



Intellectual Property Management in West Africa

*Guide for agricultural development
through use of Geographical
Indications in Burkina Faso, Ivory Coast
and Senegal*





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CONTENT

| | |
|---|----|
| List of abbreviations..... | 7 |
| Foreword..... | 9 |
| General Introduction..... | 10 |
| Chapter I: The Legal and Institutional Framework of Intellectual Property in West Africa | 13 |
| 1.1 Legal and Institutional Literary and Artistic Property Framework ... | 13 |
| 1.1.1 Domestic Law | 14 |
| 1.1.2 International Law | 15 |
| 1.2 Legal and Institutional Industrial Property Framework | 17 |
| 1.2.1 International Legal and Institutional Framework..... | 17 |
| 1.2.2 The Legal and Institutional Domestic Law Frameworks | 19 |
| 1.2.2.1 <i>Centralized Organization</i> | 19 |
| 1.2.2.2 <i>National Implementation Services</i> | 22 |
| Chapter II: The Contribution of GIs to the Agricultural Sector in West Africa | 28 |
| 2.1 Weight of Agriculture in the West African Economies | 28 |
| 2.1.1 The Weight of Agriculture in the Economy of Burkina Faso.... | 28 |
| 2.1.2 The Weight of Agriculture in the Economy of the Ivory Coast | 29 |
| 2.1.3 The Weight of Agriculture in the Economy of Senegal | 31 |
| 2.2 GIs, a Potential for Agricultural Development: The Impact of GIs (Social, Economic, Environmental) | 35 |
| 2.2.1 GIs, a Potential for Agricultural Development in Burkina Faso | 38 |
| 2.2.2 GIs, a Potential for Agricultural Development in the Ivory Coast..... | 39 |
| 2.2.3 GIs, a Potential for Agricultural Development in Senegal | 40 |
| 2.3. Protection Conferred by GI | 41 |
| 2.3.1 Rights Conferred by Registering | 41 |
| 2.3.2 Defending GIs | 43 |
| Chapter III: The Path Towards GIs in the OAPI System | 44 |
| 3.1. The Protection Procedure by GIs | 44 |
| 3.1.1 GI Registration Procedure - National Phase | 44 |
| 3.1.2 The Regional Phase..... | 46 |
| 3.1.2.1 <i>Who can file an application for the registration of a GI?</i> | 46 |

| | |
|--|-----------|
| 3.1.2.2 Elements that Make Up the Application:..... | 46 |
| 3.1.2.3 Application Filing Location | 47 |
| 3.1.2.4 Examining the Application | 47 |
| 3.1.2.5 Issuance of the Registration Certificate..... | 48 |
| 3.1.2.6 Publication of the Application..... | 48 |
| 3.1.2.7 Objecting to the Registration of a GI..... | 48 |
| 3.2. OAPI Product Tracking Methodology..... | 49 |
| 3.3 Determination of potential GI Products in West Africa | 51 |
| 3.3.1 In Burkina Faso..... | 51 |
| 3.3.1.1 Léraba-KénéDougou Tiger Nut..... | 51 |
| 3.3.1.2 Boubou Dagara..... | 53 |
| 3.3.1.3 Saponé Hat..... | 54 |
| 3.3.1.4 Kouigny Cloth | 56 |
| 3.3.1.5. Chitoumou..... | 57 |
| 3.3.1.6 Arbolle Yam..... | 59 |
| 3.3.2 In the Ivory Coast | 60 |
| 3.3.2.1 Grand Lahou Attiéké | 60 |
| 3.3.2.2 Tiébissou Woven Cloth | 61 |
| 3.3.2.3 Korhogo Cloths..... | 61 |
| 3.3.2.4 Katiola Pottery | 62 |
| 3.3.2.5 Cocoa | 63 |
| 3.3.2.6 Mountain Coffee | 64 |
| 3.3.2.7 Cashew Nuts | 64 |
| 3.3.3 Senegal..... | 65 |
| 3.3.3.1 Senegal Yett | 65 |
| 3.3.3.2 Casamance Honey..... | 66 |
| 3.3.3.3 Bandia Honey..... | 67 |
| 3.3.3.4 Teug Dara and Keur Saer Pottery | 68 |
| 3.3.3.5 Ngaye Shoes..... | 69 |
| 3.3.3.6. The Fouta Ndiordy..... | 69 |
| 3.3.3.7 The Senegal Kethiakh | 70 |
| Recommendations and Conclusions | 72 |
| Glossary..... | 75 |

List of abbreviations

| | |
|--------------------|--|
| TRIPS: | Trade-Related Aspects of Intellectual Property Rights |
| ANADER: | Agence National d'Appui au Développement Rurale (National Rural Development Support Agency) |
| ANIDA: | Agence Nationale d'Insertion et de Développement Agricole (National Integration and Agricultural Development Agency) |
| APROMAC: | Association des Professionnels du Caoutchouc naturel de Côte d'Ivoire (Ivory Coast Natural Rubber Professionals Association) |
| ARIPO: | African Regional Intellectual Property Organization |
| ASPIT: | Agence Sénégalaise pour la Propriété Industrielle et l'Innovation Technologique (Senegalese Agency for Industrial Property and Technological Innovation) |
| CCA: | Conseil du Coton et de l'Anacarde (Cotton and Cashew Council) |
| CCC: | Coffee-Cocoa Council |
| CDPI: | Centre de Documentation en Propriété Intellectuelle (Intellectual Property Documentation Centre) |
| CNDPI: | Comité national de coordination et de développement de la propriété intellectuelle (National Coordination and Intellectual Property Development Committee) |
| CNIG: | Comité National des Indications Géographiques (National Geographical Indications Committee) |
| CNRA: | Centre National de Recherche Agronomique (National Agronomic Research Centre) |
| COPROCA-GL: | Coopérative de Production et de Commercialisation d'Attiéké de Grand Lahou (Attiéké de Grand Lahou Production and Marketing Cooperative) |
| DPEE: | Direction de la Prévision et des Études Économiques (Department of Forecasting and Economic Studies) |
| FCFA: | CFA (African Financial Community) Franc |
| GI: | Geographical Indication |

| | |
|-------------------|--|
| PGI: | Protected Geographical Indication |
| IP4GROWTH: | “Enhancing Intellectual Property Capacities for Agricultural Development” |
| LOASP: | Loi d’Orientation Agro-Sylvo-Pastorale (Agro-Sylvo-Pastoral Act) |
| OAPI: | Organisation Africaine de la Propriété Intellectuelle (African Intellectual Property Organization) |
| OIPI: | Office Ivoirien de la Propriété Intellectuelle (Ivorian Office of Intellectual Property) |
| WTO: | World Trade Organization |
| WIPO: | World Intellectual Property Organization |
| ONDR: | Office National de Développement de la Riziculture (National Rice Farming Development Office) |
| PAEP: | Projet d’appui à l’entrepreneuriat paysan (Project to support farmer entrepreneurship) |
| PAMPIG: | Projet d’Appui à la Mise en Place des Indications Géographiques (Project to support the implementation of Geographical Indications) |
| PNDPI: | Plan National de Développement de la Propriété Intellectuelle (National Intellectual Property Development Plan) |
| PNIA: | Programme National d’Investissement Agricole (National Agricultural Investment Plan) |
| PRACAS: | Programme d’Accélération de la Cadence Agricole au Sénégal (Programme for Accelerated Agricultural Development in Senegal) |
| PRODAC: | Programme des Domaines Agricoles Communautaires (Community Agricultural Development Program) |
| PSE: | Plan Sénégal Emergent (Emerging Senegal Plan) |
| SIA: | International de l’Agriculture de Paris (Paris International Agricultural Show) |
| SNL/OAPI: | Structure Nationale de Liaison avec l’Organisation Africaine de la Propriété Intellectuelle (National Liaison Structure with the African Intellectual Property Organization) |

Foreword

IP4GROWTH ‘Enhancing Intellectual Property Capacities for Agricultural Development’ is a 3-year long Higher Education Capacity Building project funded by the European Commission under the EU – ACP group of states Higher Education cooperation programme, Edulink II. Its objective is to contribute to the agricultural and socio-economic development of West African countries (especially Burkina Faso, Ivory Coast and Senegal) through enhancement of Higher Education Institutions’ competences in Intellectual Property management.

West African countries face particular challenges on agricultural innovation, structured practices, trade policy and IP management. During the first phase of the IP4GROWTH project, a survey analysis conducted by the partners in May 2014 in universities of Burkina Faso, Ivory Coast and Senegal revealed a lack of knowledge and concepts in intellectual property rights, including as a result a lack of knowledge on aspects regarding licensing and intellectual property management.

Therefore, the IP4GROWTH project, in its second phase, organized three training modules on IP applied to agriculture and research targeted at the academic staff of the project’s partner universities. After each module, these same universities held a seminar to pass on the essentials of this knowledge to a wider audience.

The third phase of the project was devoted to analysing the situation of intellectual property applied to agriculture in each country, including visits to farming communities to identify products that could potentially be protected as Geographical Indications. These visits produced a second result: increasing the awareness of these communities on the benefits that the use of these Geographical Indications can have to increase the added value of their products. This guide shows the results and conclusions of this analysis.

General Introduction

WIPO defines intellectual property as a term referring to the creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce and geographical indications. This intellectual property is protected through law and enables creators to earn recognition or financial benefit from what they invent or create.

If there is an intellectual property right whose positive impact on agricultural development in Africa is often misunderstood, it is that of Geographical Indication (GI). It is one of the eight¹ industrial property rights managed by the African Intellectual Property Organization (OAPI), the subject of Annex VI of the Bangui Agreement establishing the OAPI. “**Penja Pepper**”, “**OKU White Honey**”, “**Ziama Macenta Coffee**” are a few examples of African Geographical Indications registered at the OAPI².

When the Bangui Agreement was reviewed in 1999, Annex VI on designations of origin was replaced by Annex VI on geographical indications. The definition of geographical indication results from article 22 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The OAPI therefore uses the World Trade Organization’s (WTO) definition. In the OAPI system, geographical indication applies to any product (natural, agricultural, craft or industrial),

-
1. The industrial property rights published by the OAPI since the revision of the Agreement in 1999 are: i) invention patents (Annex I); ii) the utility models (Annex II); iii) brands of products or services (Annex III); iv) industrial models and drawings (Annex IV); v) trade names (Annex V); vi) geographical indications (Annex VI); vii) layout designs (topographies) of integrated circuits (Annex IX); viii) protection of new plant varieties (Annex X).
 2. Penja and Oku are communities in Cameroon and Ziama is a region in Guinea.

whereas the definition of designation of origin, in some legislations such as the European Union CE 510/2006 regulation, applies only to agricultural products or foodstuffs. The change of name in Annex VI of the OAPI Agreement is justified especially since the definition of designation of origin in Annex VI of the Bangui Agreement (1977) was already that of geographical indication as provided by the TRIPS Agreement. It was also that of the Lisbon Agreement on the protection of designations of origin and their international registration.

Geographical Indication

“A sign that identifies a product as originating from a place, region or country, and possesses qualities, a reputation or other given characteristic that may be attributed essentially to that geographical origin.”

Annex VI of the OAPI agreement, Article 1, paragraph a.

Among the industrial property rights, a geographical indication is typically dedicated to the value of local products whose quality is linked to the origin. Despite the economic underdevelopment that characterizes them, African countries such as Burkina Faso, Ivory Coast and Senegal are filled with products, natural or not, whose local qualities make them competitive products in the international market. Indeed, the global market is testimony to the growing interest in “local” products³. Geographical indications can be tools for the development of rural areas through the promotion of local products.

In order to correctly situate the geographical indications among the industrial property rights and to show the potential in the development of the agricultural sector, the guide is structured in three chapters:

3. See Agropolis International, For support of small producers through the construction of GIs in southern Africa, extract from the thematic dossier of Agropolis International “the duras project, partners for development”, June 2010.

- ▶ Chapter I. The Legal and Institutional Framework of Intellectual Property in West Africa
- ▶ Chapter II. The Contribution of GIs to the Agricultural Sector in West Africa
- ▶ Chapter III. The Path Towards GIs in the OAPI System

Chapter I: The Legal and Institutional Framework of Intellectual Property in West Africa

Within the IP4GROWTH project framework, the legal and institutional framework of IP is sufficiently aligned since the three West African countries concerned (Burkina Faso, Côte d'Ivoire, Senegal) share a common legal tradition inherited from French law.

In this context, the concept of intellectual property refers to a large quantity of legal institutions grouped into two categories: literary and artistic property on the one hand, and industrial property on the other. The legal and institutional framework can therefore be presented following this division.

1.1 Legal and Institutional Literary and Artistic Property Framework

The institutional field did not develop in the same way for literary and artistic property as for industrial property. The lack of rights to be delivered and the lack of formalities, to access protection, in our copyright system explain this situation. In this area, it is sufficient to raise the institutional connection to the Ministries responsible for culture and the existence in each country, the body responsible for the collective administration of rights⁴. We will present the legal framework for literary and artistic property by distinguishing between domestic and international law.

4. Before independence, the cities' collective management organizations exercised their activities in the colonies. Since their independence, Senegal created its collective management body in 1973, the Ivory Coast created theirs in 1981 (Decree No. 81-232 of 15 April, 1981) and Burkina Faso in 1985.

1.1.1 Domestic Law

In the field of literary and artistic property, Burkina Faso, the Ivory Coast and Senegal have inherited the Latin copyright system through French law. The first copyright rules in these countries date back more than a century and a half. Indeed, the Decree-Law of 1791 on the right of representation and that of 1793 on the right of reproduction were made applicable to the colonies in Africa by the decrees of 9 December 1857 and 1 May 1858, respectively. These texts were only repealed by the law of 11 March 1957 on the protection of literary and artistic property, also made applicable in French West Africa. The law of 11 March 1957 was only repealed by legislation made after the independence of the three countries⁵. Thus, literary and artistic property in Burkina Faso is governed by law No. 32-99/AN of 22 December 1999 on the protection of literary and artistic protection⁶, in the Ivory Coast by law No. 96-564 of 25 July 1996 on the protection of intellectual works and rights of authors, performers and phonogram and videogram producers, in Senegal by law No. 2008-09 of 25 January 2008, on copyright and related rights.

The concept of literary and artistic property also includes the institution of related rights. This institution provides the right of those involved in the artistic and literary creation (artists, performers, phonogram and videogram producers as well as the broadcasting organizations). This is governed by the same laws as copyright.

5. The law of 11 March, 1957 was repealed by Order dated 27 September, 1983, in Burkina Faso, by law dated 4 December, 1973 in Senegal and by law dated 28 July, 1978 in the Ivory Coast.

6. See Law No. 032-99/AN on the protection of literary and artistic property dated 2 December, 1999, enacted by Decree No. 2000-53 of 21/02/00, J.O.B.F. of 2/03/2000, p. 3253.

The positive law of the three countries in the field of copyright and related rights also originates in Annex 7 of the Bangui Agreement⁷.

1.1.2 International Law

The presence of Burkina Faso, Ivory Coast and Senegal in the OAPI commits them to adhere to a set of international instruments in the field of literary and artistic property⁸. The level of implementation of

7. Annex VII of the Bangui Agreement covers literary and artistic property protection.

This text is a common law scheduled to be directly applied in Member States of the OAPI. The domestic laws of the member countries can complete and fill in the gaps of common law without contradicting its provisions. The agreement and its annexes revised in 2015 in Bamako have not yet entered into force.

Article 5, paragraph 2, of the Agreement revised in 2015 includes the following information to the scope of the annexes: "In the Member States, this Agreement and its Annexes serve as laws for the subjects that they relate to. They repeal or prevent the effectiveness of all contrary provisions. Annex VII relative to literary and artistic property is a minimal regulatory framework".

8. Member countries agree to adhere:

- I. to the Berne Convention of 9 September 1886, as revised in Paris on 24 July 1971 and/or the Universal Copyright Convention revised in Paris on 24 July 1971 and amended on 28 September 1979;
- II. to the Convention Establishing the World Intellectual Property Organization, signed in Stockholm, on 14 July 1967 **and amended on 28 September 1979**;
- III. to the Nairobi Treaty concerning the protection of the Olympic symbol dated 26 September 1981;
- IV. the Marrakech Treaty establishing the World Trade Organization, including the Agreement on Trade-Related Aspects of Intellectual Property Rights dated 15 April 1994;
- V. to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, **dated 26 October 1961**;
- VI. to the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, in Brussels on 21 May 1974;
- VII. to the World Intellectual Property Organization Copyright Treaty adopted in Geneva on 20 December 1996;
- VIII. to the World Intellectual Property Organization Copyright Treaty on performances and phonograms adopted in Geneva on 20 December 1996;
- IX. to the Beijing Treaty on Audiovisual Performances dated 24 June 2012;
- X. to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise, dated 28 June 2013;

this commitment varies from one country to another. Regarding the main international instruments, we can make the following observation:

Burkina Faso, Ivory Coast and Senegal are parties to the Berne Convention for the Protection of Literary and Artistic Property, the Rome Convention of 26 October 1961 on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of 1994⁹.

On the other hand, the WIPO treaties on copyright and related rights currently bind only Senegal and Burkina Faso¹⁰, as Ivory Coast has not ratified them yet. However, all the three countries are signatories of the Beijing Treaty on Audiovisual Performances dated 24 June 2012, and the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise, dated 28 June 2013. Both treaties signed under the auspices of WIPO, however, are not yet in force, although the Marrakech Treaty will enter into force on 30 September 2016 following the recent ratification by Canada (being the 20th country to ratify it).

The international conventions in the field of literary and artistic property are instruments to standardize national legislations. Thus, with regard to the term of protection, the treaties set a minimum dura-

9. The so-called developing countries including Ivory Coast and Senegal have benefited from a transitional period that ended on 1 January 2000, while the least developed countries, such as Burkina Faso, had a longer period that expired on 1 January 2006. For the latter countries, with one extension after another, the transitional period will expire on 1 July 2021. The reasons have always been the economic, financial and administrative constraints still faced by the least developed countries and their need for flexibility to create a viable technological base. Thus, beneficiary countries will not be required to apply the provisions of the Agreement, other than Articles 3, 4, and 5.

10. This is the WIPO Copyright Treaty of 20 December 1996 and the WIPO Performances and Phonograms Treaty of 20 December 1996.

tion that each member country should integrate into their legislation. These treaties establish a minimum protection that States remain free to improve. They also apply the principle of national treatment, offering nationals of member countries access to the protection reserved for nationals of Member States.

1.2 Legal and Institutional Industrial Property Framework

In the field of industrial property, the institutional framework is extensively developed. In this field, the States have institutions empowered to issue rights and monitor their management. For the three States involved in the IP4GROWTH project, the legal framework and the institutional framework are harmonized. The issue may usefully be presented by distinguishing the international order (para. 1) from the domestic order (para. 2)

1.2.1 International Legal and Institutional Framework

Since the three countries concerned are members of the OAPI they are committed to adhere to a series of international conventions listed in the preamble of the Agreement¹¹. The level of implementation of this commitment varies from one country to another.

11. This list, included in the Agreement revised in 2015 is as follows: i) the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised in Stockholm on 14 July 1967 and amended on 28 September 1979; (ii) of the Hague Agreement Concerning the International Registration of Industrial Designs of 6 November 1925, as revised at the Hague on 28 November, 1960, in Stockholm on 14 July 1967, in Geneva on 28 September 1979 and 2 July 1999; iii) the Lisbon Agreement for the Protection of Appellations of Origin and their international registration on 31 October 1958, as revised in Stockholm on 14 July 1967, in Geneva **on 28 September 1979 and on 20 May 2015**; iv) the Convention Establishing the World Intellectual Property Organization, signed in Stockholm on 14 July 1967 **and amended on 28 September 1979**; v) e Patent Cooperation Treaty, signed in Washington on 19 June 1970 and revised on 28 September 1979, on 3 February

Nevertheless, we can see that Burkina Faso, Senegal and the Ivory Coast are members of the following main international instruments:

- ▶ The Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised in Stockholm on 14 July 1967;
- ▶ The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 1994, effective from 1 January 1996;
- ▶ Patent Cooperation Treaty (PCT), signed in Washington on 19 June 1970;
- ▶ As for the Lisbon Agreement for the Protection of Appellations of Origin and their international registration on 31 October 1958, as revised in Stockholm on 14 July 1967, while there is no lack of interest in the subject of geographical indications, only Burkina Faso ratified it.

1984, and on 3 October 3 2001; (vi) the Patent Law Treaty adopted in Geneva on 1 June 2000; (vii) the Nairobi Treaty on the Protection of the Olympic Symbol of 26 September 1981; (viii) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 1977, **and amended on 26 September 1980**; (ix) the International Convention for the Protection of New Varieties of Plants of 2 December 1961, revised in Geneva on 10 November 1972, 23 October 1978, and 19 March 1991; (x) the Marrakesh Agreement Establishing the World Trade Organization, especially the Agreement on Trade-Related Aspects of Intellectual Property Rights on 15 April, 1994; (xi) the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks in Vienna on 12 June 1973, and amended on 1 October 1985; (xii) the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks adopted in Madrid on 27 June 1989, amended on 3 October 2006 and 12 November 2007; (xiii) the Singapore Treaty on the Law of Trademarks of 2 March 2006; (xiv) the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, revised in Stockholm on 14 July 1967 and Geneva on 13 may 1977 and amended on 28 September 1979; (xv) the Locarno Agreement Establishing an International Classification for Industrial Designs signed in Locarno on 8 October 1968, and amended on 28 September 1979; (xv) the Strasbourg Agreement Concerning the International Patent Classification of 24 March 1971, as amended on 28 September 1979.

This list, that is included in the Agreement revised in 2015, is as follows:

- ▶ The three countries concerned are also members of the WIPO and WTO.

1.2.2 The Legal and Institutional Domestic Law Frameworks

This is to present the OAPI industrial property system. It consists of a centralized system with which links are arranged in each State through the National Liaison Services.

1.2.2.1 Centralized Organization

The independence of the French colonial territories in Africa in 1960 created a need to create industrial property management structures in the new African States. They chose to do so in a concerted manner through the establishment of the African and Malagasy Office of Industrial Property (OAMPI). It arose from the Libreville Agreement of 13 September 1962, only two years after the independence of most of those States. The OAMPI subsequently became the OAPI with the departure of Madagascar on 31 December 1975¹². It currently includes seventeen¹³ member countries with over 100 million inhabitants. Its headquarters are in Yaoundé, Cameroon.

The OAPI changed on the occasion of the adoption of the Bangui Agreement in 1977. It consisted in the extension of its powers to literary and artistic property, becoming the African Intellectual Property Organisation. Its role, however, remains predominant in the field of

12. Effective from 31 December 1976.

13. The OAPI member countries are:

Benin, Burkina Faso, Cameroon, Central African Republic, Congo, Ivory Coast, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Mauritania, Niger, Senegal, Chad, Togo and the Comoros.

There is an organization parallel to the OAPI between the English-speaking African countries: it is the ARIPO, African Regional Industrial Property Organisation. Its headquarters are in Hararé, Zimbabwe.

industrial property, as it continues to serve as a national industrial property office for the member countries.

The Libreville Agreement system, maintained under the Bangui Agreement, is based on three principles:

- ▶ the adoption of uniform laws, in the form of annexes to the Agreement which are an integral part of the Agreement¹⁴;
- ▶ the creation of a common Office; it takes the place of “national office”, “elected office”, “designated Office”, “receiving office”, in the sense of international treaties granting industrial property rights¹⁵;
- ▶ the centralisation of procedures for issuing industrial property rights, leading to granting a right that gives rise to a bundle of independent national rights simultaneously effective in all member States.

The OAPI title is therefore unique but not unitary. It is not a supra-national title like the CE mark in Europe. In each member country, the rights live their lives independently. Thus, the holder of an OAPI patent may assign its rights to one or more territories and keep them in the other territories, in strict respect of the exhaustion of rights that takes into account the free movement of goods respecting the eco-

14. The annexes to this Agreement contain, respectively, the applicable provisions, in each member State, in what concerns: i) invention patents (Annex I); ii) the utility models (Annex II); iii) brands of products or services (Annex III); iv) industrial models and drawings (Annex IV); v) trade names (Annex V); vi) geographical indications (Annex VI); vii) literary and artistic property (Annex VII), viii) protection against unfair competition (Annex VIII); ix) layout designs (topographies) of integrated circuits (Annex IX); x) protection of new plant varieties (Annex X).

15. Patent Cooperation Treaty (PCT), Lisbon Agreement for the Protection of Appellations of Origin, the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, The Hague Agreement Concerning the International Registration of Industrial Designs

conomic community areas such as the CEMAC and UEMOA. However, there is a desire for harmonization and unification of the implementation of common texts through Article 15 of the Bangui Agreement, of 1977.

The African community legislator does not appear to have measured at the start the entire scope of the choice made in favour of the OAPI title based on independent national rights. Indeed, an OAPI patent may be cancelled in one country and continue to exist in other countries. To remedy this, an article was included in the Agreement as revised in 1977, which provides that final court decisions regarding intellectual property in a member country are effective in the other countries. Such a provision does not seem consistent with the choice in favour of independent national rights.

In the agreement as revised in 1999¹⁶, Article 15 became Article 18, which states that “final court decisions on the validity of rights in a member country under the provisions of Annexes 1-10 to this Agreement are effective in all member States, except those based on public order and morality”. The reduction of court decisions on the validity of the rights does not remove all the difficulties implementing this provision. However, the problem becomes more manageable. Thus, it is accepted that a patent cancelled in a member country continues to produce its effects in other member countries, if the cause of the cancellation is contrary to public order or morality.

In the various member States, the creation of a common office justifies the absence of national industrial property offices responsible for issuing industrial property rights. However, each country has a National Liaison Service (SNL).

16. Became effective on 28 February 2002.

1.2.2.2 National Implementation Services

1.2.2.2.1. *National Implementation Services in Burkina Faso*

Like the other member countries of the OAPI, Burkina Faso has a National Industrial Property Centre (CNPI). It is a structure that reports to the Ministry of Industry, Trade and Handicrafts (MICA) whose organization is governed by Decree No. 2013-853 / PRES / PM / MICA of 27/08/2013. The CNPI is also the National Liaison Structure with the African Intellectual Property Organization (SNL/OAPI). Its main missions are to:

- ▶ implement the country's industrial property policies;
- ▶ facilitate national users' access to services rendered by the OAPI;
- ▶ set up and operate a service to welcome and provide support, consulting services and assistance to users;
- ▶ promote the protection of various forms of creations through intellectual property;
- ▶ encourage creativity and transfer of technology through the use of intellectual property;
- ▶ promote the valuation of research results and the exploitation of technological innovations by domestic firms;
- ▶ collect, process and distribute technological information.

Burkina Faso adopted other institutions indicated by the OAPI to ensure the effective management of intellectual property. This is how the National Committee on Intellectual Property Development and Coordination (CNDCPI), the National Geographical Indications Committee, the Intellectual Property Documentation Centre and the Technology and Technological Innovation Support Centre (CATI) were created.

Regarding the National Committee on Intellectual Property Development and Coordination (CNDCPI), it was implemented in each member State in the context of promoting the intellectual property system with the support of the OAPI. In Burkina Faso, the CNDCPI

was established based on two texts: Decree No. 2012-329/PRES/PM/MICA/MCT of 26 April 2012 establishing the creation, powers, composition and operation of a national committee on intellectual property development and coordination and joint order No. 2013-0322/MICA/MCT of 11 October 2013 on the establishment, composition and operation of two specialized units of the CND CPI, one dealing with copyright issues and the other with industrial property issues. The CND CPI's goal is to promote the economic, social and cultural development of the Member States of the OAPI based on the effective, massive but judicious use of intellectual property, to the people's best interests.

Since it is the National Committee for the control of geographical indications, it was established as part of the promotion and development of local products containing specific characteristics related to their geographical origin. In Burkina Faso, it was created by joint order No. 2013-387/MICA/MASA of 31 December 2013 of the minister in charge of industry, trade and handicrafts and that responsible for agriculture and food security. The Committee is responsible, among others, for raising awareness on the importance of geographical indications, identifying and assessing the relevance of products into geographical indications in relation to their product specifications.

Regarding the Intellectual Property Documentation Centre (CDPI), the OAPI has committed in recent years to providing each of the Member States with such a Centre, with the purpose of facilitating access to technical and technological information for researchers, inventors and innovators. In Burkina Faso, the measures taken by the OAPI led to the technical acceptance of the CDPI in June 2016.

Finally, the Technology and Innovation Support Centre (CATI), aims to allow innovators from developing countries to have access to the local benefits of quality technological information services and other related services. CATIs stem from the WIPO CATI project and include

access to online scientific and technical resources, access to intellectual property publications, and assistance in searching for technological information. In Burkina Faso, the CATI was created by Decree No. 2015-243/MICA/SG/CNPI with the mission to provide users with technical and scientific documents published in databases.

1.2.2.2. The National Implementation Service in the Ivory Coast

The Ivorian Office of Intellectual Property (OIFI) is the national public institution created by Decree No. 2005-112 of 24 February 2005, in charge of managing the intellectual property system. It also ensures the representation of the African Intellectual Property Organization (OAPI) and the World Intellectual Property Organization (WIPO). Before the establishment of the OIFI, the services in charge of registering, promoting and protecting intellectual property (industrial property) were housed within the Ministry of Industry and the Promotion of the Private Sector. This ministry remains the ministry that supervises the OIFI. To enable it to carry out the missions assigned, the OIFI has a Management Board and a Directorate-General.

Decree No. 2005-112 of 24 February 2005, which established the OIFI set the following missions:

- ▶ promote the acquisition of technologies and applied research in the field of industry and, in particular;
- ▶ handle all issues relating to the industrial exploitation of technological progress, monitoring technology acquisition agreements and contracts;
- ▶ promote and manage the national intellectual property activities in liaison with the African Intellectual Property Organisation (OAPI) and the World Intellectual Property Organisation (WIPO), as well as with any agency that can provide assistance to the Ivory Coast in the subject;
- ▶ monitor national and international intellectual property issues;

- ▶ protect all intellectual property rights as defined by the Bangui Agreement, and combat, together with the competent services, any counterfeit and fraud in this field.

As such, the Ivorian Office of Intellectual Property is responsible for:

- ▶ initiating the ratification or denunciation of the Agreements, Conventions, bilateral, regional and multinational treaties regarding industrial property and ensure their implementation at national level;
- ▶ implementing the State's intellectual property policies;
- ▶ contributing to the representation and defence of the State's interests with the international institutions responsible for industrial property;
- ▶ receiving intellectual property rights applications, control their regularity and ensure their effective transmission to the OAPI;
- ▶ receiving and managing national and international intellectual property documentation;
- ▶ ensuring the monitoring of license agreements in relation to industrial property rights in accordance with the provisions of the Bangui Agreement;
- ▶ taking all necessary measures to curb the illicit exploitation of protected property rights in the Ivorian territory;
- ▶ cooperating with all assistance and training programs by industrial property organisations in favour of their country;
- ▶ promoting inventive activities;
- ▶ promoting the exploitation of research results and encourage the transfer of technology;
- ▶ Promoting art and culture.

1.2.2.2.3. The National Implementation Service in Senegal

The Senegalese Agency for Industrial Property and Technological Innovation (ASPIT) was born of the merger between the Industrial Property Service and the Senegalese Agency for Technological Innovation created in 2001. The new Agency's mission is to promote invention and technological innovation. Its objective is to make the productive sectors more competitive, to support and accompany industrial, agricultural and/or handicraft projects. Priority is given to innovative projects, resulting in value added growth and very likely to create employment.

The ASPIT is the national structure in liaison with the OAPI (SNL/OAPI). As such, at national level, it must translate the main tasks entrusted to it by the Bangui Agreement, in particular, the promotion and awareness of the use of the industrial property system for economic and social development of its member States, guidance and assistance to users of the system.

The ASPIT's missions comprise, on the one hand the popularization and promotion of the industrial property system, and on the other hand the valuation of inventions and innovations. Regarding the first mission, it involves:

- ▶ assistance to users within the industrial property rights protection procedures;
- ▶ making substantial academic literature available, with the opportunity to view the free-to-access databases to research on the state of the art both at national and international level;
- ▶ transmitting research requests on the state of the art to the OAPI and WIPO;
- ▶ assisting economic operators in the exploitation of the technologies described in the patents in force or not, available in databases, so as to guide them towards the driver sectors;

- ▶ increasing users' awareness of the system by holding seminars, workshops and during the celebration of institutional days (e.g. 13 September and 26 April) for a better understanding and efficient use of the protection of their inventions and creations.

Regarding the second mission, namely the valuation of inventions and innovations, it involves:

- ▶ the identification of needs;
- ▶ the technical evaluation of projects;
- ▶ building and testing prototypes;
- ▶ specific studies;
- ▶ support in the search for funding;
- ▶ Setting up and finalizing the projects.

Chapter II: The Contribution of GIs to the Agricultural Sector in West Africa

Burkina Faso, the Ivory Coast and Senegal are agricultural countries. First, we will present the weight of agriculture in each country's economy, prior to showing that the geographical indication is a tool to be discovered and used.

2.1 Weight of Agriculture in the West African Economies

2.1.1 The Weight of Agriculture in the Economy of Burkina Faso

Burkina Faso is a West African landlocked Sahelian country located in the Niger loop with an area of 274 000 km² and a population estimated at 19 million in 2016 according to projections by the National Institute of Statistics and Demography (INSD). It shares borders with Mali to the north and west, Niger to the east, and Benin, Togo, Ghana and the Ivory Coast to the south.

Since 2008, Burkina Faso has entered the age of mining countries. Gold has indeed become the country's main source of revenue, ahead of cotton which, until recently, was the country's main export product. The agricultural sector, however, remains the basis of socio-economic development in Burkina Faso and occupies 84% of the total workforce. About 30% of the Gross Domestic Product (GDP) comes from agricultural activities (agriculture, livestock, forestry and fishing), considered the main sources of economic growth and income for the majority of the population (IAP 2010). Furthermore, the agricultural sector provides 44.7% of total household income of which 24.3% from agriculture (crop production) and 20.4% from livestock (DGPER, 2010).

Despite this significant contribution, the agricultural sector remains inefficient, with respect to its real potential based on extensive arable

land not yet been exploited, big not yet recovered water potential, a considerable human resource potential made up of a young, often unemployed, workforce. Agriculture in Burkina Faso is indeed facing several constraints including poor soil, non-control of water, inadequate organisation of stakeholders, especially producers, and the narrowness of the real market for agricultural products.

2.1.2 The Weight of Agriculture in the Economy of the Ivory Coast

The Ivory Coast is a West African country in the Northern Hemisphere between the Tropic of Cancer and the Equator with an area of 322 462 km². It borders Mali and Burkina Faso to the north, Liberia and Guinea to the west, Ghana to the east and the Atlantic Ocean to the south. This territory is in the transition zone between two types of climate: the humid equatorial climate in the south (dense forest) and the dry tropical climate in the north (open forest and savanna). The hot and humid climate favours agriculture. About 23 million people live in this territory. The Ivory Coast is a former French colony that has been independent since 7 August, 1960. The Ivorian legal system has been greatly inspired by the French system.

Since its independence, the Ivory Coast has made agriculture the backbone of its economic development. Initially, the Ivory Coast based its development on cash crops, especially coffee and cocoa. In addition to these crops, the country has been promoting other crops such as palm oil, natural rubber, cotton, pineapple, banana, cashews, etc. In 2014, according to World Bank statistics¹⁷, the agricultural sector of the Ivory Coast accounted for about 22% of its GDP and provided 40% of its export earnings. This sector is also the main source of employment and income for about 60% of the population (PNIA 2012-2015).

17. *World development indicators*, April 2016.

For the promotion of the agricultural sector, the country's leaders have established state structures. These include, among others, the Office National de Développement de la Riziculture (National Rice Farming Development Office) (ONDR) to promote the rice sector, the Centre National de Recherche Agronomique (National Agronomic Research Centre) (CNRA), the Agence National d'Appui au Développement Rurale (National Rural Development Support Agency (ANADER) for agriculture management and council. Regarding the regulation of the main industries, the Coffee-Cocoa Council (CCC), and the Cotton and Cashew Council (CCA) were implemented. These various policies allowed the country to improve its agricultural production. Today, the Ivory Coast is the world's leading cocoa and cashew producer, the world's 7th producer of rubber (natural rubber), and the world's 13th coffee producer. Table 1 below shows some statistics on the Ivorian agricultural production.

In order to maintain these good agricultural numbers, the country established the Programme National d'Investissement Agricole (National Agricultural Investment Plan) in 2012 for the 2012-2015 period. The basic principle of the PNIA is to define development activities that are essential to reduce the incidence of poverty nationally from a thorough analysis of the growth rate of the economy in general and the agricultural sector in particular.

Table 1: Ivory Coast agricultural production in 2015

| Crops | Production (tonnes) |
|----------|---------------------|
| Cocoa | 1,740,842 |
| Coffee | 126,000 |
| Cashew | 800,000 |
| Cotton | 405,000 |
| Palm oil | 417,000 |

Source: Ivory Coast Ministry of Agriculture

2.1.3 The Weight of Agriculture in the Economy of Senegal

Senegal is located in the far west of the African continent, between 12°5 and 16°5 latitude North and 11°2 and 17°3 longitude West. It covers a total area of 196 722 square kilometres and its population is estimated at 13'500'000 inhabitants according to population registration office's estimates (2014). It borders Mauritania to the north, Mali to the east, Guinea and Guinea Bissau to the south, and the Atlantic Ocean to the west over a 700 km coastline.

Senegal is an emerging country whose economy is mostly based on the primary sector (agriculture, livestock, fisheries, forestry, etc.). The agricultural activities of the commodity sector, such as food and crop farming, livestock, fishing and forestry are the main source of income for 42% of all Senegalese households and in rural areas for 46.1% of households. However, the sector is increasingly affected by the recurring effects of climate variability, drought and desertification associated with the continued degradation of agricultural and pasture land, with all the socio-economic consequences of which the most obvious is food insecurity. Today, this situation makes Senegal particularly vulnerable, especially since the growth and economic development of the country will be hampered by the unexpected effects of climate change.

The development of Senegal's economy has always been based on the agricultural sector, especially groundnut culture. Senegalese agriculture, which accounts for about 14% of the GDP, employs 67% of the active population and provides a significant proportion of export earnings, is paramount for the development prospects of Senegal.

The agricultural sector is dominated by family-type farms, which account for over 95% of farmers in the country. The remaining 5% are composed of a few large producers with larger areas and increasingly modern resources: these are usually producers belonging to the big religious and traditional families. And as noted by the PNDA

(2005), “next to a versatile family farming emerges a modern agriculture based on investment and the search for profitability of the implemented capital. These farms are mainly present in the peri-urban areas and areas irrigated with water control. They employ 1% of the active population and control 5% of farmland”.

Senegalese agriculture is highly rain-dependent. However, the continuously falling rainfall (generally by 35% in quantity, with a reduction in the length of the rain period and a decline in the frequency of rain days), and the rising temperatures, endanger cultural variety.

Agriculture has significant potential to significantly contribute to the growth of the gross domestic product (GDP). It also plays a major role in the improvement of the population’s food and the consolidation of the country’s food security.

Despite its strengths, Senegalese agriculture is subject to multiple constraints; it requires not only the establishment of adequate financial means but also quality human resources able to meet the challenges and achieve the main objectives assigned to this sector, which are:

- ▶ self-sufficiency in agricultural commodities;
- ▶ improving the income of the rural population;
- ▶ integration into national and international markets.

Despite the considerable efforts undertaken by the public authorities to promote Senegalese agriculture, the sector is slow in taking off. In general, over the 2000-2011 period, the agricultural growth rate has been, on average, relatively low and erratic, making it a vulnerable sector. Compared to the secondary and tertiary sectors, the agricultural sector displays the lowest average growth rate with 2.5%, while it reached 4.1 and 4.6 percent respectively for the secondary and the tertiary sector. (DPEE/DEPE, 2013).

Thus, with the second political change, Senegal entered a development dynamic by establishing and implementing the Plan Sénégal Emergent (Emerging Senegal Plan) (PES). This plan is aimed at its first pillar: the promotion of commercial agriculture and modernization of family farming.

It is in this context that, leaning on the National Agricultural Investment Plan (NAIP) and the Agro-Sylvo-Pastoral Act (LOASP), the Ministry of Agriculture and Rural Equipment implemented the Programme for Accelerated Agricultural Development in Senegal (PRACAS), with these three Strategic Objectives (SO): (i) improve and secure the productive base, (ii) increase production and productivity and (iii) improve the efficiency of the sector's management. More specifically, the PSE aims at self-sufficiency, particularly in rice farming, by 2017, through irrigated and rain-fed rice farming, groundnut production in a value chain approach and the development of market gardening and horticulture, a segment mainly dedicated to export.

Furthermore, the National Integration and Agricultural Development Agency (ANIDA) and the Community Agricultural Development Program (PRODAC) are mobilizing thousands of young people searching for employment to boost national production and fight against unemployment.

Self-sufficiency in rice farming will have positive macroeconomic consequences by reducing imports, which mobilize, on average, 150 billion CFA francs in foreign currency annually and represent 16% of the trade balance deficit. The projections of the PSE also include a production of 1 million tons of groundnuts by 2017.

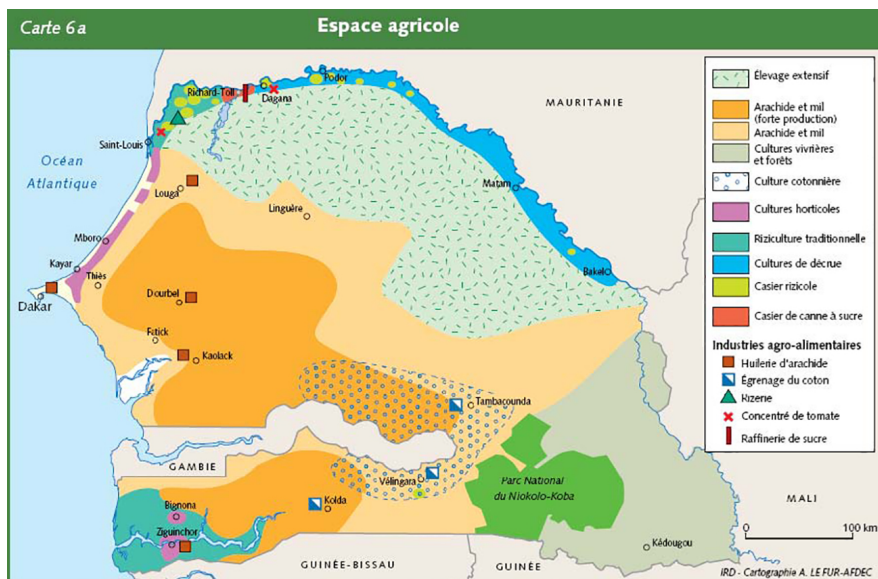
In addition to cereals and groundnuts, a strong increase in the export of horticultural products should be noted. The sector employs 15,000 full-time workers and has a turnover in exports amounting to €100 million. The significant increase in exports positions the “Country of Origin: Senegal” label on the markets of the European Union.

The PSE plans to establish 100 integrated farms, particularly in the field of horticulture, grain crops and poultry farming in order to develop commercial agriculture and position Senegal as an exporter of high added value fruits and vegetables.

Since Senegalese agriculture is for the most part family, the State, in its economic development policy, will set up 200 micro-projects to be run by farming families. Eventually, the goal is to reorganise production around the agropoles to develop the transformation and agribusiness. Next to the industrial agricultural production, organic farming has certain potential for export development provided producers are organised in labelling and supported in the marketing channels (CIES, 2016).

The livestock sector is mainly traditional in nature, and plays a very important socio-economic role: 350,000 families, that is about 3 million people rely on livestock farming. Indeed, livestock farming is a strategic sector that covers almost 60% of agricultural households in Senegal (RGPHAE 2013), but its contribution to the country's wealth is largely below the targets set by the government regarding food safety. Despite its relatively low impact in the Gross Domestic Product (GDP) (4.3% in 2013), the livestock sector should be among the sectors boosting economic growth, through the establishment of different development strategies in this field. According to livestock management, in 2010 Senegal had about 3 million cattle, more than 4 million sheep and 5 million goats, that is a livestock capital of 550 billion CFA francs (\$1.2 billion).

Only 10% of this capital is exploited. In 2012, meat production was estimated at 189 729 tons, 41% was beef and 30% poultry. The poultry sector benefits from a change in food consumption. Indeed, since 2000, the Senegalese tend to consume more chicken.



2.2 GIs, a Potential for Agricultural Development: The Impact of GIs (Social, Economic, Environmental)

The experience of many countries shows that geographical indications (GIs) can be a powerful tool for asserting the identity of certain agricultural products, for structuring the economic organisation around these products, and for increasing their added value to the benefit of the community. It also allows to secure business opportunities, increase the income of the producers and local processors and promote local heritage through the decentralised management of natural resources. It is a way to boost the potential of a country's agricultural development.

Generally, the protection of signs of identification of the quality and the origin is an important issue for African countries to not only safeguard the potential of natural resources but also to promote a com-

petitive local agriculture, above all, local markets, which explains the current involvement of the OAPI.

The richness of biodiversity, the variability of traditional food production techniques and the presence of dynamic local handicrafts offer a conducive framework for the implementation of a device to protect domestic products both regionally and in the African Member States.

The first advantage of GI protection is the **prevention of production relocation**. A product may only be marketed under the geographic name protected by GI if it is from the territory that defines it, by reason of climate or human factors specific to the location, which are unique features. In this sense, GI protection prevents production by businesses located outside of the defined territory, traditional products with high added value and the usurpation of the traditional manufacturing methods of developing countries. Therefore, registration of a GI has a first important economic interest: that of reserving the profits from the use of the geographical or traditional name for authorized users only. For this protection to be effective, it must be requested by rights' holders and established by a proper legal basis in the country of origin.

The approach can also **gain the consumer's confidence**. From this point of view, the economic rationale of GIs is based on the observation of asymmetry of market information about products, an asymmetry that is reduced by reputation, quality or other characteristics due to the presence of a GI: GIs communicate at a minimum the product's place of production and its typicality in relation to its area of production. Such an economic strategy of differentiation makes it possible to place the product on a market segment for which consumers, when they recognise the specificity linked to the origin, express a willingness to pay more money to reward this specificity. This strategy restores the confidence between producers and consumers. When the latter are located far from the product's place of origin, the GI certification assures them that the product for which they pay is made in

the place expected, according to the expected methods. We refer to the guarantee of the product's traceability. In combating unfair competition, GIs allow the concerned sectors and companies to position themselves in developing differentiation strategies and to ensure the return -even if minimal- of the created added value.

The last food crises in 2009 on the African continent revealed the productivity challenge the country was facing to ensure the food security of the entire population. However, strong competition from more competitive agriculture and the lack of modernization of farms chase millions of poor farmers towards the cities, looking for less adverse living conditions. According to the implemented system, the introduction of GIs may therefore **encourage rural development** in: i) creating added value by promoting access to niche markets improving the income of local producers; (ii) contributing to the preservation of local, natural, and cultural resources; (iii) strengthening the relationships between the stakeholders involved in the process, in particular in the framework of organisations created for this purpose, and build equity in these areas.

Abundant literature attests that GIs have many assets compared with the benefits they generate in the economy as a whole: maintaining or creating jobs, opportunities in other sectors such as tourism, putting a brake on rural exodus, protecting the environment, empowerment of women through the sustainability of their economic activities. These questions have a strategic importance to developing countries. GIs can be a real tool for economic and social development and are an integral part of the policy to support rural areas. Famine, malnutrition and rural exodus illustrate the need to reposition agriculture and handicrafts in the centre of a regional strategy to combat poverty and food security.

Finally, GIs are also **the expression of a right to be different**, essential in the globalisation era, allowing to “keep the location in the context of globalisation”. The threats to traditional products produced and

consumed on the domestic market are a reply to the threats of globalisation on export markets. With the arrival of new products changing lifestyles, these products are neglected, with the various resulting economic problems to their producers. A GI is an identification tool for the national and international recognition of heritage and the art of cooking of rural populations and for the preservation of cultural heritage. Even when the market is small, avoiding the usurpation of names referring to their history and their heritage has become an issue in international negotiations.

2.2.1 GIs, a Potential for Agricultural Development in Burkina Faso

On the economic front, a number of studies indicate that GIs can contribute effectively to development in the areas of production (European Commission, PGI Workshops. 26). Indeed, agricultural products can generate added value with investments in promotion and marketing. Thus, in Morocco, producers' incomes have improved thanks to an increase in the price of argan oil which has increased tenfold in fifteen years¹⁸. Activities related to the production of oil (first African GI) represent 25 to 45% of the local population's income¹⁹. In Cambodia, the price of Kampot black pepper, certified GI, is 3608 CFA francs compared to 1968 for other types of black pepper²⁰; which shows the contribution GIs in increasing the income of the producers concerned. In addition, the added value created through other remuneration activities is redistributed along the chain of the product with a GI, between the different actors involved in the production, processing and marketing process. Finally, the development and promotion of a GI product can serve as a starting point to develop other products or other local activities, thus generating jobs for the benefit of other segments of the population such as women and young

18. Didier CABROL, 13 décembre 2010.

19. Workshops on GIs, CE, p. 27.

20. Didier CABROL, 13 December 2010.

people. Thus, in Burkina Faso, the Chitoumou or the boubou dagara fairs allow creating activities related to trade, restoration, transformation, popular animation, etc.

On the social front, the protection of the product plays an important social part linked to the preservation of the natural and cultural heritage, traditions, know-how and the way of life in the areas concerned. Indeed, the connection between the product, the local actors and their territory makes the GI product an element of pride and local identity as for example the dagara boubou, and even national identity, as evidenced by the strongly noticed Sapone hat worn by the delegation of Burkina Faso at the opening ceremony of the Olympic Games in Rio. Moreover, through the implementation of the specifications, social cohesion is strengthened. It is about consolidating the identity linked to the product through the strengthening of connections between the various economic sectors such as accommodation, tourism, foodservice²¹ and stakeholders around a common representation of the product's quality.

On the environmental front, the development of specifications contributes to guaranteeing sustainability of the system through the consideration of questions regarding the preservation of biodiversity and the environment. In a Sahelian country weakened by the continued degradation of its natural resources such as Burkina Faso, such a contribution of GIs to the sustainable management of the environment seems beneficial.

2.2.2 GIs, a Potential for Agricultural Development in the Ivory Coast

In the Ivory Coast the GI approach has generated many benefits. At the economic level, GI protection resulted in the creation of local

21. Case study No. 6, FAO, 2010, page 143.

added value and the creation of local jobs. Thus, there is a promotion of the products from the different territories and consequently a higher household income. On the sociocultural front, GIs contribute to the preservation and valorisation of natural and cultural heritage of traditions, know-how, and lifestyles in the region. They also allow a strengthening of the social links between stakeholders, greater equity in the redistribution of added value along the chain, increase in the region's reputation and the strengthening of local pride. Geographical indications also protect the health of consumers due to the existence of a specifications document that is binding for production. In terms of the environment, geographical indications can also contribute to the preservation of the environment and the biodiversity.

The Ivory Coast has a proven commercial potential of agricultural products. The report of the *Projet d'Appui à la Mise en Place des Indications Géographiques* (Project to Support the Implementation of Geographical Indications) (PAMPIG) for the development of rural areas (E. Bicholat, 2012) identified for the Ivory Coast several products that may be subject to protection by GI. Thus, the Grand Lahou Attiéké has been identified as eligible for protection by GI subject to further investigations. As for Tiébissou woven loincloth, Katiola pottery, Trinatario cocoa, mountain coffee and cashew, these have been identified as products for which further studies are required. With regard to mountain rice, kola nuts, Bonoua pineapple and Korhogo Kent mango, the report concluded that in the absence of new information there is no reason for continuing the GI process.

2.2.3 GIs, a Potential for Agricultural Development in Senegal

In Senegal, geographical indications may contribute to an increase in production, creating employment at local level and to the prevention of a rural exodus. They may help producers to get a better price for quality food produced according to traditional recipes in specific places.

In this context, initiatives are underway in Senegal to promote the identification of quality and origin of agricultural products of the regions of Senegal, value their natural resources and participate in the development of rural areas. It is in this framework that the Project to Support Farmer Entrepreneurship (PAEP) has put at the disposal of the Union des producteurs de la zone des Niayes (Niayes producers' union) storage stores and supports the establishment of a trademark: “*Soblé Niayes*”²². This brand reflects, at the same time, an indication of origin. Indeed, the Niayes area is believed to have special agro-ecological conditions that gives its onions specific characteristics in terms of firmness, conservation quality and taste.

2.3. Protection Conferred by GI

International conventions prescribe minimum protection levels that member states are free to improve. Thus, the TRIPS agreement (article 22) urged member states to provide legal means allowing the parties to prevent a number of actions. This includes preventing the use, in the designation or presentation of a product, of any means likely to mislead the public as to the geographical origin of the product, or likely to constitute unfair competition.

The OAPI legislation chose to provide strong protection to GIs in a *sui generis* framework of annex VI of the Agreement. The provisions in articles 15,16 and 17 of this text list the rights conferred when registering the GI and the means of defense available to rights holders.

2.3.1 Rights Conferred by Registering

Registration grants a right to ownership over the GI (art. 15). Protection offers an exploitation monopoly, but it is a monopoly that is exercised collectively. Only producers carrying out their activities in the

22. That can be *translated as “Niayes onion”*.

geographical area specified in the register have the right to use the Protected Geographical Indication (PGI) for commercial purposes for products listed in the register, provided that these products have the essential characteristics indicated in the register (compliance with the specifications).

Protection is further detailed through certain actions described as illegal by law. It is the use, for commercial purposes, of a PGI or a similar name for similar products or products listed in the register. There is wrongfulness, even if the true origin of the product is indicated or the geographical indication is used in translation, or used with expressions such as “kind”, “type”, “way”, “imitation”. The OAPI legislator extends to all PGIs the additional protection of the PGIs for wines and spirits under article 23 of the TRIPS Agreement.

Paragraph 5 of article 15 also indicates a form of indirect protection of the PGIs. Use in the designation or presentation of a product of any means that indicates or suggests that the product in question originates in one geographical area other than the true place of origin of the product is unlawful.

The provisions of paragraphs 2 and 6 of article 15 can be analysed as limitations to the protection of the PGI. According to the first paragraph, when products have been put into circulation under the conditions defined in the preceding paragraph with a registered geographical indication, everyone has the right to use the GI for these products. There is a form of using the PGI rights. According to paragraph 6 of article 15, the holder of an earlier identical trademark or one similar to a PGI may continue to use its trademark, except in the case of wines and spirits²³.

23. The change that appears in the text of annex VI, article 6, paragraph 5 should be noted: the reserve made in the benefit of wine and spirits to the rights of the owner of an earlier trademark is now granted for the benefit of agricultural, natural, or handicraft products. If it is to reflect the fact that wine and spirits are not the

PGI protection is granted without a time limit. It is not even subject to periodic renewal as in trademark law.

2.3.2 Defending GIs

Registering GIs confers protection against infringement, both civil (article 16) and criminal (article 17). Anyone interested and any interested group of producers or consumers may bring actions under paragraph 2 (cessation of the unlawful use, prohibit use if it is imminent, destruction of labels and other materials that may be used) against the author of the unlawful use of a registered GI, and against persons contributing to such use.

Anyone who has suffered damage as a result of the unlawful use of a registered GI, may require compensation from the person making unlawful use of the indication and persons who have contributed to such use. PGI violations are criminal offenses punishable by imprisonment and fines under article 17 of annex VI. The fine is 1 to 6 million CFA and the prison sentence ranging from three months to one year. Both forms of penalty may be cumulative or alternative²⁴.

realities of the economies of OPAI [Sic] member countries, this addition should have been made this without removing wines and spirits at the risk of infringing Article 23 of the TRIPS Agreement.

24. It must be noted that there is a clear desire to aggravate these sanctions in the text resulting from the revision of December 2015: in fact, the minimum fine goes from 1 to 5 million and the maximum from 6 to 30 million (article 23, annex VI).

Chapter III: The Path Towards GIs in the OAPI System

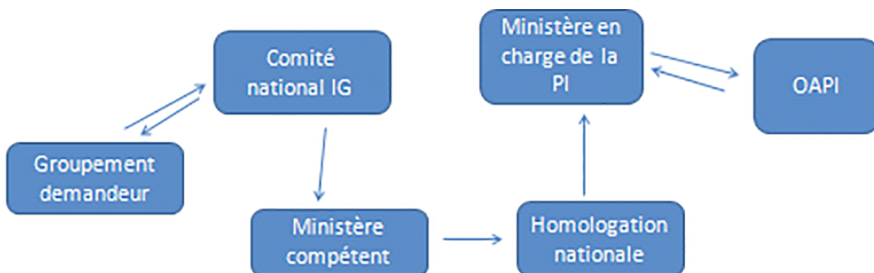
The journey to GIs involves, on the one hand, a legal procedure described in annex VI of the OAPI Agreement, and on the other hand, a path that is technical in nature which further complicates access and explains the scarcity of GIs in the OAPI space. Regarding the procedure described in annex VI, it is rather complex compared to that observed to obtain other industrial property rights such as trademark, design or industrial model. As for the technical approach, the difficulty that characterizes it imposes the respect of a rigorous methodology whose implementation has produced results in the countries covered by the IP4GROWTH project.

3.1. The Protection Procedure by GIs

In the OAPI system, the approach towards PGIs takes place in two phases: a national and a regional phase.

3.1.1 GI Registration Procedure - National Phase

The plan of the national phase is as follows:



Source: Mr. Cécé KPOHOMOU, OAPI, presentation given during IP4GROWTH training at Ouagadougou from 14 to 17 October 2014.

The procedure begins with the development of the product specifications. This procedure is not described in annex VI. Although harmonised, it is specific to each country. The specifications document is a collective, consensual and open document, collectively adopted by the stakeholders. It determines all the conditions of a product's production, as well as sanctions for breaches resulting from their application. Compliance by stakeholders is an important condition of the guarantee of origin and the specific quality of the product to consumers. The specifications document is now one of the parts of the application for registration file in annex VI revised in 2015 (article 8)²⁵.

Once drafted, the specifications document is validated by the sector's stakeholders. This validated specifications document must be approved by the national GI Committee. This approval follows a review with possible field visits to ensure the veracity of the information contained in the specifications document.

Subsequently, the specifications document approved by the national Committee is subject to the approval of the competent Ministries, depending on the country. The product approval decision is one of the centrepieces of the admissibility of the request during the registration procedure before the OAPI (section 8 d) of annex VI, revised).

After the decision to approve the product by the competent Ministry(ies), the file is transferred to the Minister responsible for intellectual property that supports the completion of the procedure for the filing of the application within the timeframe specified before the OAPI.

25. The specifications document includes the following: i) the applicant; (ii) the name of the product; (iii) the type of product; (iv) the description of the product while highlighting the quality, reputation, or other characteristics of the product for which the indication is used; (v) the delimitation of the geographical area; (vi) the method of obtaining it; (vii) the link with the origin; (VIII) the control plan; (IX) the labelling.

Following registration by the OAPI, a final national stage may consist of a certification procedure that will be implemented as the case may be, to ensure the specific quality of the product and its origin.

3.1.2 The Regional Phase

This phase takes place alongside the OAPI in Yaoundé. Its description implements various aspects presented below.

3.1.2.1 Who can file an application for the registration of a GI?

Individuals or legal entities, who, for the products listed in the application, are:

- ▶ Producers of the product in the region indicated in the application;
- ▶ The group of producers or union for the defence of the product;
- ▶ The competent authorities;
- ▶ The group of processors.

3.1.2.2 Elements that Make Up the Application:

- ▶ The following elements make up the application²⁶:
- ▶ An application form in five copies;
- ▶ The geographical indication;
- ▶ The specifications, including
- ▶ Proof of payment of the filing fee;
- ▶ The decision of national registration of the product;
- ▶ The statutes of the group of producers, where applicable;
- ▶ A private power of attorney issued to the agent, where applicable;

26. See article 7 of annex VI in force, supplemented by article 8 of annex VI revised in 2015.

3.1.2.3 Application Filing Location

The application may be addressed directly to the OAPI for countries that have selected the direct deposit option or through an agent for applicants domiciled outside the territories of the Member States. But the three countries involved in the IP4GROWTH project, namely Burkina Faso, the Ivory Coast and Senegal, have selected indirect filing. Thus, the request must be filed with the competent national authority as the national service with the OAPI²⁷.

The National Administration, or the Organisation, checks the regularity of the documents, drafts a record of deposit, assigns a date to this deposit and issues the depositor a deposit receipt.

3.1.2.4 Examining the Application

The examination of the application is initially formal on its admissibility. It is a verification of the lawfulness of the documents that make up the file, of the applicant, of the existence of a national approval decision and the payment of the filing fee.

The examination of the application is carried out on the merits. It is an opportunity to verify the existence of the holder group, the specifications, the plan for the demarcation of the geographical area, the control plan for the specifications document and its implementation. This verification is followed by making direct contact with the union for the defence of the product and several producers. These verifications are formalized in a technical report drafted by the inspectors.

27. In Burkina Faso, this service is the Centre National de la Propriété Industrielle (National Industrial Property Centre) (CNPI); in the Ivory Coast, the Office Ivoirien de la Propriété Intellectuelle (Ivorian Office of Intellectual Property) (OIP), and in Senegal, the Agence Sénégalaise pour la Propriété Industrielle et l'Innovation technologique (Senegalese Agency for Industrial Property and Technological Innovation) (ASPIT).

3.1.2.5 Issuance of the Registration Certificate

When the organisation has verified that all the requirements for registration are met, including the approval of the inspectors' report, it issues the GI registration certificate. The certificate is issued by the Director General.

3.1.2.6 Publication of the Application

In annex VI in force, the publication only addresses the registration certificate. Its content is defined in Article 11²⁸. It is from this publication that the objection process referred to in article 12 can be exercised.

The text revised in 2015 brings an essential innovation: therefore, the application will be published. This will make it possible to object to the registration of the GI²⁹. The publication of the registration which will occur at the end of the process does not involve any more objection proceedings.

3.1.2.7 Objecting to the Registration of a GI

In positive law, objection is made to the registration decided by the OAPI. In the future, it will be made at the time of applying for registration, prior to any review of the case. Objection is open to all those interested within a six-month period from the date the GI registration is published, by filing before the organisation a notice explaining the reasons for such an objection. The objection should be based on a violation of articles 5 and 6 of this annex, or of a previously registered right belonging to the objector.

28. The following items that appear on the registration certificate are published: i) GI serial number; (ii) title of the applicant; (iii) name and address of the applicant; (iv) name and address of the representative; (v) geographical region to which the GI applies; (vi) products to which the GI applies; (vii) GI registration date.

29. This publication is provided for in article 11 of annex VI, revised. This change was a needed one, and brings more consistency to the title's registration procedures.

The organisation shall send a copy of the statement of objection to the applicant or to his agent, who may reply within a once-renewable period of 3 months. The reply shall be forwarded to the objector or to his representative. If the applicant fails to respond to the organisation within the prescribed time, then it will be understood that he has withdrawn his application and registration will be cancelled.

Before making a decision on the objection, the organisation shall, on request, hear each party or either one of them or their agents. An appeal from the organisation's decision on cancelling the objection shall lie to the High Commission of Appeal within a period of three months from the date of receipt of notice of the decision by the interested parties. The organisation shall only cancel the registration in so far as the aforementioned objection is valid. The decision shall be published in the Bulletin Officiel de la Propriété Industrielle (Official Industrial Property Gazette).

3.2. OAPI Product Tracking Methodology

For OAPI member countries, the method to identify products likely to be recognized as GI, is inspired by the *Applicant Guide* produced and transferred to the countries as part of the Project for Implementation of Geographical Indications. This guide makes it possible to collect essential data on this or that product and the final analysis qualifies them as a possible product, capable of contributing to the socio-economic development of the community of origin.

The most important data to be collected by the collection missions are:

- ▶ The applicant (*individual or legal entity*);
- ▶ The name of the product;
- ▶ The type of product (*agricultural, industrial, craft...*);
- ▶ The description of the product (*physical, chemical, microbiological, organoleptic [flavour, colour, sensory profile...]*);

- ▶ Geographical area (*territory within which product development must be carried out*);
- ▶ Obtainment method of production process;
- ▶ Link with the origin (essential to file the application for the GI);
 - ◆ *A certain quality, related to the origin that differentiates it from the other products*
 - ◆ *Reputation (history, old reputation, current reputation)*
 - ◆ *Another characteristic (special know-how)*
- ▶ Control and warranty (*self-control by producers, verification of second part of compliance with the specifications document, verification by third parties [certification by an organisation]*);
- ▶ Labelling to identify it.

In most cases, the development of the *Guide* is carried out in the presence of representatives of all stakeholders in a plenary session; these are those of producers, distributors, processors, local authorities, human resources, etc.



Session for development of the “Guide à Bobo”, MICA/MAAH, 2011

The data collected in the field are analysed and result in the production of a report submitted to the national authorities, prior to being submitted to the OAPI for technical advice. The selected products will then continue the recognition process (technical studies, development of the specifications document, National GI Committee session, etc.).

3.3 Determination of potential GI Products in West Africa

3.3.1 In Burkina Faso

After multiple missions of the National GI Committee, the list of identified products in Burkina Faso is as follows: the Comoé **tiger nut**, the **boubou Dagara** from Dano, the Saponé **hat**, the Kouigny **woven loincloths**, the Houet **chitoumou**, the Orodara **Kobi**, and the **local yams** from Arbollé.

Sources: extract from the identification document of products likely to be protected by GIs, Ministry of Industry, Trade and Handicrafts (MICA) and the Ministry of Agriculture, Food Security and Hydraulics (MASAH), August 2011.

3.3.1.1 Léraba-KénéDougou Tiger Nut



Photo: MICA/MASAH, August 2011

The culture of the tiger nut is an ancestral culture that dates back centuries. Its culture has many objectives. For breastfeeding women, it accelerates lactation. Also, in the absence of the mother, porridge made with tiger nut flour has always been essential food for babies. It is used during customary ceremonies. According to the information received, the tiger nut plays an important role in the conquest of the Gouin woman. Indeed, when a young girl receives tiger nuts from a man, it is a symbol of the expression of their love. Tiger nut increases male and female fertility because of its vitamin E concentration.

Tiger nut is also primarily intended for the production of a drink that is very popular in the region of Valencia (Spain) called “horchata de chufa”. It is also used as a substitute for milk in the diet of lactose-intolerant people, especially diabetics and the elderly. That is why it has such a high demand from other countries.

There is a much higher sugar content in tiger nuts from the Comoé region, especially from the Banfora and Oueleni departments. However, in other locations where the nuts are grown, such as Mangodara, Niangoloko and Sideradougou, the sugar content is very low with large tubers that cannot be turned into juice.

The Comoé tiger nut can be grown in the Comoé and Leraba provinces where isohyets are between 800 and 1200 mm/year, with deep, soft soil.

Although the Comoé tiger nut is very much sought after both in the domestic and in the international market, it seems that it is taking long for the sector to be appropriately organised. At the current stage, there is a Tiger nut program in the Cascades region, but limited to it being institutional, without any means of operation. However, there are four (04) producer groups who are growing tiger nut. Since there is no structure in the distribution circuit, orders are jumbled together, so producers are not able to take good advantage of their production even when demand is very high.

There are associations whose main focus is the tiger nut; however, these farmer organisations are not organized and do not respect the rules and laws that govern farmers' organisations.

3.3.1.2 Boubou Dagara

The history of the Dagara Balla dates back to shortly before the end of the 19th century. It is said that initially the Dagara people lived in Ghana. The arrival of Christianity led part of these people to Burkina Faso. Those who followed the missionaries were called "cross-wood". Thus, emigrants, in order to mark a distinction from the Dagara, remained across the border, and on the back of their clothing include embroidery whose appearance is always in the form of a cross.

The fame of the Dagara clothing goes beyond the borders of Burkina Faso to the point that anyone seen wearing this outfit abroad is believed to be a national of the country of honest men. Also, the attachment to this boubou requires each family to have a boubou Dagara



Photo: MICA/MASAH, August 2011

themselves. And even during funeral ceremonies, the amounts collected are initially used to purchase this traditional product.

The geographical area of the boubou Dagara covers the province of IOBA, but the technology is currently being exported to other prov-

inces of the South West region of Burkina due to the emigration of young people from IOBA. But this geographical area does not match the geographical origin of the product. Indeed, this boubou has been historically imported from the other side of the border by the various migrations of the Dagara people themselves located in Ghana and Burkina Faso.

Added to this is the know-how related not only to the weaving of bands that are much finer but also specially to sewing.

In addition to this association, the direct stakeholders (producers, distributors, etc.) are aware of the need to be organized: the attempts to set up local structures to supply productive inputs, or to capture a higher share of the clothing market.

3.3.1.3 Saponé Hat

Historically, the Saponé hat appeared in the 14th century due to a historical fact; it then established itself over the years as a cultural or social



Photo: MICA/MASAH, August 2011

heritage. This means that the hat is closely linked to the Saponé territory despite imitations found in other places, but these imitations are unsuccessful. The hat represents the Mossi people of this locality, and increasingly all of Burkina Faso.

This work of art, a cultural element, is integrated as a logo of the people of Saponé, and hatters

teach the manufacturing technique from father to son, from generation to generation.

The Saponé hat enjoys a national and international reputation. It is much appreciated by consumers both for its cultural aspect and for its decorative element. Indeed, this piece of art is extensively used at major cultural, sporting and decoration events. Its fame crossed the borders of Burkina Faso long ago. By integrating this hat in the logo of the African Cup of Nations (CAN) in 1998, the world discovered this typical hat from the country of honest men.

It is often a gift to diplomats at the end of their stay in the country during the farewell ceremonies, and was worn by the Burkinabe delegation at the Athens Olympic Games opening parade in 2004 and in Rio in 2016.

The Saponé hat is much appreciated by consumers. But in the absence of a strong organization, artisans sell their products individually at the market. However, grouping attempts exist. The artisans want support in terms of training and technology for a better promotion of their products.

It reflects its historical origin as a symbol. However, fibers from Palm leaves are found in other locations, especially in Ghana. Its fame today has brought local and political authorities to design a plan of action that calls for experimentally planting this type of tree in spaces reserved for this purpose.

Groups existed in time and gave life to this hat, but these have a limited production. Today, an association called “Servir la vie” (Serve Life) helps women produce and market their products.

Therefore, a good policy in the organisation of this sector would help both craftsmen and politicians in the fight against poverty since the market exists and the demand is very high outside our borders.

3.3.1.4 Kouigny Cloth

The *gara mouna* is a traditional cloth usually dominantly black and blue, made of 5 or 6 strips according to the customer's wishes. It has stripes or drawings according to the requested pattern. The product is a blend of cotton (*Gossipium sp.*) strips that are thread-sewn. Drawings, which are patterns, vary depending on the customer.



Photo: MICA/MASAH, August 2011

The realization of patterns is a specific know-how in the region as well as the patterns themselves. They are so recognisable that they are the main basis of the product's specificity.

The production of the *gara mouna* is essentially from the village of Kouigny, capital of the department with the same

name. However, in neighbouring villages such as Niarè (2 km South), Tiouma (3 km east), some craftsmen have taken on the activity. But it is surely in Kouigny where the activity is the largest by the number of people who perform it, and are more organized.

With its high level of Islamisation that is recognized locally, we cannot talk about the village of Kouigny without associating it with its dyed cloths; as indicated above, the village dyeing site is one of the tourist attractions recognized by the Province's authorities. It is a local cultural heritage.

The activities covered by the *gara mouna* have led the stakeholders to form groups. There are in fact two (2) distributed groups: a group named "dotolaley" with 22 members as officially recognized on 22

November, 2001, under No. 2001_007, and the group named “**Benkady**” with 10 members, recognized on 11 August, 2003, under No. 2003_006; These two groups belong to the Fédération Nationale des Artisans du Burkina Faso (National Federation of Burkina Faso Craftsmen) (FNABF).

3.3.1.5. Chitoumou

The **chitoumou** is the larva of a moth species whose scientific name is *Cirina butyrospermi*. This larva only feeds on shea leaves.

The chitoumou is produced not only in the Houet province, but also in other localities of Burkina where the following climate conditions are met: presence of the shea tree that can bear fruit (female tree), regular and fine rain.

These localities are in the areas of the southwest, in the Boucle du Mouhoun; in contrast, the absence of female shea tree, and/or the occurrence of violent or abundant rain or drought, do not allow the existence of chitoumou or quality chitoumou. Caterpillars from these trees are also found in South Africa and Ghana, despite their difference in quality, due to the nature of the soil and the climate, which the shea tree also depends on.



Photo: MICA/MASAH, August 2011

We do not know exactly when the chitoumou made its appearance in the area. The history of the caterpillars is yet to be explored since most of the elderly say they were there when they were born. There is

therefore no reliable historical reference of the caterpillars. For some, it is between 500 and 2000 BC. Most of the region's communities love them. It is therefore a valued regional, even national heritage. Consumption of the chitoumou conquered and continues to conquer other towns, starting with immigrants; it has crossed borders and the product is exported now to Nigeria, the Ivory Coast, Ghana, and even Europe, the United States and China.

We cannot count the number of chitoumou gatherers in the area since the product has become one of the population's customs: everyone gathers them, but to varying degrees. But among them are those who engage in gathering as their main activity during the period of appearance of the caterpillars, but who are not organised yet. They are the ones directly connected to the shea tree. They sell the collected product to the so-called wholesalers, other stakeholders who consider this an important activity during the period, but who are also engaged in other activities. We find among them a semblance of organization through an association called "Association pour l'Epanouissement de la Commune de Bobo" Association for the development of the Commune of Bobo. The Association (AECB for short) has more than 100 members and can form the basis for the organisation of all the activities that involve the chitoumou in the sector.

The presence of the chitoumou in the Bobo Mandare territory certainly isn't the main feature of the connection of the caterpillar with the Bobo region; however, its valuation as a consumer product, its extension, its development as a culinary art is the main connection of the product with the region. Indeed, these caterpillars who love Bobo Mandarè are increasingly rooted in the eating habit of some alien communities living in the sub-region, in the country, or even abroad. It is simply a heritage.

3.3.1.6 Arbollé Yam

The Arbollé yam is a long tuber, up to 40 cm, that is ochre or black depending on the soil. It is soft in the mouth, easier to swallow than other yams known to other communities across the country. It tastes slightly sweet, and easy to digest unlike other yams which can cause stomach bloating.

The Arbollé yam has been established as a different variety to those grown in other pretty humid areas; it is the only variety in the world present in only three production areas: North Benin, North Cameroon and North Burkina. In the latter it is grown in the more northern latitudes and, in fact, it is supposed to be better adapted to the dry conditions of the Sudano-Sahelian zone.



Photo: MICA/MASAH, August 2011

Geographically the area covers the Department of Arbollé, hence the expression “Arbollé Yam”. We do not know exactly when the Yùugnan made its appearance in the area. “Yùugnan” is an infrequent name, so the most well-known name to designate the product is “Arbollé yam”. Given its low promotion, the product has not acquired notoriety beyond its production area.

In 2001 promotional activities in the sector began, including the organization of a promotion day. The “Association pour le développement du département de Arbollé” (Association for the development of the Department of Arbollé) (ADDA) has developed a five-year plan which also includes the organisation of the yam sector. They have also eval-

uated its production potential through the estimation of areas, census of producers, and production techniques.

Production of this yam in terms of local know-how has proved to be a local sustainable land management system. Indeed, the mounds implemented for this culture constitute embankments that reduce rain erosion, increase infiltration and groundwater recharge, and help limit the filling of reservoirs downstream.

3.3.2 In the Ivory Coast

The analysis below shows some Ivory Coast products likely to benefit from GI protection.

3.3.2.1 Grand Lahou Attiéké

The attiéké is a cassava semolina with a stacked appearance obtained from fresh cassava tuber prepared according to traditional know-how of the lagoon people from the south of the Ivory Coast. Cassava production is estimated at 2.4 million tonnes (FAOSTAT, 2013). For the production and marketing of attiéké, there are several organisations, such as the COPROCA-GL, grouping both cassava and attiéké producers. The latter were able to retain a traditional production method, making attiéké produced in this area special. There is a national, regional and international market for attiéké. There is a strong demand from neighbouring countries (Mali, Burkina Faso, Niger, etc.) and western countries (France and the



Source: CIRES

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area special. There is a national, regional and international market for attiéké. There is a strong demand from neighbouring countries (Mali, Burkina Faso, Niger, etc.) and western countries (France and the

USA). The will of the Ivorian government is to create a brand (attiéké) for cassava semolina that is likely to contribute to increasing the fame of attiéké and therefore the producers' income.

3.3.2.2 Tiébissou Woven Cloth

This fabric is woven from cotton yarns or silk threads with a traditional tool, and due to the production method has a typicality linked to its geographical origin. Tiébissou is located in the centre of the Ivory Coast, 285 km from Abidjan.

It is the area where this cloth is originally woven by the Baoulé.

The national market recognizes the specificity of Tiébissou woven cloth which is very popular in major events. The weavers are organized in cooperatives (Bomizambo) and these take part in various international fairs and agricultural shows.

Protection of these cloths as GIs will increase the artisans' income.

However, to be eligible for protection, a clear delimitation of the production area is essential.



Source: CIRES

3.3.2.3 Korhogo Cloths

Korhogo cloths originate from the north of the Ivory Coast, specifically from the region of Korhogo (Sénoufo countries). These traditional cotton strip fabrics are made on hand looms and decorated with



Source: CIRES

patterns. The patterns of the Korbogo cloths are inspired by the traditional costumes of the Poro dancers³⁰, panther-men³¹, geometric shapes, drawings of animals, etc. These paintings reflect daily life in the Senoufo country. Cooperatives were created to produce and market the cloths in the Korbogo region. The artisans' incomes in this region would be further

improved if a GI provided them with effective protection.

3.3.2.4 Katiola Pottery



Source: CIRES

The ancestral know-how regarding pottery manufacture in the Katiola region is transmitted from one woman to another. Pottery production also exists in other parts of the Ivory Coast, but the specificity of Katiola pottery is recognized in the country.

30. initiatory system in the Senoufo country

31. The panther dance is a dance of the Senoufo country. It is also called the Boloje.

Traditional pottery includes decorative flower pots, the tureens for meals, and jewelry boxes. In addition to consumption by the nationals, pottery is also sold to tourists or in trade fairs. At the same time, pottery exportation is carried out by organisations specialised in the export of African art. Organisation of producers into cooperatives is essential to be able to qualify for protection by GIs.

3.3.2.5 Cocoa

The Ivory Coast is the world's leading producer and exporter of cocoa beans. There are many producers' cooperatives in different parts of the country. Since the 2004-2005 campaign, the first applications of the cocoa sustainability certification programs have been introduced for fair trade.

These are the Rain Forest Alliance, UTZ Certified and Fair Trade certifications. A constantly growing number of cocoa producers' cooperatives are certified. The implementation of a cocoa quality and traceability policy and the launch of the "***Ivory Cocoa***" label at the 2016 Paris international agriculture fair (SIA 2016)



Source: CIRES

could facilitate the implementation of GIs (for the establishment of an Ivorian cocoa GI it is necessary to identify a specific agro-ecological area whose features will be having the colour of cocoa, an aroma and a particular taste of the chocolate).

3.3.2.6 Mountain Coffee

Formerly the world's 4th largest coffee producer, the Ivory Coast is currently the 13th producer. Although production has declined, coffee remains one of the most important crops in the country. The coffee



Source: CIRES

production technology is broadly similar for all the coffee producing regions in the country. But the aroma and the particular taste of their coffee are determining factors in the promotion of quality. Ivory Coast mountain coffee has the advantage of

benefiting from the soil's characteristics and the climate of the mountainous area where it is grown. The implementation of protection as a GI could have the backing of the Ivory Coast coffee-cocoa producers' federation. GI protection of the Zياما Macenta coffee can be an asset since the production area of Ivory Coast mountain coffee is next to that of Guinea's Zياما Macenta coffee. These two areas have essentially the same characteristics.

3.3.2.7 Cashew Nuts

Originally from Brazil, cashew was introduced in the Ivory Coast over fifty years ago. Cashew nut production is especially concentrated in the northern and eastern half of the country. It has become one of the main crops in the Ivory Coast. With a production of about 800,000 tonnes in 2015, the Ivory Coast became the biggest cashew producer in Africa and in the world. The Ivory Coast consumes less than 10% of its production. The rest is exported in its raw state. The creation of cashew nut producers' cooperatives in the various regions of production is an asset for the implementation of a geographical indication.

The creation of cashew plantations helped settle the populations of the production areas who used to migrate to the forest areas to engage in growing other crops. The identification of an area with specific agro-ecological characteristics influencing the quality of cashew nuts is essential for the attainment of a GI for this agricultural product.



Source: CIRES

3.3.3 Senegal

The following Senegalese products could have the potential to be recognised with a GI.

3.3.3.1 Senegal Yett

The Senegal yett or *Cymbium*, is a sea snail, a marine mollusc. It is manually dried on the beaches and used as a condiment in food preparation. Consumers recognize its particular taste qualities, distinguishing it from other yetts particularly by colour. While the specific quality of the Joal yett is recognised by its consumers, the documentation of the specificity linked to the origin has some shortfalls. One of the proposed leads is the link between the taste characteristics and the local plankton the cymbium feeds from. Manufacturers also pointed out that there are local characteristics especially in terms of water loss.



Source : au-senegal.com

The quality of the yett is mainly based on the time it is left on the pirogue before it is debarked, which also depends on the duration of collection of all the nets and of the amount of these nets.

An improvement in the quality of the final product could depend on a reduction

in the number of nets aboard every pirogue, which would change the producers' strategy based far more on volume than on quality. The quality approach for this product is justified by the existence of illegal yett for which the craft process is shortened and the fermentation phase removed. The taste, texture and colour are different, with a lower nutritional value.

3.3.3.2 Casamance Honey

It is honey from a tree called the "solome" in the national wolof language. Casamance honey is very popular with the Senegalese and visitors due to its organoleptic and natural properties. There is also a very wide range of this product in Casamance due to the wealth and diversity of the melliferous flora but also of the production areas (honey from mangroves, Fromager, islands, forests, etc.) and practices (honey production, traditional beekeeping using local materials: trunks, bamboo, raffia, terracotta pots and other natural materials). We note the emergence of improved techniques (introduction of improved hives, Kenyan hives, beekeeping techniques, etc.) with the support from some NGOs, French cooperation and, recently, Canadian cooperation.

The GI project for Casamance honey is all the more relevant that this product is presently for many stakeholders (Government, NGOs, projects and donors) a promising sector in terms of means to fight poverty and sustainable development for the natural region of Casamance. However, it is a nascent industry where producers are not well organized yet. Some NGOs and technical projects are beginning to get interested, but there still no strategy for better use of this potential.



Photo : Birahim FALL

3.3.3.3 Bandia Honey

The Bandia forest, with an area of 10.750 ha, classified by order of the governor-general of French West Africa on 16 October, 1933, is located between the departments of Mbour and Thiès. It used to be, together with the forests of Thies and Pout, the richest wooded areas and certainly those closest to Dakar. This forest has been the subject of over-exploitation of its timber resources since the colonial period. In order to stop the continuous degradation of the forest due to long droughts and con-



Source :APS

tinued overexploitation, in 1980 the State set up the Projet Autonome de Reboisement de la Forêt de Bandia (autonomous Bandia forest reforestation project) (PARFOB) to regenerate the forest by planting about 3000 ha of eucalyptus, Prosopis and other species. Beekeeping figures prominently in the conservation strategy initiated by the forest and water department. Many hives installed in the Eucalyptus and Acacia Seyal helped female Bandians to annually produce large quantities of honey that are marketed in the cities of Mbour, Dakar and Thiès and even beyond. The protection of Bandia honey by intellectual property rights such as geographical indications could contribute to substantially improving the incomes of women of this locality and indirectly promote conservation of the forest.

3.3.3.4 Teug Dara and Keur Saer Pottery



Photo : S.M.SARR

In the Teug Dara and Keur Saer villages, in the Commune of Bambey, handicraft is present but hardly valued. Indeed, women work making pottery. These artisanal products reflect a true cultural wealth that it would be interesting to develop, since the know-how is less and less transmitted to current generations and tends to disappear. Women use terracotta to make canaris and ceners which are valuable cultural and religious

objects. Sustainability actions of the local potential are currently being carried out to preserve the cultural richness of this area and to create and maintain the population's sources of income. Teug Dara and Keur Saer pottery is identified as a potential GI, and the labelling of these products can help women increase their revenue.

3.3.3.5 Ngaye Shoes

The city of Ngaye is known for its craft expertise. This city, located some 50 kilometres from the city of Thies, is nationally renowned for its leather shoes, better known under the label *Dallu Ngaye* (Ngaye shoes). Their expertise in crafting has been successful through several generations and has crossed the ages and borders of the country. They have the inherent ability to work cowhide, sheep and goat skins to produce quality leather. The ingenuity of the shoemakers is proven by the quality and beauty of the shoes “made in Ngaye”. The



Photo : S.M. SARR

The originality of the design, the charm of the patterns and texture make the *Dallu Ngaye* a real GI. To deal with counterfeiting and competition (derivatives), protection of the *Dallu Ngaye* is urgent.

3.3.3.6. The Fouta Ndiordy

The *ndiordy* results from manual processing by the women of Danthiady (Fouta, North-East of Senegal) of millet or “pearl millet” (*Pennisetum glaucum*). The goal is to improve the preservation of millet flour,



Photo : Selly HANN

especially in the mortar, and to obtain a ready-to-use finished product. Indeed, since millet flour become rancid quickly, it is manually ground in a gourd, usually wooden, to obtain a very fine type of couscous. The product is then steamed and dried. This way it can be kept at room temperature or in cold conditions and is easy to transport over

long distances, including by migrants.

Originally produced and consumed by the *Khaal Pulaar*, the *ndiordy* is quickly approved by all who taste it because of its “freshness” and its ease of “use”: it can be eaten hot or cold, sweet (with or without fresh or sour milk) or salty (with a sauce). It can also be boiled for children and the elderly to consume. In terms of agri-food innovations, the *ndiordy* could be, in turn, transformed into petals, balls or other cereal bars, sweet or savoury, to be eaten or mixed with milk or sauces. Finally, assigning a Geographical Indication to the Danthiady *ndiordy* would promote it, offer women a source of income, boost millet production and create jobs.

3.3.3.7 The Senegal Kethiakh

The braised-dried fish commonly known as Kethiakh in Wolof (language spoken in Senegal) is a specialty of the women who are food processors in the town of Kayar, Department of Thiès. The species used are sardines and bonga fish.

The process includes heading, gutting, braising, cooling, and drying. Drying takes 2-4 days depending on the climate and the fish's water content and lipids. Kéthiakh, an animal protein available to very small segments



of the population, is recognized as one of the most important valuations at socio-economical level in fish production in Senegal. It highlights the real capabilities of women fish processors to meet the socio-economic development imperatives by the jobs created and revenue generated. The Kayar Kéthiakh is distinguished by its shelf life and hygiene in the transformation process. In Kayar, the processing area was built by the Japanese cooperation (JICA). It includes processing facilities (ovens and drying racks), finished product preservation stores, rest shelters and a training centre.

The Kayar Kéthiakh GI project is used to designate the braised and dried fish that bears the name of the territory in which it is processed. Its qualities and reputation are due to this geographical origin. The project will be a tool for the protection and valuation of this quality local product and the development of the town of Kayar in general and women processors in particular. It is in this context that we have chosen the Kayar Kéthiakh as a GI product.

Recommendations and Conclusions

This study showed that the three countries concerned, Burkina Faso, the Ivory Coast and Senegal, have products with specific characteristics likely to be protected by geographical indications. But for these products to be successful in being awarded the “geographical indication”, specific actions must be carried out by all stakeholders concerned. It is in this perspective that the following recommendations can be made.

- ▶ **Governments** are recommended to:
 - ◆ **ensure the proper operation of the structures in charge of protecting intellectual property and ensure the operationalization of the Comités Nationaux des Indications Géographiques (National Geographical Indications Committees) (CNIG)** in: i) designating anyone who has to serve for their functioning; (ii) making resources available for their optimal functioning; (iii) ensuring that these National Committees become platforms for all the stakeholders concerned by the GI to come together;
 - ◆ **operationalize the National Committees and both their cells** (industrial property cell and literary property cell);
 - ◆ **provide support to producers** in terms of capacity-building for improving the quality of products likely to be protected by GIs;
 - ◆ **implement a marketing policy** for products with attributes recognized by consumers;
 - ◆ **develop and implement a national intellectual property development strategy** based on: i) the update of national laws in accordance with the new OAPI regulations and; (ii) strengthening the authorities in charge of intellectual property;

- ◆ **build capacity to fight against the violation of intellectual property rights** (for example, by creating a national commission to fight against counterfeiting)
- ▶ ***The National Geographical Indications and Collective Trade-marks/OIPI Committees***, are recommended to:
 - ◆ **ensure capacity-building of cooperatives** in terms of intellectual property in general and geographical indications in particular;
 - ◆ continue to **support the cooperatives** throughout the geographical indications implementation process.
- ▶ ***Higher education institutions*** are recommended to:
 - ◆ **create intellectual property management structures** in universities and public research institutes;
 - ◆ **increase research** on issues relating to intellectual property rights;
 - ◆ **make the results of this research accessible** by using accessible language;
 - ◆ **provide support in monitoring and evaluating intellectual property policies.**
- ▶ ***Producers*** are recommended to:
 - ◆ ensure **better organization and management of cooperatives** so as to, among others, take the opportunities offered by the intellectual property protection in general and geographical indications in particular;
 - ◆ **work in close collaboration with the administrations in charge of intellectual property protection** to obtain all information necessary to protect their products.

Moreover, since operational efforts have only just started, knowledge and support needs to concern the following aspects:

- ◆ structuring the sector, with the creation or strengthening of producer organizations to actively develop and manage GIs;
- ◆ identifying the connection to the origin and qualification of the product, by drafting the specifications, an essential base for the recognition of GIs;
- ◆ the establishment of the guarantee system, with the procedures and institutions to monitor and certify the origin and respect for GI production conditions.
- ◆ the existence of institutional mechanisms and clear and consistent procedures to ensure the protection of GIs for both producers and consumers;
- ◆ support product marketing strategy as a whole.

This implies the continuation of the awareness-raising policy, technical support and specialized training for all the local communities, policy-makers and researchers.

Glossary

Designation of origin: Geographical name of a country, region or locality to designate a product originating from it.

Patent: Industrial property title conferring its holder a 20-year monopoly on the invention.

Industrial models and designs: The forms, presentations, and decorations given by the manufacturers to their products to capture customers.

Geographical Indication: Name that identifies a product as originating from a territory, region or place of that territory, where a quality, reputation or other given characteristic of the product may be essentially attributed to that geographical origin.

Trademark: Sign chosen by marketers to distinguish their products from those of competitors.

Collective Mark: Sign used to distinguish products or services of the members of an association or group.

Utility Models: Also called “small inventions”, these are work instruments or objects intended to be used as new tools and susceptible of industrial application.

Trade name: Name under which a commercial, industrial, craft or agricultural establishment is known and exploited.

Intellectual Property: Set of exclusive rights on intellectual creations.



This paper presents an analysis of the intellectual property situation applied to agriculture in Burkina Faso, the Ivory Coast and Senegal, focusing on the protection of agricultural and handicraft products by means of the figure of Geographical Indication and the impact this can have on the economic and social development of rural communities. Products were identified in each country that could be subject to protection as Geographical Indications.

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For more information about the IP4GROWTH Project,
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IP4GROWTH – Intellectual Property Management in West Africa: Guide for agricultural development by Geographical Indications in Burkina Faso, Ivory Coast and Senegal