



**African Food Tradition rEvisited by Research  
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## Abstract

This deliverable deals with intellectual property rights issues for the traditional food products that are researched. The general context of IPR laws and legislation in African countries is presented with a focus on the African countries partners in the AFTER project and who wish to protect a traditional product. The IPR issues encountered in the course of the project are raised. Five of the traditional products under study are found to be in need of IPR protection. The way forward is discussed and varies for each of the AFTER partners in function of the respective country capacity for implementation of IP protection measures. The interventions presented at the AFTER Congress (Dakar, November 2014) dealt with various aspects of the subject, providing guidance on how to proceed in order to enable producers, industries and countries to adopt the adequate measures to protect their traditional knowledge. Attention was accorded to modalities for acquiring GI label.

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## Introduction

AFTER project deals with African traditional know-how and one of its purposes is to bring traditional knowledge and technology to light. The promotion of traditional African products in Africa and in Europe is backed by planned activities that disseminate the AFTER project research results with the aim of turning research results into innovative technologies and products that are commercially viable in both European and African markets and even beyond. This is why intellectual property rights (IPR) issues constitute the core of the ethical preoccupations of the project. Applying for IPR registration (patent registration, GI registration, trademark, etc...) is a national responsibility and not that of the AFTER project. Nonetheless, the outcome of the product characterization and analytical data produced by the AFTER project activities provide the essential elements for the dossier to be submitted when applying for a quality label (such as GI), for registration of a patent or other IPR protection measures. The AFTER project addressed IPR issues within the African context and proposes concrete tools to help the concerned local communities in protecting their traditional knowledge. The present report shows how IPR issues were dealt within the AFTER project.

## IPR: general context in Africa

Africa is not a homogenous entity with respect to IPR legislation. Some countries have very poor or inexistent IPR laws whereas others are at the same level as European countries. Members of the World Trade Organization (WTO) are obliged by the TRIPS agreement to respect basic IP protective measures which is the case with most of the partner countries of the AFTER project. However, whatever the strength of a given legislation, traditional know-how and products remain poorly protected in Africa. This is attributed, in great measure, to absent or weak IPR systems and/or the infrastructure required for enforcement of protection instruments. Not all African countries have acceded to or are signatories of continental and regional IPR protection treaties such as OAPI and of ARIPO and the instruments for their implementation. The geographical indication (GI) remains the best tool for a local community of producers to protect a traditional product whose quality and other characteristic relate to its geographic origin (the GI protects the name and not the product or process). It allows them to benefit collectively of this protection. However, the African continent has a limited number of products that are protected by a GI label.

<b>Participation in international treaties for AFTER countries</b>		
<b>Treaty</b>	<b>Country (African Union Members)</b>	<b>Comments</b>
<b>OAPI</b> (Organisation Africaine de la Propriété Intellectuelle)	Benin, Cameroon, Madagascar, Senegal	Established in 1977 and updated in 1999, it is open to ECA and AU Members
<b>ARIPO</b> (African Regional Intellectual Property Rights Organization)	Ghana (Egypt is an associate member)	Open to ECA and AU Members
<b>PCT</b> (Patent Cooperation Treaty)	Benin, Cameroon, Egypt, Ghana, Madagascar, Senegal	Administered by WIPO
<b>TRIPS</b> (Trade Related Aspects of Intellectual Property Rights)	Benin, Cameroon, Egypt, Ghana, Madagascar, Senegal	Open to WTO Members

The African countries under review in the present report are those where an IPR issue may arise during implementation of planned project activities. They include, Benin, Cameroon, Egypt, Ghana and Madagascar. These countries have varying levels of efficiency of their IPR systems and IP protection legislation. While they may adhere to the major international organizations such as WIPO and WTO, they may be signatories to and enjoy the support of different IPR related treaties or conventions but do not have the same legislation regarding IPR. Requirements for GI-supporting measures include administrative agencies and regulatory infrastructure for registration, and to establish and enforce standards.

### **Members of the “Organisation Africaine pour la Propriété Intellectuelle” (OAPI): Benin and Cameroon**

Western and central African countries have created OAPI. These countries protect GI with a *sui generis* system meaning that a specific law considers geographical indication as a specific separate intellectual property right. That is to say that GIs are recognized as a protection for agricultural products in the member countries.

See appendix 1 and 2 for details on Benin’s and Cameroon’s IPR situation.

### **Other countries: Egypt, Ghana and Madagascar**

Ghana and Egypt have a trademark regime, which means that there is no law considering GI as a specific separate intellectual property right. Legislating for recognizing the geographic origin of their products by a protected GI label is the first step for establishing a GI infrastructure supporting system in these countries. To protect a product, they can only register a patent or a trademark. These protections are more difficult to put in place for a traditional community. However, In Egypt, the Cairo based services of the Euro-Mediterranean certification organ IMC (Istituto Mediterraneo di Certificazione) has been actively engaged with agro-food producers for the past decade in certifying Egyptian agro-food products that are eligible to access to other food quality labels and that conform with EU norms and standards,

See appendix 3, 4 and 5 for details on IPR situation in Ghana, Egypt and Madagascar.

## IPR issues within AFTER project

### AFTER products needing IPR protection

During the 3<sup>rd</sup> annual meeting in Pretoria, the AFTER consortium discussed IPR issues and established that 5 products from the AFTER project: Kishk Sa'eedi, Kenkey, Kitoza, Akpan and Gowé were likely to need IPR protection. Indeed, these products are specific to the country, have a unique traditional recipe, were not documented before and are not protected. Bringing those products to international common knowledge means that they will need a protection system in order not to delocalise their production.

### Products that can apply for a Geographical Indication

A geographical indication (GI) is a label applicable to products that have a specific geographical origin and possess qualities or a reputation that are due to that origin and to the specific know how of a specific community of producers. In addition, the qualities, characteristics or reputation of the product should be essentially tied to the place of origin as there is a clear link between the product and its traditional production territory.

The question of benefits for the local communities that possess the traditional know-how was raised. The best way to protect the traditional knowledge and ensure the return of benefits to the community is through application of the GI system. Indeed, the protection is collective, non-transferable and inalienable. The protection stretches over a defined area and all the community of producers in the territory can apply the GI label to their products once it is certified to conform with the quality control standards established for the product in question. However, other than promulgating the appropriate legislation, the GI or any protection system cannot stand alone and requires supportive policies and the establishment of appropriate infrastructure, which can be a lengthy process. The *sui generis* option based on administrative law (see above) remains open, as well as the option for applying to obtain the "Appellation of Origin" (AO) label (Lisbon Agreement Art. 3).

Two of the AFTER products are likely to qualify to obtain a GI label: White Kenkey and Kishk Sa'eedi.

Indeed these products fulfil the GI protection criteria:

- Their production is traditional
- Their production is localised in a specific geographical region
- There is a link between the geographical origin and the ~~specificity~~ specific characteristics of the product
- The community of producers in that territory are keepers of the inherited know how and a guarantee of its continuity

Though the GI system has not yet been introduced to the White Kenkey and Kishk Sa'eedi (KS) producing countries (Ghana and Egypt respectively) the establishment of national standards for the product (already initiated in Egypt) represents the first step towards the establishment of an IPR protection system. This will draw on the product characterization and analytical data produced by the AFTER project. Other strategies of protection can be put in place that will be detailed in the second part of this chapter. The Ghanaian and Egyptian

partners are meanwhile encouraged to continue initiate steps to introduce a GI law in their countries.

### **Products that can be protected by trademark**

Concerning Akpan, Gowé and Kitoza, these products do not satisfy the conditions for a GI label. A more suitable protection can be through the creation of a trademark. The means and instruments to register and protect the products are detailed in the second part of the report.

### **Existing ways and instruments to protect the 5 selected products**

A list of measures is proposed to protect the AFTER products in the countries where IPR systems are weak. The AFTER African partners are encouraged to:

- Strengthen national IPR systems and encourage them to make use of African regional IPR protection instruments.
- Initiate steps to introduce a national Geographic Indication law by using the FAO website for step by step guidance: <http://www.fao.org/docrep/013/i1760f/i1760f.pdf>
- Establish the appropriate administrative and regulatory infrastructure that can enforce standards and support a GI regime.
- Ratify international instruments protecting IPR and Traditional Knowledge.
- Create a register for traditional knowledge as was done by South Africa.
- Make use of the WIPO Portal for Traditional Knowledge
- Make use of international opportunities for product registration, such as Slow Food International
- Engage actively in Regional and international debates or discussion forums for establishing IPR protection instruments for Africa.

The following are recommendations for alternate action to be undertaken by those countries that have a weak IPR system that is mostly limited to satisfying the TRIPS requirements. They apply to KS, White Kenkey and Kitoza who also do not benefit from the presence of a Geographic Indication Law:

- Create a local “Association of Producers” for the product;
- be covered by an MTA for any transfer of materials;
- register the product with the local Standards Organization that establish the national specifications for the product;
- register a local trade name;
- apply for a local patent for the production process;
- apply for a patent for any innovative product or process;
- apply for the appropriate European food quality labels if applicable;
- delay publishing of product production details till the trade name is registered.

The measures adopted by South Africa for protection of its genetic resources, its bio-diversity and the traditional knowledge heritage of its peoples are far ahead than most African countries and it is recommended that they be shared among the AFTER African partners. A starting point for strengthening weak IPR systems is to critically examine the food value chain analysis (already completed for each product) and work toward strengthening the identified

IPR gaps and weaknesses. The African countries could draw on the texts in the Strategic Partnership agreements between the EU and the African Union that aim at protecting Africa's natural resources, its biodiversity, and that promote sustainable agricultural production systems. They can also encourage ratification by national authorities of international/regional instruments for IP protection noting that protection of the African cultural heritage and biodiversity are prominent components of the EU-AU Strategic Partnership.

## **Communication on IPR within AFTER project**

### **The AFTER Congress: a major IPR dissemination event.**

The AFTER Congress on traditional African foods (Dakar, November 2014) was a major dissemination event organised by the project. More than 120 participants who came from all over the world attended the event. The presentations of the Congress were organised in sessions, each session dealing with a theme. Session 4 of the Congress was entirely dedicated to IPR issues: Intellectual property rights and market access for new products. For this session, the Congress invited Mr. Diegane Diouf from DIPIVAAR of the Cheikh Anta Diop University (Senegal) and Mr. Ben Bennett from the NRI of the University of Greenwich (UK) to make an introductory conference during which the role of patents in the innovation process was presented (appendix 6). The four following oral communications included a presentation of the role of geographical indications to protect traditional knowledge (appendix 7) presented by Mr. Didier Chabrol from the UMR Innovation of CIRAD (France).

The Congress offered the AFTER project the occasion for organising a major direct communication event on intellectual property and related issue and for protection of African traditional knowledge in general. The presentations gave rise to a rich debate and a series of questions that heightened the participant's awareness of the IPR challenge.

### **IPR in the AFTER website**

The AFTER website is a tool of communication among the project partners and between them and the rest of the world. A specific session was created to inform stakeholders on the IPR issue. For this, the website proposes useful information in which they can find information on IPR. The web page proposes different links to documents of reference concerning IPR that gives guidance for registering products, traditional knowledge, processes, etc...; gives an overview of IPR country by country; gives all information on IPR indicators and existing protections:

- The FAO document for step by step guidance:  
<http://www.fao.org/docrep/013/i1760f/i1760f.pdf>
- The O'Connor guide for IPR landscape country by country
- The World Intellectual Property Indicators website:  
<http://www.wipo.int/portal/en/index.html>
- GIs as a tool for development: Its special nature and characteristics. (OKEDIJI R, 2011) [http://ec.europa.eu/agriculture/events/2011/gi-africa-2011/okediji\\_en.pdf](http://ec.europa.eu/agriculture/events/2011/gi-africa-2011/okediji_en.pdf)

## IPR strategy applied within the AFTER project

As explained in the introduction, it is the responsibility of national authorities (and not of the AFTER project) to apply for IPR protection instruments and/or establish protection systems for their traditional products, benefiting from the product data generated by the project. It is the responsibility of the industries, communities, associations of producers or academia to initiate the process. The responsibility of the AFTER management is to avoid dissemination of project results in a manner that may run counter to the IPR protection interests.

### Protecting some results by restricting public distribution

The results of research are mainly written in the project's deliverables. Access to these deliverables can either be public or restricted. Some results were considered "sensitive" and access to the corresponding deliverables was restricted. It is the case for example of the results on the fermentation process for the cereal group of products. This precaution was taken since some partners plan to register these new processes as patents for the university. This is the case for Lanhouin, Gowé and Akpan for which the UAC University wishes to deposit patents.

### Attention given while writing the guidelines

The Guidelines are the main tool the project has produced for technology and knowledge transfer to local SMEs the project has produced. In order to maintain some level of control on the use of these results, the Guidelines encourage establishing a contact with the designated product contact person. In this way, the university can collaborate with the producers and ensure a correct interpretation of the Guidelines in a way that protects the traditional processes. AAFEX, the responsible partner for disseminating the Guidelines, are committed to establishing a strategy for dissemination that involves the partner responsible for the concerned product.

### IPR management for Kishk Sa'eedi

Two modalities are adopted in the IPR management of Kishk Sa'eedi (KS). Re-engineered by the AFTER project, traditional KS is to be initially protected by implementation of a *sui generis* GI system and by other food quality labels while awaiting the promulgation of a law for establishing a GI protection system backed with appropriate supportive policies and infrastructure. However, the food industry and other partners are allowed to create innovative KS by-products derived from its early production phases of KS. The property rights for such innovative products will be retained by the innovator.

## Conclusion

IPR issues were raised before, during and after the dissemination phase of AFTER project. These issues were discussed between the partners of the project and a communication strategy on IPR was established. A strategy that responds to the knowledge gaps and identified IPR related weaknesses. This communication took place during the AFTER Congress and was posted on the AFTER website. Concrete solutions and tools were proposed to the partners who wish to protect their products. Special care was given to the cereal products and to Kitoza are in need of IP protection. The AFTER project is not authorized to register IPR protection for these products. The project partners can help the association of local producers and SME's



to register the IPR for a product or apply for a quality label by providing them with the product data required by the registration process. Guidance and counsel was provided to them by the project.

The EU Agriculture and Local Development Commissioner encourages ACP (African, Caribbean and Pacific) countries to develop systems of GI protection and considers that EU and African country cooperation on protected GI can help sustain quality agriculture and guarantee a regular supply of local products (cited by Scott-Thomas, C., in FOODnavigator.com, 2013).

Though IPR issues remain a challenge for African traditional knowledge and know-how and much more work remains to be done, it is believed that the AFTER project has brought to the fore the intellectual property protection issues and provided the elements that can help African countries to establish IP protection systems.

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## Appendix 1: IPR landscape in Benin

Continent: Africa  
Country: Benin

Country: Benin

International Legal Framework	
<p>Benin is a member of the World Intellectual Property Organization from 9 March 1975 and a signatory of the Paris Convention for the Protection of Industrial Property from 10 January 1967.<sup>151</sup></p> <p>Benin is a WTO Member from 22 February 1996.<sup>152</sup></p> <p>There are no bilateral agreements between the EC and Benin specific to GIs.</p> <p>Benin is a member of the <b>Bangui Agreement on Intellectual Property</b> which set up the Organisation Africaine de la Propriété Intellectuelle (OAPI) that governs the protection of intellectual property rights in 16 countries of Western and Central Africa.</p>	
National Legal Framework	
Type of Protection	<b>Sui generis protection but <i>ex patre</i>.</b> No <i>ex officio</i> protection is available; protection is only provided at the request of any interested party.
Relevant Regulatory Framework	<ul style="list-style-type: none"> <li>• <b>Bangui Agreement, March 1977</b> (Annex VI), since February 1982, as last amended in February 1999.</li> </ul>
Scope of protection	The scope of application of the GI Law is more extensive than the scope of the EC system (concerns all goods: agricultural and handicraft, but not services).
Source	English version of the Act is available at <a href="http://www.oapi.wipo.net/doc/en/banqui_agreement.pdf">http://www.oapi.wipo.net/doc/en/banqui_agreement.pdf</a> .
Summary of the Operational Provisions	<p>Application must be made directly at the OAPI Office in Yaoundé (see below). Geographical indication is defined in the <u>Article 1 of Annex VI of the Bangui Agreement</u> in a manner similar to EU law.</p> <p><u>GIs excluded from protection:</u> GIs that are contrary to morality or public policy, liable to deceive the public, not protected in their country of origin or have ceased to be protected or have fallen into disuse in that country (article 5 of the Annex VI).</p> <p>The registration procedure is divided into three phases:</p> <ul style="list-style-type: none"> <li>• Request for registration;</li> <li>• Formal and substantial examination of the request;</li> <li>• Grant of a registration certificate for the GI.</li> </ul> <p><b>An opposition procedure is available after the registration.</b> Open for 6 months after the publication. There is also an appeal procedure available on the decision of the OAPI on the opposition (3 months). <b>Registration is conditional upon the payment of the fees.</b> GIs are registered in the Special Register of Geographical Indications.</p>

<sup>151</sup> Source of information: <http://www.wipo.int>.

<sup>152</sup> Source of information: <http://www.wto.org>.

*Continent: Africa*  
*Country: Benin*

	<p>Level of protection is similar to the one provided under the EC law: the protection in translation is covered by the Agreement; the use of kind, type, make, etc. is forbidden (Article 15.3 of the Annex VI).</p> <p>The owner of an early mark that is identical with or similar to a geographical indication may continue to use his mark, except where such mark concerns wines or spirits (Article 15.6 of Annex VI).</p>
Specific Provisions (issue of Generics, Reciprocity)	<p>There is no provision with respect to generic names.</p> <p>However, Article 15.4 of the Annex VI of the Bangui Agreement states that the competent national authority of an OAPI member State can decide by regulation that the quality of products put on sale or used under a registered geographical indication shall be subject to control or that the use of such geographical indication shall be prohibited.</p> <p>Any person may at any time consult the Special Register or request information, against payment of the prescribed fees (Article 13 of the Annex VI).</p>
<b>Formal Requirements for an Application</b>	
Application Forms	<p>Article 6 of the Agreement states that Applications of GIs shall be filed directly to the OAPI.</p> <p>Applicants domiciled outside the territory of the member States shall file through an agent selected in one of those member States. However, OAPI has already signaled that it would be ready to accept filing via national embassies.</p> <p><b>Unlike in the EU, there is no standard application form at the present time. The application for registration filed to the OAPI shall contain:</b></p> <ul style="list-style-type: none"> <li>• an application to the Director General of the Organization in a sufficient number of copies;</li> <li>• the geographical area to which the GI applies;</li> <li>• the products for which the GI is used;</li> <li>• the quality, reputation or other characteristic of the products for which the geographical indication is used;</li> <li>• a proof of payment of the filing fee.</li> </ul> <p>A simplified version of the EC specifications can be used for these purposes.</p>
Relevant Supporting Documents	None.
Administration Responsible for Registration	<p>Direction Générale de l'OAPI BP 887 Yaoundé Cameroun Tél : (237) 220 57 00/ 220 39 11 Fax : (237) 220 57 27/ 220 57 21 E-mail: <a href="mailto:oapi.aa@oapi.ao.wipo.net">oapi.aa@oapi.ao.wipo.net</a> Website: <a href="http://www.oapi.wipo.net">http://www.oapi.wipo.net</a>.</p>
<b>Costs</b>	
Costs of registration	<p>Application for Registration: F.FCA 90.000 (€ 137). Publication of the application for registration: F.FCA 55.000 (€ 83). Application for Opposition: F.FCA 150.000 (€ 228).</p>

Source: O'Connor and Company, "Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members", Part II: Protection of Geographical Indication in 160 countries.

## Appendix 2: IPR landscape in Cameroon

Continent: Africa  
Country: Cameroon

Country: Cameroon

International Legal Framework	
<p>Cameroon is a member of the World Intellectual Property Organization from 3 November 1973 and a signatory of the Paris Convention for the Protection of Industrial Property from 10 May 1964.<sup>162</sup> Cameroon is a WTO Member from 13 December 1995.<sup>163</sup> There are no bilateral agreements between the EC and Cameroon specific to GIs. Cameroon is a member of the <b>Bangui Agreement on Intellectual Property</b> which set up the Organisation Africaine de la Propriété Intellectuelle (OAPI) that governs the protection of intellectual property rights in 16 countries of Western and Central Africa.<sup>164</sup></p>	
National Legal Framework	
Type of Protection	<p><b>Sui generis protection.</b></p> <p>No <i>ex officio</i> protection is available; protection is only provided at the request of any interested party.</p>
Relevant Regulatory Framework	<ul style="list-style-type: none"> <li>• <b>Bangui Agreement, March 1977 (Annex VI),</b> since February 1982, as last amended in February 1999.</li> </ul>
Scope of protection	<p>The scope of application of the GI Law is more extensive than the scope of the EC system (concerns all goods: agricultural and handicraft, but not services).</p>
Source	<p>English version of the Act is available at <a href="http://www.oapi.wipo.net/doc/en/banqui_agreement.pdf">http://www.oapi.wipo.net/doc/en/banqui_agreement.pdf</a>.</p>
Summary of the Operational Provisions	<p>Application must be made directly to the OAPI Office in Yaoundé (see below).</p> <p>Geographical indication is defined in the <u>Article 1 of Annex VI of the Bangui Agreement</u> in a manner similar to EU law. <u>GIs excluded from protection:</u> GIs that are contrary to morality or public policy, liable to deceive the public, not protected in their country of origin or have ceased to be protected or have fallen into disuse in that country (Article 5 of the Annex VI).</p> <p>The registration procedure is divided into three phases:</p> <ul style="list-style-type: none"> <li>• Request for registration;</li> <li>• Formal and substantial examination of the request;</li> <li>• Grant of a registration certificate for the GI.</li> </ul> <p>An opposition procedure is available after the registration and is open for 6 months after the publication. There is also an appeal procedure available on the decision of the OAPI on the opposition (3 months).</p>

<sup>162</sup> Source of information: <http://www.wipo.int>.

<sup>163</sup> Source of information: <http://www.wto.org>.

<sup>164</sup> Source of information: <http://www.oapi.wipo.net/en/OAPI/index.htm>.

*Continent: Africa*  
*Country: Cameroon*

	<p>Registration is conditional upon the payment of the fees.</p> <p>GIs are registered in the Special Register of Geographical Indications.</p> <p>Level of protection is similar to the one provided under the EC law: the protection in translation is covered by the Agreement; the use of kind, type, make, etc. is forbidden (Article 15.3 of the Annex VI).</p> <p>The owner of an early mark that is identical or similar to a geographical indication may continue to use his mark, except where such mark concerns wines or spirits (Article 15.6 of Annex VI).</p>
Specific Provisions (issue of Generics, Reciprocity)	<p>There is no provision with respect to generic names.</p> <p>However, Article 15.4 of the Annex VI of the Bangui Agreement states that the competent national authority of an OAPI member State can decide by regulation that the quality of products put on sale or used under a registered geographical indication shall be subject to control or that the use of such geographical indication shall be prohibited.</p> <p>Any person may at any time consult the Special Register or request information, against payment of the prescribed fees (Article 13 of the Annex VI).</p>
<b>Formal Requirements for an Application</b>	
Application Forms	<p>Article 6 of the Agreement states that Applications of GIs shall be filed directly to the OAPI.</p> <p>Applicants domiciled outside the territory of the member States shall file through an agent selected in one of those member States. However, OAPI has already signaled that it would be ready to accept filing via national embassies.</p> <p><u>Unlike in the EU, there is no standard application form at the present time. The application for registration filed to the OAPI shall contain:</u></p> <ul style="list-style-type: none"> <li>• an application to the Director General of the Organization in a sufficient number of copies;</li> <li>• the geographical area to which the GI applies;</li> <li>• the products for which the GI is used;</li> <li>• the quality, reputation or other characteristic of the products for which the geographical indication is used;</li> <li>• a proof of payment of the filing fee.</li> </ul> <p>A simplified version of the EC specifications can be potentially re-used for these purposes.</p>
Relevant Supporting Documents	None.
Administration Responsible for Registration	<p>Direction Générale de l'OAPI BP 887 Yaoundé Cameroun Tél : (237) 220 57 00/ 220 39 11 Fax : (237) 220 57 27/ 220 57 21 E-mail: <a href="mailto:oapi.og@oapi.og.wipo.net">oapi.og@oapi.og.wipo.net</a> Website: <a href="http://www.oapi.wipo.net">http://www.oapi.wipo.net</a></p>

Source: O'Connor and Company, "Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members", Part II: Protection of Geographical Indication in 160 countries

## Appendix 3: IPR landscape in Egypt

Continent: Africa

Country: Egypt

Country: Egypt

### International Legal Framework

Egypt is a member of the World Intellectual Property Organization from 21 April 1975, a signatory to the Paris Convention for the Protection of Industrial Property from 1 July 1951 and the Madrid Protocol Concerning the International Registration of Marks from 1 July 1952.<sup>182</sup>

Egypt has signed the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods on 1 July 1952.

Egypt is a WTO Member from 26 March 1995.<sup>183</sup>

There are no bilateral agreements between the EC and Egypt specific to GIs. However, Protocol 4 of the EC - Egypt Association Agreement concerns the definition of "originating products" and methods of administrative cooperation.<sup>184</sup>

### National Legal Framework

Type of Protection	Trademark Regime. It appears that no <i>ex officio</i> protection is available; protection is provided only at the request of a third party. Specific articles are included into the Law with respect to GIs.
Relevant Regulatory Framework	<ul style="list-style-type: none"> <li>Law on the Protection of Intellectual Property Rights No. 82, Book 2, entered into force on 3 June 2002 (hereinafter, referred as "the Law").</li> </ul>
Scope of protection	The scope of protection concerns all goods and services.
Source	The text is available at: <a href="http://www.aspip.org">http://www.aspip.org</a> .
Summary of the Operational Provisions	<p>GIs are defined in Article 104 and can be protected as ordinary or collective trademarks (Article 69 of the Law) in Egypt, provided that they have acquired protection in the country of origin. Definition of GIs is similar to the one provided by the EC Regulation.</p> <p>A definition of Trademarks under Article 63 of the Law includes <u>any signs that indicate the origin of the product, or their quality, category, guarantee or preparation process and capable of distinguishing the product or services of one undertaking from those of other undertakings</u>. Names and signs that meet such definition may be registered.</p> <p>A trademark that contains a geographical indication may be registered, with the proviso that the products are continuously produced by the applicant in the well - reputed geographical territory (Article 109 of the Law).</p> <p>The Department of Trade Registry (the authority responsible for registration of GIs) examines the application first formally, and then substantially. GIs which are likely to mislead or confuse the public, or which contain false descriptions as to the origin of the products or their qualities shall not be registered</p>

<sup>182</sup> Source of information: <http://www.wipo.int>.

<sup>183</sup> Source of information: <http://www.wto.org>.

<sup>184</sup> Source of information: <http://www.oapi.wipo.net/en/OAPI/index.htm>.

*Continent: Africa*  
*Country: Egypt*

	<p>(Article 110 of the Law). Further appeals are available before competent Court of First Instance under Article 112 of the Law.</p> <p><b>An opposition procedure is available within sixty days</b> from the date of publication (Article 80 of the Law).</p> <p><b>Level of protection:</b> The use of false or misleading information as to the origin, nature or essential qualities of the product is prohibited (Articles 113 and 114 of the Law).</p>
<b>Specific Provisions (issue of Generics, Reciprocity)</b>	<p>Under Article 108, when a geographical name has become “descriptive”, to indicate in a commercial sense the nature of the any products and not their geographical place of origin, such geographical name may be used in connection with such products and may not be registered.</p> <p>The Law allows foreign GIs to be protected in Egypt subject to reciprocity provisions (Article 104 of the Law). Therefore, the EC GIs may be registered in Egypt.</p>
<b>Formal Requirements for an Application</b>	
<b>Application Forms</b>	<p>In order to file a trademark application in Egypt, the following documents must be provided:</p> <ul style="list-style-type: none"> <li>• A Power of Attorney legalized up to the Egyptian Consulate (to be submitted with the filing of the application);</li> <li>• A printing block and ten prints of the trademark for each class;</li> <li>• A list of the goods and services to be covered by the application;</li> <li>• A certified extract of the entry of the applicant company in the commercial register or a certified copy of the certificate of incorporation, which includes the name, address, nationality, legal status and profession or nature of the business of the applicant, legalized up to the Egyptian Consulate. A certified copy of the priority document must be submitted within six months, in case it is claimed.</li> </ul> <p>According to the new Egyptian regulations, all the documents must be available within six months from the filing date. Please be advised that if the documents were not available by the due date, the above-captioned trademark application will lapse.</p> <p>All documents must be in translated in Arabic.</p>
<b>Relevant Supporting Documents</b>	None.
<b>Administration Responsible for Registration</b>	<p><b>Administration of Commercial Registration</b> Ministry of Supply and Internal Trade 24, El-Gomhouria Street Abdiu Cairo Tel.: +20.2 393.82.42 Fax: +20.2 393.82.43</p>
<b>Costs</b>	
<b>Costs of registration</b>	<ul style="list-style-type: none"> <li>• Filing a mark application in one class up to registration is \$ 280 (€ 224);</li> <li>• Filing a simultaneous mark application up to registration is \$ 250 (€ 200);</li> </ul>

Source: O’Connor and Company, “Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members”, Part II: Protection of Geographical Indication in 160 countries

## Appendix 4: IPR landscape in Ghana

Continent: Africa

Country: Ghana

Country: Ghana	
International Legal Framework	
<p>Ghana is a member of the World Intellectual Property Organization Convention from 12 June 1976 and a signatory to the Paris Convention for the Protection of Industrial Property from 28 September 1976.<sup>195</sup>            Ghana has been a WTO Member from 1 January 1995.<sup>196</sup>            Ghana is also a member of the African Regional Industrial Property Organisation for English-speaking Africa (ARIPO) (established by the Lusaka Agreement of 9 December 1976) from 15 February 1978 but <b>is not a party to the Banjul Protocol on marks</b> in the framework of ARIPO.<sup>197</sup>            There are no bilateral agreements between Ghana and the EC specific to GIs.</p>	
National Legal Framework	
Type of Protection	<p>Trademark regime (no <i>ex officio</i> protection is available, protection is provided only at the request of an interested party).</p>
Relevant Regulatory Framework	<ul style="list-style-type: none"> <li>• Trademarks Act No. 270 of 25 February 1965 which entered into force with the approval of the implementing regulations in 1970 (hereinafter referred to as "the Law");</li> <li>• Trademarks regulations, No. L.I. 667, of December 1970 as amended in December 1972, July 1980 and July 1988 and in July 2001;</li> <li>• Trade Marks (Amendment) Regulations 2001, No. L.I. 1685 of 26 June 2001 entered into force on 28 July 2001;</li> <li>• Act on Protection against Unfair Competition No. 589 of 2000;</li> <li>• Civil procedure rules No. LI 140A of 1954;</li> <li>• Civil procedure rules No. CI 116 of 1996.</li> </ul> <p><u>Ghana is in the process of completing a Draft Act on Trademarks and a Draft Act on Geographical Indications (GIs) soon to be submitted to the Parliament for approval.</u><sup>198</sup></p>
Scope of protection	<p>Under the legislation currently in force, only goods (industrial and agricultural) are covered. The Trademarks Act is not applicable to services. However, the draft Trade Marks Act contains provisions on the protection of service marks.</p>
Source	<p>The English version of the Trademark Act and the Draft Acts on Trademarks and on GIs are not available in electronic format. The only information on the contents of the Trademark Act and of the said legislative proposals is available on the WTO official web site: <a href="http://docsonline.wto.org">http://docsonline.wto.org</a>.</p>

<sup>195</sup> Source of information: <http://www.wipo.int>.

<sup>196</sup> Source of information: <http://www.wto.org>.

<sup>197</sup> Source of information: <http://www.aripo.org/Protocols.html>.

<sup>198</sup> Information as of 20 June 2006. The new Bill on Geographical Indications seeks to provide a system of Geographical Indications protection which complies with Articles 22-24 of the TRIPs Agreement. It establishes a registration system for geographical indications for those producers carrying on activities within a specified geographical area of Ghana. The Bill includes an effective regime of both civil and criminal sanctions to prevent the unlawful use of a geographical indication.



*Continent: Africa*  
*Country: Ghana*

Summary of the Operational Provisions	<p><b>Trademark regime:</b></p> <p>Under the Act, <u>a mark must be registered in order to be granted protection</u>. The simple use of trademarks is not protected. The main criterion for the registration of a mark under the Trade Marks Act is its distinctiveness.</p> <p>Sections 9 and 10 of the Act set out the conditions for the registration of a mark. Section 9(1)(d) of the Act excludes from registration a word or words which in its ordinary signification mean a geographical name thus the registration authority usually would refuse a trademark application if it contains a geographical indication.<sup>199</sup></p> <p>An exhaustive examination is carried out on the application by the Registration Authority before acceptance or refusal. The applicant may be invited to make amendments. All applications are published in the <b>Commercial and Industrial Bulletin</b> for possible opposition. A mark is entered in the Register of Trade Marks if there is no opposition or where the opposition has been disposed of.</p> <p>No information is currently available on the existence of appeal proceedings against the decision to reject a trademark application.</p> <p><b>Sui generis protection of GIs, according to the Draft Act:</b></p> <p>The future scope of application of this Act will be more extensive than the EC scope of protection of GIs, including natural products and handicrafts.</p> <p>Wines and spirit will also be covered by the Act but the current Draft does not provide for a higher level of protection of such products.</p> <p>Like the Draft Act on Trademarks, also the Draft Act on GIs only prohibits the unlawful use of GIs, such as <i>inter alia</i>, the use of a GI in a misleading manner for the public and in contrast with fair business practices. <b>Definition of geographical indications is similar to the one provided by the EC Regulation.</b> Names and signs that meet such definition may be registered.</p> <p>According to the Draft on GIs, there are several requirements under which the GI may be used in Ghana:</p> <ul style="list-style-type: none"> <li>• the use should be made by a producer carrying on an activity in the geographical area specified in the Register;</li> <li>• the indication may be used with respect to products specified in the Register;</li> <li>• products on which the GIs would be used possess the quality, reputation or other characteristic specified in the Register.</li> </ul> <p>The EC specifications can be potentially re-used for the registration.</p>
Specific Provisions (issue of Generics, Reciprocity)	No information is currently available in the Law in force or in the draft legislation.
<b>Formal Requirements for an Application</b>	
Application Forms	<u>Under Section 9, the application for registration of a trademark must be made in the prescribed form (Form TM No.2).</u>

<sup>199</sup> The draft Trade Marks Act contains a provision prohibiting the registration of a mark if it is likely to mislead the public with regards to the geographical origin of the goods or their nature or characteristics.

Source: O'Connor and Company, "Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members", Part II: Protection of Geographical Indication in 160 countries

## Appendix 5: IPR landscape in Madagascar

Continent: Africa  
Country: Madagascar

Country: Madagascar	
International Legal Framework	
<p>Madagascar is a member of the World Intellectual Property Organization since 22 December 1989 and a signatory of the Paris Convention for the Protection of Industrial Property since 21 December 1963.<sup>226</sup> Madagascar is a WTO Member since 17 November 1995.<sup>227</sup></p>	
National Legal Framework	
Type of Protection	Trademark regime (no <i>ex officio</i> protection is available under the trademark regime, protection is provided only at the request of an interested party).
Relevant Regulatory Framework	<ul style="list-style-type: none"> <li>Ordinance No 89-019 Establishing Protection for Industrial Property in Madagascar (hereinafter referred as "the TM Law"), July 1989 («Titre II» - Art 55 - 87).</li> <li>Decree No 92-993 of December 1992 for the Implementation of the Ordinance No 89-019.</li> </ul>
Scope of protection	The scope of protection concerns all goods and services.
Source	<p>A French version of the Ordinance 89-019 is available at: <a href="http://droit.francophonie.org/doc/html/mg/loi/fr/1989/1989dfmglgfr1.html">http://droit.francophonie.org/doc/html/mg/loi/fr/1989/1989dfmglgfr1.html</a>.</p> <p>A French version of the Decree 92-993 is available at: <a href="http://droit.francophonie.org/doc/html/mg/loi/fr/1992/1992dfmglgfr7.html#H_026">http://droit.francophonie.org/doc/html/mg/loi/fr/1992/1992dfmglgfr7.html#H_026</a>.</p>
Summary of the Operational Provisions	<p>The Ordinance of 1989 entered into force through the application of the 1992 Decree.</p> <p>It appears that the EC GIs could be registered as collective marks in Madagascar. There is a specific section on collective marks (Articles 78 to 82 of the Ordinance). The Ordinance provides that an applicant must fill in an application form which must be written in French or Malagasy. There is a formal examination of the demand by the Intellectual property office.</p> <p>Unlike in the EC, there is no opposition procedure available.</p> <p>The violation of a mark is punished by prison (3 months – 6 years) and by the payment of a fine. In the event of a second offence the sentence is doubled (Article 84 of the 1989 Decree).</p>
Specific Provisions (issue of Generics, Reciprocity)	Generic terms cannot be registered as trademarks (Article 55 of the Law). No definition is provided in the Ordinance.
Formal Requirements for an Application	
Application Forms	Like in the EC there is a standard application form, however, this form is not available online. The following elements are required for application:

<sup>226</sup> Source of information: <http://www.wipo.int>.

<sup>227</sup> Source of information: <http://www.wto.org>.

*Continent: Africa*  
*Country: Madagascar*

	<ul style="list-style-type: none"> <li>• Application form;</li> <li>• Receipt of the taxes payment;</li> <li>• 10 prints of the mark;</li> <li>• List of the products/services covered by the mark;</li> <li>• A rule on the use of the mark;</li> <li>• The name of an agent in charge of the contacts with the IPO. A power of attorney signed before a notary</li> </ul>
<b>Relevant Supporting Documents</b>	None.
<b>Administration Responsible for Registration</b>	<p><b>Industrial Property Office</b> Office Malgache de la Propriété Industrielle (OMAPI)</p> <p><b>Malagasy Industrial Property Office</b> Bâtiment de la Direction générale de l'artisanat Rue Agosthino Neto – 67 Ha-Sud 8237 – Antananarivo 101 Tel.: (261.20) 223.35.02/6 226.59.75 Fax: (261.20) 226.59.79 E-mail: <a href="mailto:omapi@dts.mg">omapi@dts.mg</a></p>
<b>Costs</b>	
<b>Costs of registration</b>	<ul style="list-style-type: none"> <li>• Application: 1 - 3 classes: \$ 735.00 (~ € 574), additional classes over three filed simultaneously \$ 472.00 (~ € 368) each.</li> <li>• Assignment: First trade mark/class \$ 432.00 (~ € 337), additional trade marks/classes filed simultaneously \$ 261.00 (~ € 204) each.</li> <li>• Preparation of documents: \$ 107.00 (~ € 83).</li> <li>• Recordal of change of name or address: First trade mark/class \$ 179.00 (~ € 140), additional trade marks/classes filed simultaneously \$ 52.00 each (~ € 40).</li> <li>• Renewal: 1 - 3 classes \$ 523.00 (~ € 408), 4 or more classes renewed simultaneously \$ 401.00 each (~ € 313).</li> </ul>
<b>Costs of litigation</b>	Depends on the complexity of the case. It can be litigated by a firm of industrial property agents authorised to practice in Madagascar (between € 600 – 900).
<b>Timeframe</b>	
<b>Registration</b>	Approximately 6 months (no timeframe is indicated in the TM Law).
<b>Protection</b>	10 years, renewable by payment of the fees.
<b>Additional information</b>	
None.	

Source: O'Connor and Company, "Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members", Part II: Protection of Geographical Indication in 160 countries

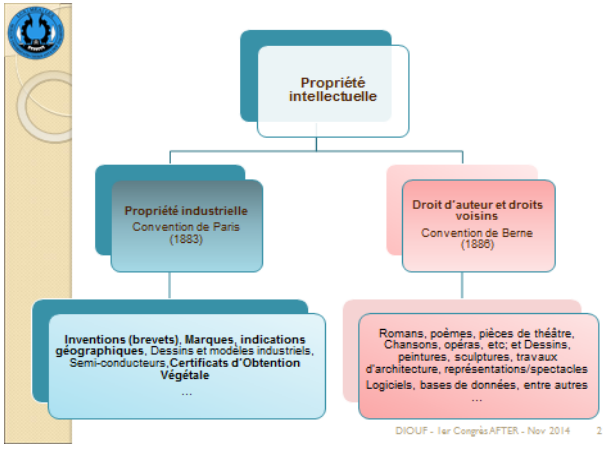
# Appendix 6: Introductory Conference of “Intellectual property rights and market access to new products” session of the AFTER Congress



## Brevet comme instrument stratégique de conquête du marché

**Dr Diegane DIOUF**  
 Chef de la Division de la Propriété Intellectuelle et de la Valorisation des Résultats de Recherche (DIPIVAR)  
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DIOUF - 1er Congrès AFTER - Nov 2014





## Brevet: Protection d'une invention

- Document juridique attribuant un monopole pour les inventions (produit, un procédé, ou à l'utilisation de ceux-ci)
- Le monopole étant la contrepartie de la divulgation de l'invention
- Pour une durée limitée (20 ans)

➢ **Monopole temporaire accordé par une Autorité à une (ou plusieurs) personne(s) physique(s) et/ou morale(s) sur une invention en contrepartie de la divulgation de l'invention.**

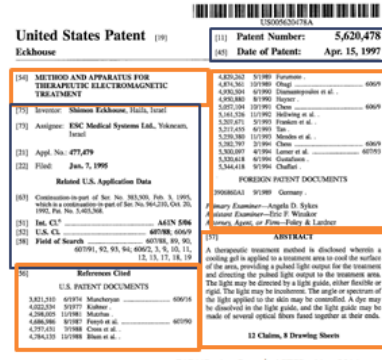
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## Brevet: Document technique

Données de publication, de priorité, déposant, inventeur, statut, pays désignés

Titre, État de la technique, abrégé, revendications




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## Brevet: Instrument stratégique d'acquisition d'une vision du marché

- Déterminer les domaines techniques les plus prometteurs dans un futur proche
- D'obtenir des informations sur les tendances et points forts de certaines technologies
  - Examen du nombre de demandes de brevets dans un secteur donné ou par des entreprises déterminées
- Identification de partenaires (inventeurs, création de joint-venture)

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## Brevet: Arme économique

- Défense d'un marché
  - Protéger son marché par des brevets adaptés
  - Dépôt de brevets
  - Concession de licence
  - Lutte contre la contrefaçon
  - Constitution d'un portefeuille
- Conquête d'un marché
  - Désinformation
  - Brevets leurres
  - Piégeage des bases de données brevet
  - Manœuvres diverses (barrage, encerclement, rachat de concurrents, entente avec accords de licences croisées, ...)

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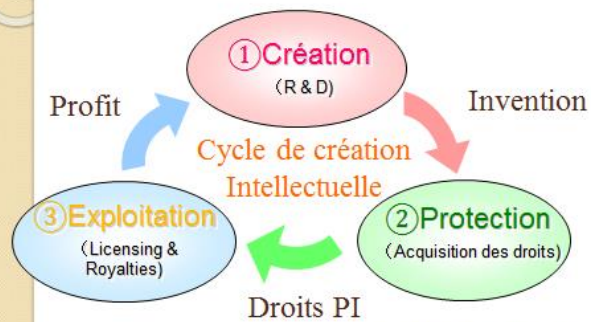
## Brevet: Instrument de veille technologique

- Demandes de brevet publiées
- Brevets délivrés,
  - en cours de validité
  - Tombés dans le domaine public.

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## DPI: Essentiels dans un cycle de création intellectuelle



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# Appendix 7: Oral presentation during AFTER Congress: Protection of traditional knowledge the role of Geographical Indications

Congrès AFTER – Dakar – 11-12 novembre 2014

## La protection des savoirs traditionnels: rôle des Indications géographiques

Didier CHABROL  
UMR Innovation - CIRAD  
Montpellier - France



Savoirs traditionnels et Indications géographiques - D. CHABROL

1

### Risques liés à la diffusion d'un produit local

- Le "camembert", la "moutarde de Dijon", l'"eau de Cologne" peuvent être fabriqués n'importe où, et pas seulement à Camembert, Dijon, Cologne...
- Parce que la protection du nom n'a pas été demandée
- Parce que le lien entre l'origine et la qualité/réputation n'a pu être établi



Savoirs traditionnels et Indications géographiques - D. CHABROL

3

### L'Indication géographique (IG)

- Un droit de propriété intellectuelle,
- que tous les pays membres de l'OMC doivent protéger depuis 1994 (accords ADPIC)
- *"des indications qui servent à identifier un produit comme étant originaire du territoire d'un Membre, ou d'une région ou localité de ce territoire, dans les cas où une qualité, réputation ou autre caractéristique déterminée du produit peut être attribuée essentiellement à cette origine géographique."*



Savoirs traditionnels et Indications géographiques - D. CHABROL

5

### Modernisation des produits traditionnels: opportunités et risques

- En Afrique, beaucoup de produits traditionnels fondés sur des savoirs et savoir-faire spécifiques.
- Qui trouvent leur origine dans des communautés locales et ont été transmis par elle.
- Modernisation souvent nécessaire de ces produits: comment préserver les intérêts des communautés d'origine?



Savoirs traditionnels et Indications géographiques - D. CHABROL

2

### « Provenance » n'est pas « origine »



Savoirs traditionnels et Indications géographiques - D. CHABROL

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### L'Indication géographique (IG)

- La protection ne porte pas sur un produit ou un procédé, mais sur un nom/ une indication
- Suppose une tradition (X création), une origine (X provenance), un lien entre origine et qualité/réputation
- Propriété collective, incessible et inaliénable



Savoirs traditionnels et Indications géographiques - D. CHABROL

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## Délimitation et cahier des charges

- Le lien origine / qualité-réputation suppose délimitation et cahier des charges: conditions de lieu et de production qui sont à l'origine de la qualité
- Un cahier des charges mentionne les points-clés qui confèrent au produit sa typicité; laisse libres les autres points: possibilité d'introduire des étapes modernes.

## IG: respect de la tradition et ouverture à la modernité

- Conditions d'hygiène: fromages au lait cru
- Mécanisation: robot mouleur à la louche pour camembert de Normandie AOP...
- Conservation: frigo à 0°C pour Oignon doux des Cévennes AOP
- L'important est de conserver le lien origine/qualité



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## IG : éviter la délocalisation

- Zone délimitée
- Les cahiers des charges peuvent prévoir des dispositions assurant la localisation dans la zone délimitée d'étapes-clés de la production
- Possibilité de RElocalisation:
  - Le fromage Feta ne peut plus être fabriqué ailleurs qu'en Grèce
  - Le tranchage du jambon de Parme destiné à être vendu en barquettes doit être assuré dans la zone de production



## En Afrique: l'OAPI et l'Accord de Bangui

- L'OAPI est l'office commun de propriété intellectuelle de ses 17 pays membres: Bénin, Burkina Faso, Cameroun, Centrafrique, Comores (depuis 2013), Congo, Côte d'Ivoire, Gabon, Guinée, Guinée-Bissau, Guinée équatoriale, Mali, Mauritanie, Niger, Sénégal, Tchad, Togo



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## En Afrique: l'OAPI et l'Accord de Bangui

- L'Accord de Bangui est la loi commune
- L'enregistrement des marques, brevets, COV et IG se fait uniquement auprès de l'OAPI
- La protection est acquise dans tous les pays membres

## Le projet PAMPIG: 2008-2014

- Projet mené par l'OAPI avec contribution de l'AFD et assistance technique du Cirad
- pour 3 produits pilotes, a utilisé méthodologie du Guide FAO/SinerGI: association représentative élaboration participative de la délimitation et du cahier des charges



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## La construction de l'IG: une démarche participative

- C'est un bien public qui est confié
- Ceux qui sont tenus en dehors pourraient contester, s'opposer, empêcher l'enregistrement
- Occasion de renforcer l'action collective
- Ainsi que la typicité du produit

## Miel blanc d'Oku



## Poivre de Penja

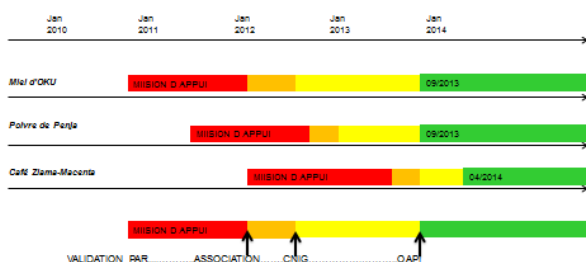


## Café Zياما-Macenta



## Trois examens successifs:

par l'association porteuse de l'IG;  
par le Comité national des IG; par l'OAPI



- En réservant l'usage du nom à des produits élaborés/obtenus dans une zone délimitée et suivant un cahier des charges issu d'une démarche participative, l'IG peut éviter la délocalisation et autorise une meilleure répartition des bénéfices au profit des communautés d'origine.