the agreement provides that South Africa can include up to 30 more GIs for protection. South Africa is the only African country with bilateral agreements on GIs.[58]

A significant impact of the South Africa—EU bilateral agreements is that it prohibits producers outside the EU from selling the protected products in South Africa. This could affect US producers and exporters of products who use names protected under GIs laws in the EU and South Africa, followed by 'style', 'like', or 'type'. The law and practice on GIs in South Africa have been heavily influenced by its bilateral trade relations with the EU.

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This demonstrates how the EU pushes its preferred systems to promote its members' economic interests through bilateral agreements, despite the unresolved negotiations on GIs at the TRIPS Council. While South Africa is a member of the African group at the TRIPS Council, which means it formed a coalition with other African countries to 'speak with one voice using a single coordinator or negotiating team', in discourse on GIs, it sometimes deviates from the African group position, aligning with the 'New World.'[59] For instance, on 23 July 2008, South Africa requested that it be added as a cosponsor to the joint proposal of New World countries including Australia, Argentina, Canada, Chile, New Zealand and the United States, who opposed the EU's proposal to amend TRIPS by introducing a compulsory register for GIs.[60] In contrast to South Africa, Kenya, discussed below, is a leading interlocutor on behalf of the Africa group at the TRIPS Council, where it aligns with the Old World in debates on GIs.

4.3.2 | The Republic of Kenya

Although Kenya is a member of ARIPO, it is not a signatory to its Banjul Protocol on Marks which provides for the protection of place-based products. Thus, its membership of ARIPO does not have a direct impact on the development of its GI regimes. This is one of the reasons why the promotion of GIs in non-OAPI African countries are individualised. Significantly, it is imperative to unpack the developments in Kenya because it is actively involved in framing and leading IPRs discourse on behalf of Africa at global levels. In particular, in the Council for TRIPS, Kenya supports the EU and Old-World proposals to extend the stronger GIs provisions for wines and spirits in Article 23 of TRIPS to other products. Along with South Africa and Nigeria, Kenya is one of the fastest-growing economies in Africa with an increasing middle class who demand foreign consumer products. Kenya was the first Anglophone country that was included in the EU's GI cause. As such, Kenya offers an enlightening counterbalance to South Africa and Nigeria.

Kenya is a lower-middle-income Eastern African country, located in Eastern Africa. It has low plains, central highlands and fertile plateau, with a land area of 569,140 km^2—48.1% of which is agricultural land, and 11,227 km^2 of water. It has a variety of ethnic groups and cultures. It is also endowed with natural resources. It is reputed for its artworks, handiwork and wildlife, which could produce goods that would qualify as GIs. Kenya is a founding member of TRIPS and became a party to the Paris Convention on 14 May 1965. It fulfils its TRIPS obligations relating to GIs through a trade mark system (certification marks and collective marks), set out in the Trade Marks Act, Chapter 506, Laws of Kenya, Revised 2009 (Trade Mark Act).

Similar to the South African Trade Marks Act discussed above, Section 40 of the Trade Marks Act, defines a certification mark as 'a mark adopted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic from other goods'.[61] While Section 40A of the Trade Mark Act defines a collective mark as a 'mark capable of distinguishing, in the course of trade, the goods or services of persons who are members of an association, from goods or services of persons who are not members of such association.'[62] Registered certification and collective marks in Kenya include Echuchuka (special *aloe vera* grown around Lake Turkana), Coffee Kenya (coffee), The Finest Kenyan Tea (tea) and Maasai/Masai (for cultural products).

Kenya's journey to revise its GI system commenced in 2001, with Draft Instructions for a Bill on the Protection of GIs (Draft Instructions) crafted by the Kenyan Industrial Property Institute.[63] The Swiss Federal Institute of Intellectual Property (SIPI) conducted a feasibility study in May 2007, which concluded that Kenya has a high potential to benefit from an effective GI system. The study identified unique products such as Mombasa mango, Kitengela Ostrich meat, Molo lamb and Mursik milk alongside Masai attire and beads as having potentials for GI protection.[64] Consequently, SIPI and the Kenya Industrial Property Institute (KIPI) launched a technical cooperation project, the Swiss-Kenyan Project on Geographical Indications (SKGI), 1 January 2008 to 31 December 2010, with three objectives. First, to contribute to the establishment of a functional *sui generis* GI system in Kenya. Second, to

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support the raising of awareness about GIs within Kenya and the East African Community member states. Third, to draft a comprehensive and coherent national GIs legalisation in Kenya.[65] The move to introduce a *sui generis* GIs system reflects international and national stakeholders' interests in stronger protection beyond the existing trade mark system in the country.

SKGI achieved its three objectives. KIPI published a Draft Instructions and a Bill for GIs Regulations in 2009. On 17 December 2010, the Attorney General's Office approved and issued the GIs Bill 2010. Following the capacity building activities in Kenya and beyond, KIPI is equipped with a team of GIs specialists able to manage the registration and administrative processes of a *sui generis* GI system. With public events and training, there is a marked increase in awareness about GIs across stakeholders, including at the KIPI, with government officials, producers, producers' associations and the general public. James Otieno-Odek, former managing director of KIPI and avid protagonist for the introduction of an effective *sui generis* GIs law in Kenya, contributed to the success of these initiatives.

Notably, Kenya and Nigeria, alongside other Old-World countries, responded to some of the concerns raised by the New World Countries such as Argentina, Australia, Canada and the United States (circulated in IP/C/W/289), about the potential costs of GI extensions as well as its possible effects on consumers and trade.[66] Kenya and Nigeria argued that the concerns raised were unfounded and the arguments advanced were invalid. Furthermore, in Kenya's communication on behalf of the African group during preparations for the 1999 WTO Ministerial Conference, it submitted that negotiations on the scope of the system of notification and registration under Article 23.4 of TRIPS be expanded to other products recognisable by their geographical origins, including handicrafts and agro-food products.[67] Similarly, Kenya joined the informal group, Friends of GIs, which got a clear mandate confirming negotiations on the extension of Article 23 of TRIPS as part of the single undertaking of the Doha Round.[68] While Nigeria, like Kenya, is vocal at the TRIPS Council in debates on GIs, this has not translated into reforms of its laws through its government's initiatives or international support, as will be discussed below.

4.3.3 | The Federal Republic of Nigeria

Nigeria not only has the largest population and growing middle class in Africa; it is also its biggest economy. Therefore, the EU will benefit immensely from protecting and enforcing its GIs in the country. While the EU did not conclude bilateral agreements on GIs with Nigeria as early as it did with South Africa and Kenya above, EU GI stakeholders such as the Scotch Whisky Association have been actively engaged in enforcing their GIs in the country for a number of years. It is unsurprising that the EU has recently extended its GIs agenda-setting to Nigeria. As mentioned above, since like South Africa, Nigeria is not a member of ARIPO, the EU's promotion of GIs in the country was targeted at the national level.

Nigeria is a lower-middle-income country located in Western Africa. It has lowlands in the south, plains in the north, hills and plateaus in the centre, with a with 910,768 km^2 of land area—78% of which is agricultural land, and 13,000 km^2 of water. Its cultural diversity is shaped by its multiple ethnic groups. With this diversity and its natural resources, Nigeria has a variety of products that can qualify for GIs as highlighted below. Like South Africa and Kenya, Nigeria is a founding member of TRIPS. It became a party to the Paris Convention on 2 September 1963. Nigeria fulfils its TRIPS obligations relating to GIs through trademarks, as set out in its Trade Marks Act of 1965, Chapter T 13, Laws of the Federation of Nigeria 2004 (Trade Marks Act).

Section 43 of the Trade Marks Act defines certification marks as including marks adapted in relation to any goods to distinguish in the course of trade of goods, certified by any person in respect of origin, material, method of manufacture, quality, accuracy or other characteristic. With the exclusion of provisions on collective marks, Nigeria operates a limited IPRs system for place-based products. In addition, like South Africa, Nigeria has a Merchandise Marks Act of 1915, Chapter M 10, Laws of the Federation of Nigeria 2004 (Merchandise Marks Act) and the National Agency for Food and Drug Administration and Control (NAFDAC) Spirit Drinks Regulations 2019.[69]

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The Merchandise Marks Act prohibits false trade descriptions. Section 1 of the Merchandise Mark Act defines false trade description to include trade descriptions that are false or misleading in a material respect with regard to the goods to which it is applied. Section 1 also defines trade description to include any description, statement or other indication, directly or indirectly as to the place or country in which any goods are made or produced. However, the nonexistent application of the Trade Marks Act and Merchandise Mark to protect placed-based products in Nigeria reflects the limited awareness about GIs in the country.

For its part, Section 1 of the Spirit Drinks Regulations states that it applies to all spirit drinks, manufactured, imported, exported, distributed, advertised, sold or used in Nigeria. It also applies to the use of ethyl alcohol and distillates of agricultural origin in the production of alcoholic beverages and to the use of the names of spirit drinks in the presentation and labelling of foodstuffs. Notably, Section 2 prohibits the sale, manufacture, import, export, advertisement, sale, distribution or use of spirit drink (as specified in its Schedule I) in Nigeria unless it is registered in compliance with the provisions of the Regulations. Under its provisions on labelling in Section 5, it requires the name of the spirit drink to be presented in a manner that protects the GIs and geographical designations of the spirit drink. Its 'Categories of Spirit Drinks' in Schedule I includes mostly foreign liquors including well-known GIs such as Scotch Whisky, Bourbon/Tennessee Whisky and Tequila. One of the limitations of this Regulation is that the scope of protection offered is limited. For example, it does not prohibit imitation or evocation.

Unlike the examples above where European actors activated the GI projects, external intervention is still growing in Nigeria. Africa International Trade and Commerce Research (AITCR), a trade consultancy firm, initially pushed for the recent promotion of GIs in Nigeria.[70] In 2017 and 2018 respectively, AITRC organised two stakeholder meetings to raise awareness about GIs in Nigeria. The first stakeholder meeting comprised 50 stakeholders from the private sector, public sector, development organisations and the media.[71] The main issues discussed included: limited awareness about GIs in Nigeria, lack of government intervention in advancing GIs, inadequate IPR laws for GIs and limited resources to promote GIs.[72] The meeting initiated a 10-year strategic plan to promote GIs in Nigeria, 'Making Nigerian GIs Global' which aims to establish placed-based products classified as GIs, both for local and global markets.

The main recommendations and resolutions from the meeting to propel the plan included the following. First, to strategically raise awareness about GIs in Nigeria through advocacy, dialogue, technical capacity development, research, documentation and establishment of a GI database. Second, to identify one or two GIs products. Third, to partner with institutions such as the Nigerian Economic Summit, Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture alongside government offices, research institutions, civil society organisations and international organisations such as the FAO. Fourth, to push for legal reforms. Fifth, to organise a national summit on GIs in 2018. Sixth, to address critical issues identified in the first meeting, and to support the government with formulating and implementing policies, strategies and programmes relevant to promoting GIs in Nigeria. As envisioned, the GI summit held in 2018.[73] Seventy-five participants from public sector, private sector, development partners, CSOs, academics and media attended. Recommendations proposed at the 2017 event were reiterated, with a core focus on mechanisms to promote GIs in Nigeria.

International collaborations on GIs commenced in 2020 with a joint WIPO—AITRC webinar entitled 'The Importance of Geographical Indications to the Sustainable Development of Nigeria'.[74] Academics, policy makers and practitioners unpacked the GIs landscape in Nigeria. For example, Chinasa Uwanna, a legal practitioner, explained that her work on GIs in the country centres on attempts to register or enforce foreign products such as Champagne and Cuban Cigar. Using the latter example, she highlighted the limitations of relying on the country's existing trade mark laws as geographical names cannot be trademarked. Shafiu Adamu Yauri, the Registrar of Trade Marks, Federal Ministry of Industry, Trade and Investment (FMITI), revealed the government's interest, through the FMITI and Ministry of Science and Technology, to develop a policy for the protection of GIs in Nigeria. The panelists unanimously recommended that a *sui generis* GI system was best suited for Nigeria.

The first EU-funded GI event in Nigeria styled as a capacity-building workshop for the public sector in Nigeria held on 22 April 2021. It was hosted by the EU-funded AfrIPI in collaboration with AITCR and the IP First Group.

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The workshop concluded with the promise for selected participants to design a plan of action for GIs in Nigeria (AfrIPI 2021). Following the workshop, a Nigerian Technical Working Group (NTWG) on GIs was established to draft a *sui generis* GI law for Nigeria. The NTWG comprised representatives from the FMITI, Federal Ministry of Agriculture and Rural Development, Ministry of Justice, Nigerian Export Promotion Council and Nigerian Bar Association. AfrIPI, AITCR and IP First Group subsequently organised a 'National Conference on Geographical Indications' from 17 to 18 February 2022, to examine the core provisions of the draft *sui generis* GI law, discuss the importance of GIs in Nigeria and formulate a roadmap for the introduction of a *sui generis* GI law in Nigeria.

Drawing from the events, unique products from Nigeria with potentials to benefit from GIs include Nsukka yellow pepper from Nsukka, Sokoto goat skins from Sokoto, Kilishi from Northern Nigeria, Adire from Abeokuta and Osogbo, as well as other textiles, leather products and artworks such as paintings, pottery, sculptures and carvings from different parts of the country. For instance, following empirical research, Adewopo, Chuma-Okoro and Oyewunmi assert that Nigeria's textile and leather products have the potential to compete favourably in domestic, regional and international markets.[75] While there is a plethora of products that can be protected as GIs, it is important for stakeholders to engage in a careful selection to ensure that products with the highest potentials to engender both domestic and international success are selected for protection.

5 | CONCLUSION

Africa offers an important lens through which to engage with a contextual analysis of GIs. Like other categories of IPRs, it reveals the crucial role of actors in law-making. While formal IPR regimes were alien to African countries before colonialisation, one distinguishing characteristic of GIs in the African context is its untapped potential to promote endogenous socioeconomic development centred on the region's rich natural resources, biological diversity, culture and associated traditional knowledge. As the world's largest free trade area with well over a billion-person market along with its growing population, rising middle/upper classes and increasing demand for quality products, Africa furnishes limitless trade opportunities, including for products that protect provenance. As has been argued elsewhere, robust GIs ecosystems should be prioritised in Africa as it one of the categories of IPRs that can contribute substantially to the region (Author 2020).

Although the construction of GI systems are gradually gaining traction in Africa, the paper presents the region as a site for Europe's agenda-setting for GIs. It discusses the technologies it employs to export its GI styled laws and interests including international legal treaties, bilateral and plurilateral agreements, alongside capacity building and technical assistance programmes at regional, subregional and national levels. Evidence of the EU's GI agenda-setting in Africa is manifest in its Continental Strategy for GIs in Africa, its two intergovernmental IPRs organisations in Africa: OAPI and ARIPO, as well as the three selected case studies: South Africa, Kenya and Nigeria. In making the case for African policymakers to be cautiously optimistic about Europe's professed GI gifts, it teases out the promises and pitfalls of GIs. It prompts policymakers to invest in robust registration, marketing, monitoring and enforcement of competitive African products in African and foreign markets to ensure that the proposed GI systems deliver on their promises, rather than disadvantage or dispossess local producers who may be marginalised in large scale trade transactions. Finally, it urges policymakers to diligently execute their duties by prioritising Africans in the same way their counterparts in the EU protect domestic interests. In doing so, external interventions will be grounded and accepted on terms best suited to the idiosyncrasies of domestic contexts to ensure the laws and policies introduced are suited for Africa.

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Network Conference (2019), the International Association for the Advancement of Teaching and Research in Intellectual Property Conference (2019) and Loyola University of Chicago School of Law (2019). I am grateful to participants for their generous comments. All errors remain my own.

CONFLICT OF INTEREST

The author declares that there is no conflict of interest.

DATA AVAILABILITY STATEMENT

Data sharing not applicable to this article as no data sets were generated or analysed during the current study.

ENDNOTES

[1] See also, The Madrid Agreement Concerning the International Registration of Marks of 1891. This part focuses on the international treaties administered by the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO). It does not cover European instruments for geographical indications (GIs). GIs are governed in the European Union (EU) through Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs. On 31 March 2022, the European Commission adopted its proposal to review the GI systems for wine, spirit drinks and agricultural products 'Proposal for a Regulation of the European Parliament and of the Council on European Union Geographical Indications for Wine, Spirit Drinks and Agricultural Products, and Quality Schemes for Agricultural Products, amending Regulations (EU) No 1308/2013, (EU) 2017/1001 and (EU) 2019/787 and Repealing (EU) No 1151/2012.'

[2] Ruth Okediji, 'The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System' (2003) 7 SJICL 315;

[3] There was also discord within Europe. European associations and legal practitioners had varied opinions on the scope of protection in the different treaties. See Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012) for a comprehensive historical analysis of the international treaties for GIs (apart from the latest—Geneva Act). In assessing the discord, Gangjee notes that there was generally support for the enhanced protection of terroir products and a demand for effective proscriptions against misleading use, but generic use remained divisive (p. 74).

[4] On 20 March 1883, 11 States adopted the Paris Convention: Belgium, Brazil, France, Guatemala, Italy, Netherlands, Portugal, Salvador, Serbia, Spain and Switzerland. 17 States ratified and acceded to the Original Text and Final Protocol of 1883: Belgium, Brazil, Denmark, Dominican Republic, France, Great Britain, Italy, Japan, Netherlands, Norway, Portugal, Serbia, Spain, Sweden, Switzerland, Tunisia and the United States of America.

[5] Georg Hendrik Christiaan Bodenhausen. *Guide to the Application of the Paris Convention for the Protection of Industrial Property as Revised at Stockholm in 1967* (BIRPI Geneva, Switzerland 1968) pp. 24–25. <https://www.wipo.int/edocs/pubdocs/en/intproperty/611/wipo_pub_611.pdf> accessed 10 January 2021. Georg Hendrick Christiaan (G.H.C) Bodenhausen was the Director of the United International Bureaux for the Protection of Industrial Property (BIRPI) from 1963 to 1970 and the first Director-General of the World Intellectual Property Organisation (WIPO) from 1970 to 1973. BIRPI was an international organisation set up in 1893 to administer the Paris Convention and Berne Convention. It was the predecessor to WIPO.

[6] See The Paris Convention for the Protection of Industrial Property from 1883 to 1983 (WIPO Publication No. 875 (E) 1983) pp. 52–53; Guide to the Application of the Paris Convention for the Protection of Industrial Property as Revised at Stockholm in 1967, pp. 135–141.

[7] Alexander Peukert, 'Intellectual Property and Development—Narratives and Their Empirical Validity' (2017) 20 (1–2) JWIP 2.

[8] Felix Addor and Alexandra Grazioli, 'Geographical Indications beyond Wines and Spirits: A Roadmap for Better Protection of Geographical Indications of Origin in the WTO TRIPS Agreement' (2002) 5 JWIP 865. 'Goods' and 'products' are used interchangeably throughout this article. The Paris Convention, Madrid Agreement and TRIPS refer to 'goods' while the Lisbon Agreement and Geneva Act refers to 'products.' Dwijen Rangnekar argues that the difference between 'goods' and 'products' have implications on the subject matter protected. That is, whether services are included or excluded. He concludes that it was not the intention of the drafters of TRIPS (which refers to goods) to include services. Nonetheless, nothing prohibits WTO members from going beyond the minimum obligations set out in TRIPS. Countries like Brazil, Peru and Switzerland protect services as GIs. Dwijen Rangnekar,

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The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe (ICTSD-UNCTAD Issue Paper No. 8 2004).

[9] *Scotch Whisky Association v Barton Distiling Company* 489F 2d 809 (7th Cir. 1973).

[10] F K Beier, 'The Protection of Indications of Geographical Origin in the Federal Republic of Germany' in Herman Cohen Jehoram (ed) *Protection of Geographic Denominations of Goods and Services* (Sijhoff & Noordhoff, Netherlands 1980).

[11] The Lisbon Agreement is a special agreement under Article 19 of the Paris Convention. Parties to the Paris Convention may accede to the Lisbon Agreement. Section 19 of the Paris Convention provides that 'it is understood that the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention.'

[12] Eleven countries signed the Lisbon Agreement: Cuba, France, Greece (22 December 1959), Hungary, Israel, Italy, Morocco, Portugal, Romania, Spain and Turkey (24 April 1959). However, Morocco has not ratified the Lisbon Agreement to date.

[13] Justin Hughes, 'Champagne, Feta, and Bourbon—the Spirited Debate about Geographical Indications' (2006) 58 HLJ 299. On the definition of terroir, see also, Mitchell Beazley, *Terroir: The Role of Geology, Climate, and Culture in the Making of French Wines* (Octopus Publishing Group Ltd 1998). In this book, Mitchell Beazley, a geologist, explores why fine wines of France grow the way they do. It covers the diverse geologies of the wine regions including Alsace, Aquitaine, Bordeaux, Burgundy and Champagne. The French system has the oldest IPRs systems in the world for place-based products.

[14] *Terroir* was also discussed within the Paris Convention and Madrid Agreement.

[15] With the EU's accession to the Geneva Act on 26 November 2019, it entered into force on 26 February 2020 (3 months after five eligible parties deposited their instruments of ratification or accession to the Director General of WIPO).

[16] In protecting GIs, the Geneva Act adopts the language of TRIPS. TRIPS entered into force on 1 January 1995, two decades before the Geneva Act was adopted.

[17] Angola, Benin, Burundi, Cabo Verde, Cameroon, Chad, Cote d' Ivoire, Egypt, Ethiopia, Ghana, Guinea, Kenya, Liberia, Mali, Morocco, Mauritania, Mozambique, Niger Nigeria, Uganda, Democratic Republic of the Congo, Senegal and Zimbabwe also sent observer delegations. Records of the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and their international Registration Geneva 2015 (WIPO Publication No. 330 (E) 2019) <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_330.pdf> accessed 10 January 2022.

[18] Article 1 of the Geneva Act defines 'trans-border geographical area' as geographical area situated in, or covering, adjacent Contracting Parties.

[19] Jerome Reichman, 'Universal Minimum Standards of Intellectual Property Protection under the TRIPS Component of the WTO Agreement' (1995) 29 IL 345; Ruth Okediji, 'The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System' (2003) 7 SJICL 315; Olufunmilayo Arewa, 'TRIPs and Traditional Knowledge: Local Communities, Local Knowledge, and Global Intellectual Property Frameworks' (2006) 10 MIPLR 155.

[20] UNCTAD-ICSTD (2005). *Resource Book on TRIPS and Development* (Cambridge University Press).

[21] The other countries were Argentina, Brazil, China, Chile, Colombia, Cuba India, Pakistan, Peru and Uruguay. (Communication from Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Nigeria, Peru, Tanzania and Uruguay, 14 May 1990; MTN.GNG/NG11/W/73). Five draft texts were tabled in the spring of 1990 by: 14 developing countries, United States, EC, Switzerland and Japan and Australia (on GIs).

[22] Graham Dutfield, 'Geographical Indications and Agricultural Community Development: Is the European Model Appropriate for Developing Countries?' in Charles Lawson and Jay Sanderson (eds) *The Intellectual Property Food Project: From Rewarding Innovation and Creation to Feeding the World* (Routledge 2016).

[23] See Article 24 of TRIPS for exceptions to the provisions on GIs.

[24] Communication from Albania, Brazil, China, Colombia, Ecuador, the European Communities, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group. Draft Modalities for TRIPS related issues, TN/C/W/52, 19 July 2008.

[25] For debates on GIs, see generally Kal Raustialaand Stephen Munzer 'The Global Struggle over Geographic Indications' (2007) 18 (2) EJIL 337; Justin Hughes, 'Champagne, Feta, and Bourbon: The Spirited Debate About Geographical Indications' (2006) 58 HLJ 299; Dwijen Rangnekar, 'Geographical Indications. A Review of Proposals at the TRIPS Council'. (UNCTAD-ICTSD Project on IPRs and Sustainable Development. Issue Paper No. 4 2003); Michael Blakeney

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'Proposals for the International Regulation of Geographical Indications' (2001) 4 JWIP 629; Stacy D Goldberg, 'Who Will Raise the White Flag? The Battle Between the United States and the European Union Over the Protection of Geographical Indications' (2001) 22 UPJIL 107; Paul Heald, 'Trademarks and Geographical Indications: Exploring the Contours of the TRIPS Agreement' (1996) 29 VJTL 635.

[26] Raustiala and Munzer (n 25), p. 351.

[27] For a full list of these agreements, see the EC's page on Geographical Indications and its commissioned reports commissioned reports O'Connor and Company "Geographical Indications and TRIPS: 10 Years Later." https://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_135088.pdf accessed 10 January 2022.

[28] Irene Calboli and Wee Loon Ng-Loy (eds). *Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific* (Cambridge University Press 2017); Sarah Bowen, 'Embedding Local Places in Global Spaces: Geographical Indications as a Territorial Development Strategy' (2010) 75(2) RS 209; Dev Gangjee. *Relocating the Law of Geographical Indications* (Cambridge University Press 2012).

[29] See also Justin Hughes, 'The Philosophy of Intellectual Property' (1988) 77 GLJ 287; Christopher Ray, 'Culture, Intellectual Property and Territorial Rural Development' (1998) 38(1) SR 3. Irene Calboli, 'Time to Say Local Cheese and Smile at Geographical Indications of Origin? International Trade and Local Development in the United States' (2015) 53 HLR 373. However, Kal Raustiala and Stephen Munzer are sceptical about the relevance of the incentive theory to GIs. See Kal Raustiala and Stephen Munzer, 'The Global Struggle Over Geographical Indications' (2007) 18(2) e EJIL 337, 359.

[30] See also Jacinthe Bessiere, 'Local Development and Heritage: Traditional Food and Cuisine as Tourist Attractions in Rural Areas' (2002) 38 SR 21; Katia Laura Sidali, Spiller Achim, and Birgit Sculze (eds) Food, Agriculture and Tourism: Linking Gastronomy and Rural Tourism: Interdisciplinary Perspectives (Springer Science & Business Media 2011).

[31] Scotch Whisky Economic Impact Report <https://www.scotch-whisky.org.uk/media/1591/final-2018-economic-impact-report.pdf> accessed 10 January 2022.

[32] Chidi Oguamanam and Teshager Dagne, 'Geographical Indication (GI) Options for Ethiopian Coffee and Ghanaian Cocoa' in Jeremy De Beer, Chris Armstrong, Chidi Oguamanam and Tobias Schonwetter (eds), *Innovation and Intellectual Property*: *Collaborative Dynamics in Africa* (UCT Press 2014).

[33] Through collective action, the small-scale farmers obtained funds from the Ministry of Agriculture to build wells.

[34] See World Intellectual Property Organisation, 'Disputing a Name, Developing a Geographical Indication' <https://www.wipo.int/ipadvantage/en/details.jsp?id=2691> accessed 10 January 2022.

[35] See also Coombe et al who refer to this as social imaginary. They define social imaginary as 'the assertion of naturalised synergies between the qualities of a territory, the characteristics of its goods, the traditions of its people, and the importance of these to their cultural identity has become orthodox for those extolling the virtues of introducing GIs and in the areas from which the goods they mark originate. The use of GIs tends to imbue products with distinct attributes that unproblematically reflect a local cultural distinction which are presumed to be isomorphic with a 'community'. See: Rosemary Coombe, Sarah Ives and Daniel Huizenga, 'Geographical Indications: The Promise, Perils and Politics of Protecting Place-Based Products' in *The Sage Handbook of Intellectual Property* (2014) 213.

[36] eAmbrosia, 'The EU Geographical Indications Register' <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/> accessed 11 May 2022.

[37] See Geographical Indications: An Opportunity for Africa to Add Value to Exports <https://developmentreimagined.com/2020/01/24/geographical-indications/> accessed 10 January 2022. (There is no comprehensive register for African GIs).

[38] The EU has conducted studies on the promotion of GI products in Cameroon, Gabon, Ghana, Kenya, Mauritius, Senegal and Zanzibar - For discussions on this study, see Michael Blakeney, Thierry Coulet, Getachew Mengistie and Marcelin Tonye Mahop (eds) Extending Protection of Geographical Indications: Case Studies of Agricultural Products in Africa. (London Earthscan 2012). Switzerland conducted studies on the promotion of GI products in Morocco and South Africa - For discussions on this study, see also Sophie Reviron, Erik Thevenod-Mottet E and Nadja El-Benni. *Geographical Indications: Creation and Distribution of Economic Value in Developing Countries*. (NCCR Working Paper No 14, Zurich ETH 2009). Similarly, WIPO supported projects, bench-marking studies on constructing and implementing IPRs as well as branding and marketing strategies to promote the competitiveness of select products in Burundi, Gambia, Sudan and Uganda.

[39] There are also diverse regional economic communities (REC) in Africa with IPRs provisions provided either in their agreements or trade-related agreements. The RECs include Economic Community of West African States (ECOWAS), 1975. The Economic Community of Central African States, 1983. The Arab Maghreb Union 1989. The Southern African

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Development Community, 1992. The Common Market for Eastern and Southern Africa (COMESA), 1994. The Inter-Governmental Authority on Development, 1996, Community of Sahel-Saharan States, 1998, East African Community, 1999., but these are not discussed in this paper.

[40] European Commission, 'Joint Declaration—The 5th College-to-College Meeting of the European Commission and the African Union Commission' 1 June 2011 <https://europa.eu/rapid/press-release_MEMO-11-371_en.htm> accessed 10 January 2022.

[41] To commence work on the Declaration, the AU Commissioner for Rural Economy and Agriculture and the European Commissioner for Agriculture and Rural Development organised a joint AU-EU workshop in November 2011, in Kampala, Uganda, to review the development of GIs and discuss strategies for progress. Other meetings held before the adoption of the Continental Strategy include the AU members consultations held in December 2012, in Abuja, Nigeria, which discussed inter alia the links between products, product quality, reputation and places of origin.

[42] See for example, World Trade Organization, *Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits: Report by the Chairman, Ambassador Darlington Mwape (Zambia) to the Trade Negotiations Committee* (Council for Trade-Related Aspects of Intellectual Property Rights Special Session, TN/IP/21, 21 April 2011).

[43] Bangui Agreement Relating to the Creation of an African intellectual Property Organisation, Constituting a Revision of the Agreement Relating to the Creation of an African and Malagasy Office of Industrial Property (Bangui [Central African Republic], March 2, 1977). The Bangui Agreement was amended by the Agreement Revising the Bangui Agreement of March 2, 1977, on the Creation of an African Intellectual Property Organisation (Bangui Central African Republic), 24 February 1999). Annexes III and VI, alongside the other Annexes of the Bangui Agreement entered into force on 28 February 2002. OAPI members: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Ivory Coast, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, Togo and Comos.

[44] Innovation and Development in Agriculture and Food, 'Project to Support the Establishment of Geographical Indications in African Countries—PAMPIG 2' <https://umr-innovation.cirad.fr/en/projects/pampig-2> accessed 10 January 2022.

[45] Verina Ingram, Maria Ellemann Hansen and Aske Skovmand, 'To Label or Not? Governing the Costs and Benefits of Geographic Indication of an African Forest Honey Value Chain' (2020) Frontiers in Forests and Global Change.

[46] Ibid.

[47] ARIPO members: Botswana, Kingdom of Eswatini, The Gambia, Ghana, Kenya, Kingdom of Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, Sierra Leone, Somalia, Sudan, Uganda, United Republic of Tanzania, Zambia, Zimbabwe as well as the Democratic Republic of Sao Tome and Principe.

[48] The Banjul Protocol was adopted on 19 November 1993 and amended on 28 November 1997, 26 May 1998, 26 November 1999, 21 November 2003, 25 November 2013, 17 November 2015, 22 November 2017 and 23 November 2018. The other three IPRs Protocols are (i) the Harare Protocol on Patents and Industrial Designs, adopted on 10 December 1982, amended on 11 December 1987, 27 April 1994, 28 November 1997, 26 May 1998, 26 November 1999, 30 November 2001, 21 November 2003, 24 November 2006, 25 November 2013, 17 November 2015, 5 December 2016, 22 November 2017 and 23 November 2018 (ii) The Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, adopted 9 August 2010. (iii) The Arusha Protocol for the Protection of New Varieties of Plants 2015, was adopted on 6 July 2015, but it is yet to enter into force.

[49] ARIPO, 'Trademarks' <https://www.aripo.org/ip-services/trademarks/> accessed 10 January 2022. Lusaka Agreement on the Creation of the African Regional Intellectual Property Organisation (ARIPO). The Lusaka Agreement has been amended twice: in 1996 and 2004 - the Lusaka Agreement on the Creation of the African Regional Intellectual Property Organisation (ARIPO) as amended on November 27, 1996, and the Lusaka Agreement on the Creation of the African Regional Intellectual Property Organisation (ARIPO) as amended on 13 August 2004.

[50] See African Regional Intellectual Property Organization (ARIPO), *ARIPO Annual Report 2014* (ARIPO Office 2015), p. 16. African Regional Intellectual Property Organization (ARIPO), *ARIPO Annual Report 2015* (ARIPO Office 2016), p. 14. African Regional Intellectual Property Organization (ARIPO), *ARIPO Annual Report 2018* (ARIPO Office 2019), p 22.

[51] Archbishop Desmond Tutu coined this term after South Africa's first democratic election in 1994 as a metaphor to describe the fusion of races and cultures in postapartheid South Africa.

[52] The Liquor Products Act was amended by Liquor Products Amendment Act No 11 of 1993. Other relevant laws include the Agricultural Product Standard Act 1990 and the Counterfeit Goods Act 1997.

[53] Getachew Mengistie and Michael Blakeney. 'Geographical Indications in Africa: Opportunities, Experiences and Challenges' (2016) 38 (5) EIPR 290. For other cases and discussions on disputes over the use of Rooibos, see: World Intellectual Property Organization, 'Disputing a Name, Developing a Geographical Indication' <https://www.wipo.int/ipadvantage/en/details.jsp?id=2691> accessed 21 August 2019. Rakesh Amin, Mark Blumenthal and Wayne Silverman,

17471796, 2023, 1, Downloaded from https://onlinelibrary.wiley.com/doi/10.1111/jwip.12255 by University Of Aberdeen, Wiley Online Library on [07/04/2023]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

Rooibos Tea Trademark Dispute Settled, 68 Herbal Gram 60; Rooibos Ltd. v. Forever Young (Pty) Ltd., No. 25,676, 2003 T.T.A.B. Lexis 65 (T A B, 13 February 2003).

[54] See European Commission, Geographical Indications <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-schemes-explained_en#geographicalindications> accessed 10 January 2022.

[55] Andries Merwe, 'Geographical Indication Protection in South Africa with Particular Reference to Wines and to the EU' (2009) 10 (1) ECJILTP 1; Magdaleen Van Wyk, 'The Legal Protection of Geographical Indications' (2006) 47 (1) Codicillus 39; Omphemetse Sibanda, 'The Prospects, Benefits and Challenges of Sui Generis Protection of Geographical Indications in South Africa' (2016) 51 (3) FTR 213.

[56] Official Journal of the European Communities, L 28, 45, 30 January 2002. Council Decision of 21 January 2002 on the conclusion of the Agreement between the European Community and the Republic of South Africa on trade in wine (3). Agreement between the European Community and the Republic of South Africa on trade in wine (4). Council Decision of 21 January 2002 on the conclusion of an Agreement between the European Community and the Republic of South Africa on trade in spirits (112). Agreement between the European Community and the Republic of South Africa on trade in spirits (113).

[57] SADC-EU EPA Outreach South Africa, 'SADC-EU Economic Partnership Agreement: Geographical Indications' (November 2017) <https://sadc-epa-outreach.com/images/files/sadc-eu-epa-geographical-indications-paper-november-2017.pdf> accessed 10 January 2022.

[58] For a comprehensive list of bilateral/plurilateral agreements on GIs around the world, see oriGIn—Organisation for an International Geographical Indications Network <https://www.origin-gi.com/activities/policy-and-advocacy/item/5552-bilateral-plurilateral-agreements.html> accessed 10 January 2022.

[59] World Trade Organisation, Groups in Negotiations <https://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.htm#GRP002>. Members of the Africa group at the WTO: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, Egypt, Eswatini, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

[60] World Trade Organization, 'Groups in Negotiations' Joint Proposal—Sponsors of TN/IP/W/10/Rev.4 proposing a database that is entirely voluntary. 20 WTO members: Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Israel, Japan, Korea, Republic of, Mexico, New Zealand, Nicaragua, Paraguay, South Africa, Chinese Taipei, United States <https://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.htm#GRP002>. See submission: World Trade Organization, 'Proposed Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits' (TN/IP/W/10. Rev.4, 31 March 2011).

[61] See Section 40 for other conditions for registration.

[62] See Section 40A for other conditions for registration.

[63] Mengistie and Blakeney (n 53), p. 214.

[64] J Otieno-Odek, 'The Way Ahead—What Future for Geographical Indications?' (2005) Worldwide Symposium on Geographical Indications jointly organised by the Ministry of Productive Activities of Italy and the World Intellectual Property Organisation (Parma, Italy 27–29 June 2005).

[65] Swiss-Kenyan Project on Geographical Indications <https://www.ige.ch/fileadmin/user_upload/recht/entwicklungszusammenarbeit/factsheet_kenya_a4all.pdf> accessed 10 January 2022.

[66] World Trade Organization, 'Communication from Bangladesh, Bulgaria, Cuba, the Czech Republic, Georgia, Hungary, Iceland, India, Jamaica, Kenya, the Kyrgyz Republic, Liechtenstein, Moldova, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland and Turkey' (IP/C/W/308/Rev.1, 2 October 2001). Document IP/C/W/289 was jointly submitted by Argentina, Australia, Canada, Chile, Guatemala, New Zealand and the United States.

[67] World Trade Organization, 'Preparations for the 1999 Ministerial Conference. The TRIPS Agreement. Communication from Kenya on behalf of the African Group' (WT/GC/W/302, 6 August 1999).

[68] See World Trade Organization, 'Statement by Switzerland—Joint Statement by the GI-Friends Group' (TN/C/4, 13 July 2004).

[69] NAFDAC also has similar Regulations for other products such as its Wine Regulations 2019.

[70] Africa International Trade and Commerce Research, 'Aims and Objectives' <https://africainternationaltrade.com/aims/> accessed 10 January 2022.

17471796, 2023, 1, Downloaded from https://onlinelibrary.wiley.com/doi/10.1111/jwip.12255 by University Of Aberdeen, Wiley Online Library on [07/04/2023]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

[71] Sustainable Development of Nigeria Geographical Indications (GIs) Stakeholders Engagement 2017. NAF Conference Centre Abuja, Nigeria (25 October 2017).

[72] Africa International Trade and Commerce Research, 'A Report of Stakeholders Engagement Meeting on the Sustainable Development of Nigerian Geographic Indications' (AITRC 2017).

[73] The summit titled 'Making Nigerian GIs Global' held on 27 November 2018 at the Nigerian Export Promotion Council, Abuja, Nigeria. See: African International Trade and Commerce Research, 'A Report on the 2nd Nigerian Geographical Indications (GIs) Stakeholder Dialogue' (AITRC 2018).

[74] Flora IP, The Importance of Geographical Indications to the Sustainable Development of Nigeria (24 August 2020).

[75] Adebambo Adewopo, Helen Chuma-Okoro and Adejoke Oyewunmi, 'A Consideration of Communal Trademarks for Nigerian Leather and Textile Products' in Jeremy De Beer, Chris Armstrong, Chidi Oguamanam and Tobias Schonwetter (eds), *Innovation and Intellectual Property*: *Collaborative Dynamics in Africa* (UCT Press 2014).

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