



# **INSTITUTIONAL FRAMEWORK FOR PROTECTION OF GEOGRAPHICAL INDICATIONS IN TANZANIA: EXAMINING THE CHALLENGES AND WAY FORWARD TOWARDS EFFECTIVE PROTECTION OF GEOGRAPHICAL INDICATIONS IN THE COUNTRY**

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## **Abstract:**

*The study is interested to review the challenges of the current Tanzania institutions framework dealing with protection of geographical indications with the view of exploring the alternative changes that can enable Tanzania to effectively deal with enforcement of domestic and international laws dealing with protection of geographical indications. In the end study recommends the possible wayward to strengthen the performance of the institutions dealing with protection and enforcement of geographical indications in Tanzania.*

**Keywords:** Geographical Indications

## **1. Introduction**

Effective protection of geographical indications in any country depends on the existence of strong institutional framework that can deal with registration and monitoring effective enforcement of the registered indications against possible infringements (Giovannucci, Josling, Kerr, O'Connor, & Yeung, 2009). This study is interested to examine the challenges of the Tanzania institutions on protection of geographical indications.

Geographical indications are names of geographical areas or symbols that are used to identify and commercialize natural agricultural products and foodstuffs, wine and spirits to mention a few as originating from a particular geographical area where certain unique characteristics or quality of the product are attributed to (Bagal, 2011).

## **2. Background to the Problem**

During colonialism, the concept of intellectual property right was totally of no interest by the black people in Africa and Tanzania in particular. There were no many intellectual property rights registered by local citizens or companies in Tanzania (Tanganyika by then) because of the nature of the laws and the conditions to be registered only if they were registered in UK (Mangistie, 2014).

The history of the institutions dealing with protection of intellectual property rights is connected to evolution of the law on protection of intellectual property laws. The recent history is traced from 1995 with the establishment of the World Trade Organization and the adoption of the Trade Related Aspects of Intellectual Property Agreement here in after referred as TRIPS Agreement (Tabaro, 2009). The TRIPS Agreement came into force in 1995 and it provides the minimum standards for the protection of geographical indication at international level. It also provides for obligation to the member states to enact domestic laws and establish institutional framework for protection of geographical indications in their respective countries.

Most of African countries are members of the WTO and as such they are bound to implement the legal instruments for protection of geographical indications. The laws on protection of geographical indication in Africa is still evolving. There are no collective regional efforts to protect geographical indication as a separate category of

intellectual property right. The protection is expected to take place under national laws. However, the existing literatures shows that the national laws are also still at infant stage. However, all the required conditions for development of geographical indications already exist and there is a political will to protect geographical indications in the national laws (The African Union Commission Department of Rural Economy and Agriculture , 2018).

At African regional level, the institutional framework on protection of geographical indications are divided into two blocks, one covering the African Regional Intellectual Property Organizing (ARIPO) countries and the other one covering the African Intellectual Property Organization. Under ARIPO, the members adopted the Banjul Protocol on Marks in 1993 (Lange, 2016)

In 2004, ARIPO designed a continental strategy for protection of geographical indications in Africa. The strategy is expected to address the issue of harmonization of domestic laws and the African institutional framework on protection of geographical indications through the African Union member states. The continental strategy is implemented in steps. In 2004 the Africa and EU partners organized the first consultation meeting in Nairobi Kenya, in January 2016 initial workshop was done in Rome where the objectives of the strategy was agreed, in march 2016 the draft of the strategy was prepared, in April 2016 another e-consultative meeting was organized on the complete draft of the strategy, in June 2016 validation of the strategy took place where the consolidated draft was presented to the African Union members , in November 2016 a workshop was organized in Nairobi where the draft of the strategy was presented and discussed , in 2017 the strategy was presented to the AU Special Technical Committee for indorsement and publication. Apparently, the strategy is waiting for validation and implementation by the AU member states (Lange, 2016).

In response to the international and regional movement on the protection of Geographical Indications, different states in Africa have taken measures by enacting or reviewing their intellectual property laws and institutions to cover protection of Geographical Indications in their territory. However, at the time of independence in 1961, Tanzania inherited few intellectual property laws from colonial regime which includes the Patent legislation of 1922, the Copyright Ordinance of 1924 and the Trade Marks Ordinance of 1922. The intellectual property laws were adopted without any significant change in their contents.

In 1986, Tanzania mainland enacted the Trade and Service Marks Act No. 12 of 1986 and subsequently in 1997 the Business Registration and Licencing Agency (BRELA) was established to administer the Act (the Trade and Service Marks Act ) and to deal with registration of various intellectual property rights like patents, trade and service marks (Kihwelo & Bullu, 2008). However, the performance of BRELA as a key institution dealing with registration and protection of geographical indications has not been effective dues to some challenges facing the institution in performing its function. Other institutions working closely to BRELA were also established in the later years to wit in 2007 the Fair Competition Commission (FCC) and Fair Competition Tribunal (FCT).

The history of the law and Institution dealing with intellectual property rights in Tanzania shows that, Tanzania have not taken serious steps to establish effective laws and institutional framework on protection of geographical indications although she is interested to protect certain geographical indications like handicrafts made in tourist destination (Kihwelo & Bullu, 2008).

### **3. Statement of the Problem**

Tanzania being a member of the Trade Related Aspects of Intellectual Property Rights herein after the TRIPS Agreement is obliged to ensure effective protection of geographical indications against possible infringements. The effectiveness of protection requires existence of strong institutional systems that can monitor compliance to the protection standards set by the laws and provide effective remedy against infringements (Mangistic, 2014).

However, despite of the obligations imposed by the international law, Tanzania seems not to have effective institutional framework for effective protection and enforcement of geographical in the country. (Kihwelo & Bullu, 2008). The existing frameworks are facing some serious challenges which makes not to be effective in performing their functions.

According to some literatures, companies in Europe and Asia are using Tanzania geographical indications to market certain products as originating in Tanzania even for products not originating in Tanzania. For example, certain coffee producing countries are using the name Kilimanjaro to market their coffee as Kilimanjaro coffee for coffee not even originating in Kilimanjaro (Mangistic, 2014). This shows the great weakness of Tanzania Institutions on protection of geographical indications in Tanzania. This paper is therefore interested to study the weaknesses of the institutions

dealing with protection of geographical indications in Tanzania and thereafter propose the possible way forwards to address these challenges.

#### **4. Literature Review**

The existing literature on geographical indication provides for understanding on the nature and scope of geographical indication as an intellectual property rights and the theoretical justification for protection of geographical indication.

Bertozi has written an article on managing geographical indications. In his Article, the author clearly points out that, strong organization and institutional structure is one of the essentials for geographical indications to be effective (Bertozi, 2014). The author further argues that, strong institutions are required to maintain, develop and monitor compliance to geographical indication standards.

The article by Bertozi is important for justifying this study on institutional challenges because it speaks about the need for effective institution in protection of geographical indications. Institutions are key player of protection of geographical indication (Bertozi, 2014). However, the author does not provide for the exhaustive coverage of the role of institutions in protection of geographical indications. Also, the author highlights some challenges of institutions in protection of geographical indications but does not give recommendations as way forward for institutions to be effective.

Mangistie , has also written a paper on Managing geographical indications in Africa. According to Mangisties, African countries has potential distinctive products with unique characteristics attributed to geographical origin but little is done to protect geographical indications to capture their intangible values (Mangistie, 2014). In the opinion of this author, protection of geographical indication in Africa is facing number of challenges including weak institutional framework, lack of or inadequate resources and capacity needed for protection, management and promotion of intellectual property rights assets. This author too has highlighted the challenges of managing and protecting geographical indications in Africa generally but this work is specifically dealing with institutional challenges and it is addressing them in Tanzanian context.

The European Union Intellectual Property Office (EUIPO) has published a manual for Geographical Indications in Africa in which they point out that, for geographical indication to be successful, robust system of protection and enforcement is required (Intellectual Property Rights and Innovation in Africa, 2021). The EUIPO further argue that, credibility of geographical indications depends on controls exercised by strong institutions be it public or private which must ensure that, the promise made by producers to the consumers about the product qualities are maintained and respected by all producers to ensure that the product authenticity is guaranteed.

Giovannucci and others have written a book on guide to geographical indication, in this book the authors states that, lesson from the case studies and literatures suggest that, for a geographical indication to be successful four components are essential; strong organization and institutional structure , equitable participation among producers and enterprises in a geographical indication region , strong market partners and effective legal protection including domestic geographical indication system (Giovannucci, Josling , Kerr, O'Connor , & Yeung , 2009).

The authors further clarify on the role of organizational and institutional framework that, such institutions are important to maintain, market and monitor the geographical indications. However, the authors do not mention the nature of the institutions and how should they be structured to perform their intended function.

In a nutshell, the key authors discussed in this section points out that, strong institutional framework is the key factor for successful protection of geographical indications. However, the institutions are facing some challenges which needs to be identified and serious measures for addressing these must be explored. When those challenges are effectively addressed in Tanzania , the country will realize the benefits of protecting geographical indications and promote national development by selling unique products of geographical indications internationally.

#### **5. Objectives of the Study**

The main objective of the study is to examine Institutional Challenges of Protecting Geographical Indications in Tanzania and proposes the way forward. The specific objects are; to examine the powers and function of the institutions dealing with domestic protection of geographical indications, to explore the challenges facing the institutions in performing their powers and to examine the possible solutions for addressing the challenges facing the

institutions. In the end, the study draws conclusion on each objective and provides the recommendations for improvement.

## **6. Methodology**

This paper is based on qualitative approach. The study mainly uses secondary data obtained by reviewing documentary sources like legal instruments establishing the institutions under study and other documentary sources like reports, books and journal articles. The study also uses primary data obtained from interview with key stakeholders working with the institutions under study. The data collected are analyzed by using content analysis techniques which involves establishing revealing themes from the legal text which are interpreted in line with the research objectives. The findings being qualitative in nature, are presented in narrative statements.

## **7. Findings of the Study**

### **7.1. Existing Institutional Framework**

The review of various literatures and reports have revealed that, in Tanzania there are about 5 key institutions which are directly or indirectly involved in the over all protection of geographical indications. These institutions are; the Ministry of Industry and Trade, Business Registration and Licencing Agency (BRELA), The Fair Competition Commission, Fair Competition Tribunal and the High Court Commercial Division. This section examines the establishment and functions or powers of each institution in line with their powers in protection and enforcement of geographical as one of the emerging intellectual property rights. The finds will help the study to conclude whether the institutional framework available is effective or not effect to protect geographical indications in the country.

#### **7.1.1. The Ministry of Industry and Trade**

Geographical indications is one of the aspect trade and industry. Geographical indications being an aspect of trade is falling within the ministry of Industry and Trade. The ministry is established for general supervision of trade related matters in the country. The ministry is the one supervising the implementation of the National Trade Policy of 2003 which is also providing for policy statement and objectives on matters relating to intellectual property as an aspect of trade. This ministry also supervises key institutions dealing with protection of geographical indications like the Business Registration and Licensing Agency (BRELA) and the Fair Competition Commission which is responsible for enforcement of the laws relating to consumer protection against dishonest trade practices like use of misleading indications of origin of goods.

The Ministry of Industry and Trade has managed to formulate the National Trade Policy which among other things provides for the general guidance of trade and business in Tanzania. Under the National Trade Policy, the ministry expressly insists on the main objective of the policy on matters of trade laws as to protect the interests of consumers through enhancing the capacity of government institution to perform their regulatory functions efficiently

#### **7.1.2. Business Registration and Licencing Agency (BRELA)**

Business Registration and Licencing Agency (here in after BRELA) is an Executive Agency established by the Government Executive Agencies Act No. 30 of 1997 as a semi-autonomous Agency to deal with general issues relating to registration of business and intellectual property rights. It was specifically established by Government Notice No. 294 published on 8th October 1999 and officially inaugurated on 3rd December 1999. The Agency is operating under the Ministry of Industry and Trade.

The Agency is implementing number of laws which includes the Trade and Service Marks Act. The agency has a directorate which deals with registration of intellectual property rights like trademarks, patent, industrial designs, service marks and other related industrial properties. This directorate is headed by the Director of intellectual properties.

The role and functions of BRELA are specifically stipulated in the constitutive government notice. In this respect, BRELA is also administering the Trade and Service Marks Act which contains prohibitions to register false indication of geographical origin of goods in course of registering trademarks.

BRELA is also responsible for registering business organizations like companies and trade names. In performing these functions, it is guided by the Company Act and the Business Names Registration Act. It has been observed by exiting literatures that, BRELA is very active on this function than that of intellectual property division.

### **7.1.3. The Commercial Court of Tanzania**

Commercial Court of Tanzania is a special division of the High Court of Tanzania dealing with adjudication of business-related cases. This is according to Rule 5(1) of the High Court (Commercial Division) Procedure Rules GN. 250 of 2012 Government Notice No. 250 of 2012. Generally, the High Court of United Republic of Tanzania is established by Article 108 of the Constitution of United Republic of Tanzania of 1977 as amended. The divisions of the High Courts are established by the Chief Justice in consultation with the President of United Republic of Tanzania under section 4A (1) of the Judicature and Application of Laws Act. According to the said section...

The Chief Justice may after consultation with the president by order published in the Gazette establish such number of divisions of the High Court as may be required for the purposes of facilitating the discharge of judicial functions in respect of specific matter as may be determined by the Chief Justice.

The High Court (Commercial Division) Procedures Rules provides for the jurisdiction of the Commercial Division of the High Court of Tanzania. According to Rule 5(1) of the High Court (Commercial Division) Procedure Rules, the commercial court vested with original and appellate jurisdiction over commercial cases. The Act further provides for the nature of commercial cases which the court can determine. These are cases related but not limited to; the formation of a business or commercial organization, the management of a business or commercial organization, the contractual relationship of a business or commercial organization with other bodies or persons outside the business or commercial organization, the liability of a business or commercial organization with other bodies or persons out of the business or commercial organization, the liability of a business or commercial persons arising out of that person's business or commercial matters, banking and financial services, the restructuring or payment of commercial debts by or to business or commercial organization or persons and the enforcement of arbitral awards decided by courts or tribunals of competent jurisdiction on international agreements to which Tanzania is party.

The nature of the cases falling within the commercial court jurisdiction includes matters relating to protection of geographical indications especially in paragraph (d) of rule 3 of Interpretation in the High Court (Commercial Division) Procedures which talks about liability of a business or commercial organization with other bodies and paragraph (h) of the said rule 3 of Interpretation in the High Court (Commercial Division) Procedures which talks about enforcement of arbitral awards by some competent tribunals to which United Republic of Tanzania is party.

Intellectual property rights are enforced as civil cases through the Commercial Court. The main purpose of the Court is to grant orders like injunction, payment of monetary compensation to the victims of breach and general penalties and fines imposed by the national laws. According the Johansen, in Tanzania most of Industrial property rights provide for civil rights and no criminal sanction, furthermore plaintiff would only be entitled to injunction, damages and compensation. This is enforced by the commercial courts of law.

### **7.1.4. The Fair Competition Commission**

The Fair Competition Commission is a special commission established under section 62 (1) of the Fair Competition Act to deal with matters relating to unfair trade practices which are likely to affect consumers rights. The commission started operating in in 2007 after appointment of required staff for its operations. According to Section 62(1) of the Fair Competition Act, the Commission shall be independent and perform its functions and powers independently and impartially without fear and favour. The main function of the Commission as stipulated under the Fair Competition Act are centered within the functions of consumer protection. This protection enforced by the Commission include protection against false indications of geographical origin of goods.

Section 62(1) of The Fair Competition Act provides for the specific functions of the Commission which are ; to promote and enforce compliance with the Fair Competition Act; to promote public knowledge, awareness and understanding of the obligations, rights and duties, functions and activities of the commission; to make available to consumers information and guideline relating to the obligations of persons under the Act and rights and remedies available to consumers under the Act; carry out inquiry studies and research into matters relating to competition and protection of interests of consumers etc. The specific function relating to consumer protection is that of carrying out inquiry on matters relating to competition and protection of consumers.

### **7.1.5. The Fair Competition Tribunal**

The Fair Competition Tribunal performs almost the same functions of the Fair Competition Commission (here in after FCC) of protection of consumers welfare. This body is established as an appellate organ to the FCC. According to section 82(1) of the Fair Competition Act, there shall be established an independent tribunal to be known as the Fair Competition Tribunal. Any person aggrieved by the decision of finding of the FCC may appeal to the Fair Competition Tribunal and the decision of the tribunal shall be final.

## 7.2. Institutional Challenges

The existence of strong and well-equipped institutions for protection of geographical indications is an important aspect towards effective protection of potential geographical indications in Tanzania. The purpose of the institutions is generally to provide for registration, management and enforcement of the potential geographical indication. However, the effectiveness of these institutions is affected by number of challenges.

### Lack of specific institutional Mandate for Protection of Geographical Indications

The study of various laws establishing institutions dealing with protection of geographical indications does not have specific provision giving powers to the institutions to deal with registration of geographical indications. The law establishing BRELA and FCC does not have define specific powers of BRELA or FCC in relation to protection of geographical indications. In the absence of such powers, these institutions can not seriously engage in protection of geographical indications. This is according to interview with BRELA Director of Intellectual Property Division. Reviewed literatures reveal that, successful protection of intellectual property depends on successful operation of the intellectual property system which include industrial property office, courts and well-trained practitioners (USAID, 2003). This means that, there must be specific institutions with mandates to deal with protection of geographical indications for the system to be effective.

The instruments establishing BRELA empowers BRELA to administer the Trade and Service Marks Act, The Company Act, the Business Licencing Act and the Patent Act which allows the institutions to receive and process applications for registration of trademarks, service marks and patent. The Director for Intellectual Property Division insists that, BRELA has no mandate to receive an application for registration of geographical indications because there are no enabling laws. The Director further observed that, BRELA rejects all applications for registration of geographical indications for lacking institutional mandate from enabling laws which apparently do not provide for procedures of registration of geographical indications.

### Inadequate Human Resource to Monitor Infringement of Geographical Indications.

The effective enforcement and management of geographical indications require enough competent staff. Most of the African states including Tanzania are facing the challenge of inadequate skilled manpower to monitor infringement and enforce the intellectual property rights (Mangistie, 2014). Human resource may not be readily available in the majority of African states and Tanzania in particular.

The problem of inadequate man power results into weak institution to monitor infringement of the protected geographical indications and poor enforcement of the laws. This in a long run results into continuous violation of the protected rights. This challenge is facing BRELA to the extent of making it less active in area of protection of intellectual property rights (Mahingila, 2005).

The problem of inadequate manpower requires short term and long-term strategies. The short term solutions may include securing financial and technical support from development partners and international organization and long-term solution will require establishing special fund for managing and promoting the geographical indication as protected product which in a long run will release contributions from the benefits of protection that will be invested in training staff for equipping the regulatory authorities.

During interview with some informed respondents, it was observed that, one of the major challenges facing BRELA in administration and protection of Intellectual property rights in Tanzania is inadequate man power. According to interview with the BRELA Director of Intellectual Property, there are no enough competent officers who are well trained to deal with protection of geographical indications in Tanzania.

### Lack of Strong Producers Organizations

Protection of geographical indications in Tanzania is facing the problem of lack of strong organization of producers who can collectively manage and own geographical indications (Mangistie, 2014). Most of geographical indication laws requires ownership of geographical indications be given to groups of farmers or producers as collective mark. However, in most of African countries including Tanzania there are very weak and non-inclusive organization of

producers which cannot ensure effective participation in developing and implementing geographical indication strategies (Giovannucci, Josling, Kerr, O'Connor, & Yeung, 2009).

According to Mangistie, African countries are facing the challenge of weak or non-inclusive organization of producers. The collective nature of ownership of geographical indications requires existence of an organization of producers that will ensure effective participation in the process of development and implementation of geographical indications as well as promoting the geographical indication (Mangistie, 2014).

Lack of strong or well-organized producers' associations affects the efforts of protection of geographical indications in many respects; first, it denies interested parties the right to apply for registration of collective marks. Second, it creates difficulty in monitoring compliance to standards or product specifications set for assessing registrability of a product. Third, it affects the collective interests of the community to realize benefit from the use and protection of potential geographical indications available in their locality (Mangistie, 2013). In Tanzania, most of the primary farmers associations are not well organized and they do not have competent staff who can formulate and monitor implementation of geographical indication laws.

#### Weak System of Settlement of Disputes relating to Infringement of Geographical Indications

According to Article 42 of the TRIPS Agreement, one of the important requirements for effective protection of geographical indications is existence of strong and effective system for settlement of disputes relating to infringement of intellectual property rights. Interview with Intellectual property lecturer at the University of Dodoma Tanzania revealed that, most of the African countries including Tanzania are facing this challenge.

The WTO and African regional institutions are lacking a serious and effective institutions for settlement of disputes concerning violation of intellectual property rights. Where these systems exist at national level, they are not effective and accessible for the general public to enforce their rights against infringement (Mangistie, 2014). According to Article 44, 45 and 46 of the TRIPS Agreement, the effectiveness of the enforcement system is measured in terms of availability of effective and timely remedies like injunction orders against infringement of the geographical indication rights, payment of damages to the right holder and other remedies like disposal of the infringing goods.

In Tanzania, geographical indication disputes could be handled through the Commercial Court, District Magistrate Court, Fair Competition Commission and Fair Competition Tribunal as key organs responsible for settlement and enforcement of intellectual property related rights in the country. However, these institutions are not effective in enforcement of geographical indications due to lack of enough and staff to monitor infringement, lack of funding to perform their functions and inaccessible filing fees for ordinary people to open the case (Mangistie, 2014).

The High Court commercial division is facing a challenge of high cost of filing cases which cannot be accessible by ordinary citizen. The cost of filing a case will go up to TSH. 10,000,000/= as filing fees and TSH.3000,000/= for filling plaint or chamber summons for declaratory orders. These fees are not friendly to be applied for enforcement of geographical indications cases which are commonly filed by farmers.

#### Lack of Institutional Capacity to Identify the Distinctive Qualities or Characteristics of the GI Products

The institutions dealing with protection of geographical indications are also facing the challenge of inadequate capacity to identify the distinctive qualities or characteristics of their products for the purposes of protection by geographical indications. There are no skilled human resources capable of analyzing and determining the unique qualities or characteristics present in the potential geographical indication products, defining the link between the product and the geographical place of origin of the geographical indication product within and outside the country (Mahingila, 2005). This has made majority of the African countries un aware of their potential geographical indication products hence failing to realize their potential in international market.

#### Lack of Technical Capacity in Protection of Geographical Indications

The institutions engaged with enforcement of geographical indications in Tanzania are facing a serious challenge of lacking enough staff with required skills to deal with protection of geographical indications. According to literatures reviewed, protection of geographical indications requires a lot of skilled human personnel who will be readily available to identify and monitor all possible infringements that may result to the protected geographical indications but African countries are lacking such capacity due to limited resources (Mahingila, 2005).

The Fair Competition Commission report for 2019 has noted some institutional challenges affecting the commission in its daily operations. One of the challenges pointed out is the issue of shortage of staff to adequately carryout the functions of the commission, lack of sustainable source of income to finance the commission operations and insufficient knowledge and awareness on Competition matters. All these challenges reveal the incapacity of the

commission in fulfilling its daily operation of protection of consumers (The Fair Competition Commission Report, 2018).

According to John et al., the development of geographical indication in Tanzania is in early stage with farmers and administrators developing awareness and technical capacity from basic levels (John et al., 2018). To realize the benefit of geographical indications the government must devise effective strategy such as voluntary license arrangement with importers, distributors and retailers of the products in major import destination to assist in management and monitoring infringements.

**Lack of Experience by the Institutions in Protecting Geographical Indications**

Institutions dealing with management and protection of geographical indications are facing the serious challenge of lack of experience in protection of geographical indication (Mahingila, 2005). In most of African countries, geographical indication is recent phenomenon and as such there are no experience of the use of geographical indications by producers and even Intellectual Property office bearers as it is in developed countries like the UK (Mangistic, 2014).

The problem of lack of experience in protection of geographical indications was noted by the former BRELA CEO when she was presenting her paper in a meeting of stakeholders of SME organized by WIPO and TCCIA. The former BRELA officer noted that, poor exposure to international best practice is another problem hindering BRELA in protection of industrial properties (Mahingila, 2005). She further noted that, the source of this problem is shortage of finance to send BRELA officers to participate in international and regional fora which could help the personnel to copy the best practices and be able to apply the same in their service delivery activities.

**Dormant Industrial Property Division at BRELA**

The key organ responsible for protection of geographical indications and administration of intellectual property laws is BRELA. BRELA has established a special industrial property directorate to deal with registration and administration of industrial property rights like patent, trade and service marks, industrial designs and other related intellectual property rights like geographical indications. This division is headed by a Director of intellectual property. The Intellectual property division is challenged for being dormant in performing its role of protecting intellectual property rights (Mahingila, 2005). BRELA is not effectively performing its role of registration of geographical indications. The 2018 WIPO report of Geographical Indications shows that, by 2018 there was not even a single geographical indication registered in Tanzania (World Intellectual Property Organization, 2018).

According to the former BRELA CEO, the main role of the intellectual property division is to administer current Trade and Service Marks Act and the Patents Act. This activity is not very active mainly due to lack of information from the demand side. She further noted that, the act of BRELA being unable to cover full range of industrial property is a major problem (Mahingila, 2005).

**Lack of Centralized African Regional Institution for Protection of Intellectual Property Rights**

At African region level, there exists two different institutions for management, protection and enforcement of Intellectual property rights (African Regional Intellectual Property Organization, 2019). There is the African Regional Intellectual Property Organization (ARIPO) covering countries of Southern Africa states including Tanzania and African Intellectual Property Organization (AOPI) covering Western African states. This situation makes African states to have a divided strategy on protection of geographical indications hence increasing diversity of domestic laws on protection of geographical indications. The disunity is also slowing down the collective efforts towards harmonization of African states legal framework on protection of geographical indications.

In 2011, HCL Consultants Ltd of Cyprus was engaged to conduct an empirical study on the protection of geographical indications by the African, Caribbean and Pacific countries engaged in the Doha Round Negotiations. During their study, they were interested to know what were considered to be the main drawbacks associated with existing international geographical indications protection in Africa? The study revealed that, 'absence of centralized African or regional protection system, lack of public knowledge about geographical indications and ignorance of sources of information' were serious challenges affecting most of the African states in their efforts towards effective protection of geographical indications (Blakeney, 2014).

It is therefore just and fair to note that, lack of African Regional centralized institution is slowing down the efforts of protection of geographical indications in Africa because Africa is lacking one voice and harmonized regional law for effective protection of African potential geographical indications. This is also affecting African countries in negotiating international IP instruments for common interests of all African states.

#### Lack of Effective Monitoring Mechanisms

The effective protection of geographical indications requires the availability of institutional mechanism of monitoring compliance with the specifications and standards of production in order guarantee consumers authenticity of the product. According AfrIPI, most of developing countries including Tanzania is lacking effective institutional system for monitoring compliance to product standards. This will sometime need to hire a private firm to monitor compliance.

According to AfrIPI, for geographical indications to be successful, a robust system of protection and enforcement is required. The credibility of a geographical indication depends on control which ensures the promise made by producers in their product standards is respected and product authenticity is guaranteed. This is difficult in most of the African states where especially to those small farmers association which do not have enough financial capacity to hire a private firm to monitor compliance of standard of goods in the market (Intellectual Property Rights and Innovation in Africa, 2021).

### 8. Conclusion

This paper was examining the institutional challenges hindering effective protection of geographical indications in Tanzania. The study has revealed that, Tanzania has in place the following institutions dealing with protection of geographical indications; The Ministry for Industry and Trade as the policy maker, BRELA as the key institution charged with administration of intellectual property laws , FCC and Fair Competition Tribunal dealing with administration of the Merchandise Marks Act and the High Court Commercial Division dealing with enforcement of the industrial laws. However, Tanzania institution dealing with protection of geographical indications are facing serious challenges which slows down their effectiveness in protection of geographical indications. The serious challenges relating to; inadequate human resource to monitor infringements, lack of strong organization of producers, incompetent staffs, lack of funding to facilitate daily operation and training for staff, weak institutions for settlement of disputes and incapacity to identify the unique qualities or characteristics of potential geographical indications by the national institutions.

### Recommendation

The government of Tanzania is advised to work on the challenges by strengthening the institutions on the following areas ; to employ more staff at BRELA and FCC and train them in those countries which are far more better in protection of geographical indications to equip them with up to date skills and techniques of protection of geographical indications. Also, to provide financial support to the existing institutions to enable them have enough financial resources to monitor compliance to geographical indication standards in the market. Further, the government must think of amending existing laws to provide the institutional powers on registration and management of geographical indications. Finally, the existing farmers associations should be strengthened to prepare them for protection of geographical indications.

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