

Reviewing the Standards for Protection of Geographical Indications in Tanzania: A case of Kyela Rice

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Article Information:

Received: September 09, 2024, Accepted: October 31, 2024, Published: November 06, 2024

Abstract

This paper examines the standards for effective protection of Geographical Indications in Tanzania. The Trade-Related Aspects of Intellectual Property Rights Agreement (hereinafter the TRIPS Agreement) provides for obligations of state parties to the Agreement to protect intellectual property rights in their respective countries. However, the TRIPS Agreement does not specifically state the conditions or standards for protecting geographical indications. This paper reviewed various legal instruments to establish the essential standards that can be adopted to protect geographical indications of Kyela Rice. The methodology used to collect data is documentary review, and data are analyzed using content analysis.

Key Words: Geographical Indications, Standards for Protection of Geographical Indications

Jel Codes: A12, A10, A19

How to Cite

Ndunguru, A. F., Haule, E., Mwanga, E. (2024). Reviewing the Standards for Protection of Geographical Indications in Tanzania: A case of Kyela Rice. *International Journal of Business, Management, and Economics*, 5(4). pp. 353 – 362. DOI: <https://doi.org/10.47747/ijbme.v5i4.2112>

1. Introduction

This article examines the legal standards required in protection of geographical indications. This is important in order to ensure that, all applications for registration of geographical indications are properly assessed within certain known and accepted standards. Protection of geographical indications on agricultural goods or product is recently increasing. Products are being registered using the names of the place of their origin linking them with certain unique characters attributed to the place of origin.

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Studies suggests that, in any debate concerning protection of geographical indications the first task is to define what constitutes geographical indication? According to article 22 of the TRIPS Agreement, geographical indications is defined as indications which identify goods as originating in the territory of a Member or region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographic origin. World Trade Organization (WTO) defined geographical indication to mean 'a sign used on a product that have a specific geographical origin and possess qualities or reputation that are due to that origin (World Intellectual Property Organization, 2017)

In this study, standards for protection of geographical indications refers to the basic conditions or elements which must be proved in order for an application for registration of geographical indications to be approved by the relevant institutions assessing applications for protection of geographical indications in a certain county. For example, if a group of producers makes an application to register an indication of 'Kyela Rice' the application must reflect those conditions in order for the name or indication to be protected in favor of that group.

In this article the author is interested to review the standards for protection of geographical indication of Kyela rice taking into account that, Kyela rice is one of the potential geographical indication product that Tanzania as a developing country can protect for export. The main reason for conducting this study is that, currently there is no specific law in Tanzania to govern protection of geographical indications as a separate category of geographical indications hence the need to develop criteria or standards which will be used in developing the law on protection of geographical indications in the country.

2. Literature Review

Recently the world has witnesses an increase in registration of geographical indications in branding or marketing agricultural products. Geographical indications are used to indicate certain products with unique qualities like the Kyela rice in Tanzania. Literatures reveal that, consumers are willing to pay premium price to products identified by using indications of origin (Mangistie, 2003)

Historically, protection of geographical indications is connected to industrial revolution in Europe (Saha and Bhattacharya, 2016). Upon emerging of industrial revolution in the 19th Century, the community of manufacturer started using certain mark or indication to show the origin of goods. Existing literatures shows that, the first country to develop a law on protection of geographical indications was France in 1825 (Tabaro, 2009). The law that was developed by France was intended to prevent false indication of source of industrial goods. The law was mainly implemented by imposing criminal sanction to people who were found guilty of false indication of origin of goods (Tabaro, 2009).

In 1919, the French Parliament realized that, the quality of certain products especially agro products were very much connected to their place of origin basing on natural, human, climatic factors and method of production as such France decided to make a law on protection of geographical origin of some goods such as cheese and wine (Tabaro, 2009). This being domestic law with no international recognition triggered for international movements on the protection of geographical indications.

At international level, the law on protection of geographical indications begins with the Paris Convention on Indications of Source of 1883. The Paris Convention is mainly intended to prevent the use of false indication of source of goods which are likely to mislead consumers as to the true origin of the goods (Ndunguru and Mwanga, 2021). The Paris Convention also prohibits acts of unfair competition which are likely to affect consumers as well as proprietors (Ndunguru and Mwanga, 2021). However, the Paris Convention does not expressly recognize protection of geographical indications (WTO Standing Committee on Law of Trademarks, 2011). The Paris Convention provides for minimum level of protection of indication. The weakness of the Paris Convention raised member's interests to extend the scope of protection covered by the Convention.

The weaknesses of the Paris Convention led to the adoption of another agreement called, the Madrid Agreement for Repression of False or Deceptive Indication of Source of Origin of 1891(WTO Standing Committee on Law of Trademarks, 2011). The Madrid Agreement was only concerned with prohibition of the use of false indication of origin of goods rather than creating an intellectual property right. The weaknesses of the Madrid Agreement also led into adoption of another agreement called Lisbon in 1958 (WTO Standing Committee on Law of Trademarks, 2011).

The Lisbon Agreement for Protection of Appellation of Origin and their International Registration was adopted in 1958. The agreement for the first time covered protection of the use of the name of a geographical areas in branding goods. Article 2 of the Lisbon Agreement provides for the protection of the use of names of geographical areas of a country, region of a country or its locality in a manner that indicates that the goods originates in that place where a certain special quality or characteristics are attributes basing on natural or human factors. The protection is intended to avoid the usurpation or imitation of the use of the mark (Ndunguru and Mwanga, 2022). According to this agreement, names of geographical areas which reflect on exclusive quality of the goods must be protected as appellation of origin under the World Intellectual Property Organization system.

In 1994 following the establishment of the World Trade Organization, the Agreement on Trade Related Aspects of Intellectual Property was adopted to cover protection of various intellectual property rights including geographical indications (Tabaro, 2019). This Agreement came into force in 1995. The agreement defined geographical indications and provides for obligation of the member states to enact domestic laws on the protection of geographical indications. However, the TRIPS Agreement does not provide for the manner or method of protecting geographical indications and the conditions or standards that can be used to assess application of registration of geographical indications. The TRIPS Agreement allows member states to adopt domestic laws which will provide for the manner of protecting geographical indications basing on their domestic context.

At African regional level, the law on protection of geographical indications are divided into two groups; the African Regional Intellectual Property Organizing (ARIPO) countries and the other covering OAPI. Under ARIPO, members have adopted the Banjul Protocol on Marks in 1993 (Lange, 2010). This Protocol provides for establishment of trademark filing system in which members can file application for protection of marks. The ARIPO system allow members to apply for registration of geographical indication as collective trademarks. Tanzania being a member of SADC belongs to the ARIPO system. However, literature reveals that, the laws on protection of

geographical indication in Africa is still at infant stage. Also literatures reveal that, there are no collective regional efforts to protect geographical indication as a category of intellectual property right because each country has individual efforts and approach of protecting geographical indication. Most of the African states think that, trademark laws can serve the same purpose to protect geographical indications which is a wrong assumption (African Union, 2017).

In 2004, ARIPO developed a continental strategy for protection of geographical indications in Africa. The strategy is intended to harmonize African Union members' domestic laws on protection of geographical indications.

However, some states in Africa have taken domestic efforts to enact or review their intellectual property laws to incorporate provisions on protection of certain geographical indications in their territory. In 2006 Ethiopia amended her intellectual property laws by adopting the Trademark Proclamation No 501 in 2006 to cover protection of geographical indications of its coffee products. In 2003 Uganda enacted the Geographical Indications Act No. 8 and Kenya adopted changes to the Kenya Trademark Act Cap. 506 R.E 2009 to allow registration of geographical indications as community collective marks. However, Tanzania mainland did not make efforts to amend the existing Intellectual Property (IP) laws or enact a new law on the protection of geographical indications (Paul and Bullu, 2008)

The intellectual property laws in Tanzania is a product of colonialism. Most of the laws were adopted from former colonial master England. It was during colonialism that, the Copyright legislation of 1924 and Patent legislation of 1922 were adopted (Mahingila, 2005).

At independence, Tanzania (Tanganyika) then inherited the Patent legislation of 1922, the Copyright Ordinance of 1924 and the Trade Marks Ordinance of 1922. The intellectual property laws were adopted without any significant change in their contents (Mahingila, 2005). However, due to some inherent weakness of those laws, there was a need to review them to accommodate some new aspects that were not covered by these laws. The Copyright legislation was later repealed by the Copyright Act No. 61 of 1996 and later in 1999 a new Copyright and Neighboring Rights was enacted.

In 1986 the Trade Mark Ordinance of 1922 which was repealed by the Trade and Service Marks Act of 1986. The change was mandatory in order to recognize service marks registration alongside trademarks (Mahingila, 2005). The 1986 Act is the one that is in use to date on matters pertaining trademarks and it is also the one which is impliedly used to protect geographical indications. The Trade and Service Marks Act under section 19 prohibits registration of certain trademarks which are likely to mislead the public on the true origin of goods but the Act does not create geographical indication as an intellectual property right.

In summary, the historical background of the development of the law on protection of geographical indications depicted above reveals that, the law on protection of geographical indication started with the adoption of the TRIPS Agreement and Tanzania is a member of TRIPS since 1995 but Tanzania does not have a specific law which deals with recognition and protection of geographical indications as a separate intellectual property right hence the need to review the standards for protection of geographical indication in the country which will be reflected during making or amending existing laws to cover protection of geographical indications.

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3. Methodology

This study is a qualitative study based on secondary data. The researcher reviewed various international laws on the protection of geographical indications like the TRIPS Agreement, journal articles, and law reports to examine their contents on standards for the protection of geographical indications. Data were analyzed by using content analysis in which the researcher in course of reviewing the legal sources developed themes which were later interpreted and summarized to answer the research question as to what are the legal standards for protection of geographical indications.

4. Result and Discussion

In protecting geographical indications, just like other intellectual property rights there must be standards for assessing registrability of the indication and other conditions to be complied by a person or community of producers seeking the said registration. World Intellectual Property Organization is of the view that, developing geographical indication scheme involves certain stages but one of the important stage is to develop the standards or regulation of use which describes the products geographical region of production, the processing methods and the natural or human factors which contributes to the characteristics of the product (WIPO, 2021). This means that, before developing the law on protection of geographical indication of Kyela rice and other potential geographical indication products, it is important to develop the standards that can be used to protect the said product.

According to Dr. Rangnekar, ‘to qualify for protection an indication must (i) identify the goods and its area of geographical origin, (ii) possess a given quality, reputation or other characteristics which (iii) is essentially attributed to its area of geographical origin’ (Rangnekar, 2003).

European Union Intellectual Property Office in one of their publication titled *Manual for Geographical Indications in Africa*, for geographical to be successful and to produce the intended results, some conditions must be present; first, certain quality linked to the product’s geographical environment and secondly, collective efforts of producers and other relevant participants within the value chain (European Union Intellectual Property Office, 2022). This observation points out two major standards for protection of geographical indications which are, ‘existence of unique qualities’ in the product to be registered as geographical indications and the need for recognition of ‘community ownership’ of the registered geographical indication.

The standards for protection of geographical indications can be implied from the definition of geographical indications under article 22 of the TRIPS Agreement. The definitions of geographical indications contains some key words which provides for standards of protecting geographical indications, these standards can be generally summarized in the following parameters:-

Must be an ‘An Indication’ Identifying Goods

The definitions of geographical indication contains a word ‘indication or sign’. The word indication in respect of geographical indications has been defined in various literature to mean the geographical name of the place or region in a particular country or any symbol/sign attributing the unique qualities of a product to a particular place or region where the product is produced (Vandecandeleare *et al*, 2010). For the case of Kyela rice, the symbol or sign that may be

recognized for protection of kyela rice is either the name 'Kyela' as it may be used in the package or label or the use of any geographical sign which implies that the product is connected to Kyela District.

According to Article 22.1 of the TRIPS Agreement, geographical indication can be any 'indications' capable of connecting the goods they indicate to a certain country, region or locality where certain unique attributes of the goods are connected to. This means that, in protecting geographical indication a sign other than geographical name can be accepted for registration (WIPO Standing Committee on the Law of Trademark, 2011). From this standard, an application for registration of geographical indication must have a sign or a name of a place where certain human or natural factors exist to shape the quality of the goods.

The Indication must Identify the Goods as Originating in a Territory, Region or Locality

The phrase 'identifying goods' means that, the indication or sign contained in the name of a product is used to link the quality of the goods to the place of production of the goods. Unlike in Trademarks where the mark is only used to identify the source or producer so as to distinguish the goods from the goods produced by other companies. Geographical indications must point the region or territory in which the quality of the goods are connected to. The use of the indication in branding the goods must have the effect of showing the customers that the product on which it is used has some unique qualities or characteristics that are connected to natural or human factors of a particular place. For the case of kyela rice, the name or sign must be of such a nature that it indicates the rice is unique rice originally produced in Kyela District.

Territory, Region or Locality

The definitions of geographical indication highlighted above define geographical indications with reference to territory. The use of the word 'territory' refers to a geographical area such as a country, region of the country or the name of any place found in a country. The territory for the purpose of protecting geographical indications refers to delimited or defined geographical area where human community has developed over a period of time and are conducting their activities there and may have developed collective production methods and skills of their own reputation (WIPO Standing Committee on the Law of Trademark, 2011). A territory is based on a system of interaction between people, environment and other human factors involved to convey an originality which confers unique characteristics and reputation to products (WIPO Standing Committee on the Law of Trademark, 2011). For Kyela rice the territory refers to a place, town or village found within Kyela District where the rice using the name kyela is produced.

According to FAO, the word 'territory' used in the law refers to the area where a human community has developed over the course of history a collective production method and knowledge (Vandecandeleare *et al*, 2010). The territory as a place where the product originates has combination of interaction physical and biological factors which contributes to convey an originality to goods which influence typicality of some characteristics on a product or confer reputation to a product (Vandecandeleare *et al*, 2010).

In registration of geographical indication, the application must contain description of the geographical area where the production is taking place (EU Council Regulation, 2006) Under the EU Council Regulation on protection of geographical indications, the application must also contain

some evidence that the product originates in the defined geographical area (EU Council Regulation, 2006).

Unique Quality or Reputation Attributed to the Place of Origin

In the definition of geographical indications, given quality or reputation refers to the special characteristic or quality of the product which constitutes unique attributes which makes it different from similar products produced from other regions (EU Council Regulation, 2006). According to Food and Agricultural Organization of the United Nations (FAO), some agricultural and food products display special characteristics which are inherent to the places where they are produced and that gives those products a reputation in the market. FAO further observes that, special qualities means some characteristics which differentiate the product from other products of the same category.

The unique elements of geographical indications products are measured in terms of taste, aroma, touch, appearance or methods of production or extraction. The main point of assessing unique quality of a product is typicality of the quality in one product over the other. Two products from different areas may have similar qualities but it is typical in one product and normal in the other product. For example the issue of aroma in rice is typical in Kyela rice if compared to rice from other areas like Shinyanga, Ifakara or Mbarali (John *et al.*, 2019)

The issue of quality difference is normally connected to environmental or climatic factors like rainfall, temperature, humidity or altitude of the area and type of soil of a particular area which naturally influences on the quality of the product produced in that region or locality as distinguished from similar product produced in other areas (John *et al.*, 2019). A good example is Kyela rice. Respondents from Kyela said that, the rice species from other district in Mbeya may not yield super rice when grown in district like Mbarali but when the same species are grown in Kyela they turn into super rice due to the climatic and environmental factors existing in Kyela (John *et al.*, 2019). This proves that there is a link between the quality of rice and environmental conditions of the Kyela District.

The link between the product and place is also contributed by human factors. Natural resources are always linked to human intervention (John *et al.*, 2019). It is the people who shape the environment by adjustment made to adopt production methods to environment on bases of cultural heritage and local know how (skills) adopted and applied from one generation to another. In this sense the product belongs to the local community that has created, adopted, preserved and passed on the specific environment which influences on the quality of the goods (John *et al.*, 2019).

In protection of geographical indications, a single criterion attributed to geographical origin is sufficient. A geographical indication can be protected if it is proved that there is at least one condition which links the product to the place of origin. The condition may be based on the quality of the goods or only its reputation. It is not necessary that, the production of raw materials and the development of the product should take place entirely in the defined geographical area (WIPO, 2017)

The Geographical Indication must be owned by a Community of producers

Literatures reveals that, geographical indication by nature can not be monopolized by individual person because they reflect common interests of the whole community involved in preserving the environment which contributes to influence on the unique attributes of the product to be protected as geographical indications. It is therefore important for the geographical indication to be registered for common benefit of the whole group of producers (European Union Intellectual Property Office, 2020). According to European Union Intellectual Property Office, GI does not confer individual rights (as is the case with patents and trademarks). Upon registration, the right to use a geographical name belongs to the community of producers in a given geographical area, the one that respects the product specifications submits the request (European Union Intellectual Property Office, 2020).

5. Conclusion

Tanzania has been a member of the TRIPS Agreement since 1995; hence, it has a legal obligation to enact domestic law for the protection of geographical indications in Tanzania. One of the potential geographical indications that needs to be protected is Kyela rice, which is a unique rice produced in the Kyela District, southern highlands of Tanzania. In order to protect geographical indication on Kyela rice, there must be clear standards which are reflected in this paper which will be used to assess the applications for registration of geographical indications. The standards include the use of indication or sign attributed to a certain area of production, the indication must be used on goods like agricultural goods, the goods must have unique qualities distinguishing the goods from other similar goods, the unique characteristics must be linked or attributed to the particular place of origin and that the application for registration must be made by a community of producers originating in the particular area.

The study recommends that, Tanzania through the ministry of agriculture must prepare the standards for assessing registration of geographical indications in Tanzania. The standards to be developed must reflect the key words and requirements stipulated in the definition of geographical indications and those discussed in this paper. Any person or an entity wishing to register geographical indication must follow these standards in order to register their products as geographical indications.

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International Agreements

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Lisbon Agreement for the Protection of Appellation of Origin and their International Registration of 1958

WTO Agreement on Trade Related Aspects of Intellectual Property Rights of 1994

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