

Policy Briefing

Women, Power & Policymaking

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Gender Implications of Geographical Indications for Ghanaian Shea Butter

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Executive summary

This policy briefing is based on research that examines how current debates¹ about extending geographical indications (GI) to products other than wines and spirits may impact women entrepreneurs in developing countries. The case study uses women producing shea butter in Ghana. Policymakers in both developed and developing countries have identified GIs as a potential mechanism to assist the agriculture sector in developing countries by reducing supply competition

¹ WTO (World Trade Organization), 'Doha WTO Ministerial 2001: Ministerial Declaration', par. 18, https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm, accessed 22 July 2019. Also see WTO, 'Joint Statement by the GI-Friends Group', 13 July 2004, https://www.ige.ch/fileadmin/user_upload/Juristische_Infos/e/j10406e.pdf, accessed 20 April 2019.

for traditional products while raising/standardising the quality of those products. As the political relevance and economic value of GIs for national trade and local economies become clearer, countries from the Global South and non-governmental organisations (NGOs) are trying to protect local products such as shea butter that were previously considered mere commodities to be sold in bulk and that could now become marketable as specialty foods. However, these countries might be in a particularly weak position to take advantage of the protection afforded by GIs, given the costs involved in establishing and maintaining the institutions and administrative organisations necessary for intellectual property (IP) protection. NGOs working with women in particular claim that GI protection for shea butter is the best way to ensure increased value upstream in the value chain and that women shea butter producers benefit from improvements to the product.² This policy briefing argues that women shea butter producers in Ghana may not reap the acclaimed benefits of GI protection and proposes collective place branding as a better alternative.

Introduction

Ghana's agricultural sector is dominated by women entrepreneurs who actively contribute to the economy. Shea butter is a vegetable fat extracted from the nuts of a tree that grows in the African savannah. The role of these women entrepreneurs in the agriculture sector is most visible in the shea butter industry in the northern parts of Ghana. Women entrepreneurs have shown their capacity and skills by managing the industry on their own, making this sector different from other agricultural sectors. Throughout the West African savannah, shea is an inextricable feature of the female domain; the process of making butter from shea nuts represents an ancient knowledge system that has been passed on generationally from mother to daughter. Women gather the nut, process it, and share and sell the oil they make.³ As a result of its high quality, there have been increased demands by the Group of Friends of Geographical Indications (GI) – which advocates for the extension of GI protection beyond wines and spirits – and by NGOs involved in the valorisation of shea butter for GI protection for Ghanaian shea butter in the global market.

The World Intellectual Property Organization (WIPO) defines GI as a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. The commercial and cultural relevance of the perceived connections between specific foods and their place of origin has led to the debate on whether GIs can become a valid tool to implement innovative and more just forms of community-based, quality-oriented agriculture in globalised markets.

2 Lovett P, 'The Impact of Certification on the Sustainable Use of Shea Butter (*Vitellaria paradoxa*) in Ghana', (Unpublished paper). Rome: FAO (Food and Agriculture Organization), 2004.

3 Chalfin B, *Shea Butter Republic: State Power, Global Markets, and the Making of an Indigenous Commodity*. Abingdon: Routledge, 2004.

This briefing brings women entrepreneurs who produce shea butter into the GI extension debate, and finds that attempts to extend GIs to Ghanaian shea butter may not be advantageous to them. This is because developing countries, in the first place, do not have the capacity to influence the direction of international protection of GI, as seen in the ongoing struggle for the extension of GI to goods other than wines and spirits. Second, the provisions in these international instruments represent a perpetual right to exclude and do not take into consideration the pivotal role of women in agricultural production in developing countries. Third, stronger GI protection is not likely to benefit women shea butter producers because implementing a complex Intellectual Property (IP) system that incorporates GI standards and certification criteria would use more resources than many developing nations could afford.

The briefing aims to show the importance of having a legislative framework that takes into consideration how decisions on agriculture and production are influenced by gender relationships in any given community. It also aims to draw the attention of policymakers to the pitfalls of relying on the protection of GIs for Ghanaian shea butter as a means of valorising a significant 'know-how' that is recognised by men as belonging to women.

Approaches

Women have often been forgotten in the economic analysis of globalisation and international market trends, and this is playing out in the GI framework. This briefing advances the intersectional identity of Ghanaian female entrepreneurs as both women and agricultural workers in a developing country, and advances the telling of that location by exploring the race and gender dimensions of the IP regime. Guided by Crenshaw's concept of intersectionality,⁴ the briefing analyses the potential impact of GIs on women entrepreneurs in the developing country of Ghana. It explores both the race and gender dimensions of the IP regime as demonstrated in the framework for the protection of GIs. This is achieved through the application of two frameworks. First, it applies a feminist perspective to explain the ways in which IP law has generally disadvantaged women. Second, it carries out a critical race critique of treaties⁵ administered by WIPO and the EU's Council Regulation⁶ that provide for the protection of GIs under the framework of the World Trade Organization (WTO), as well as two official documents – the Food and

4 Crenshaw K, 'Mapping the margins: Intersectionality, identity politics, and violence against women of color', *Stanford Law Review*, 43, 6, 1991, p. 1241.

5 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); Paris Convention for the Protection of Industrial Property of 1883; Lisbon Agreement for the Protection of Appellations of Origin and their International Registration; Geographical Indication Act 2003 (Act 659 of 2003).

6 EU, 'Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs', <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992R2081>, accessed 11 July 2019.

Agriculture Organization (FAO)⁷ and UN Industrial Development Organization (UNIDO)⁸ guides to geographical indication.

Results

Race and gender in the GI framework

The 1883 Paris Convention for the Protection of Industrial Property, under the auspices of WIPO, was the first major international agreement covering patents, designs and marks. Article 1(2) of the convention refers to ‘indications of source’ and ‘appellations of origin’ as objects of industrial property, while articles 10 and 10ter⁹ address false indications of the source of goods. This provision is so worded that it must, in countries that admit this possibility, be directly applied by the competent administrative and judicial authorities; in other words, the provision is ‘self-executing’. A critical examination of the provisions of the convention shows they impose severe administrative burdens on developing countries that often lack competent administrative and judicial authorities to meet the requirements.¹⁰ This affects women even more because of their dynamic involvement in agriculture at the grass-roots level,¹¹ which generally has less competent administrative authorities.

Furthermore, the gender neutrality of the provisions excludes women who perform specific roles germane to agricultural production. For instance, Council Regulation (EEC) 2081/1992, the European law on the protection of GIs and designations of origin for agricultural products and foodstuffs, presents the recognition of a product as worthy of GI protection as a complex matter requiring great expertise. The preamble of regulation 2081/1992¹² underlines that ‘the promotion of products having certain characteristics could be of considerable benefit to the rural economy, in particular to less-favored or remote areas, by improving the incomes of farmers and by retaining the rural population in these areas’. Here, farmers are gender neutral. As a result, the differential impact of rural migration on men and women, the role of women in keeping families on the land and other related matters are not explicit factors under the law.

When filing an application for the legal recognition of a GI, there is a requirement of proof that the product originates in a specific geographical area. Compliance with this requirement is usually proven by providing historical documents that mention the

7 FAO & Siner-GI (Strengthening International Research on Geographical Indications), *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable GIs*, 2nd edition. Rome: FAO, 2010.

8 UNIDO (UN Industrial Development Organization), *Adding Value to Traditional Products of Regional Origin: A Guide to Creating an Origin Consortium*, 2010, http://www.unido.org/fileadmin/user_media/Publications/Pub_free/Adding_value_to_traditional_products_of_regional_origin.pdf, accessed 20 April 2019.

9 The suffix ‘ter’ is used to refer to the fact that this is the third version of this provision.

10 Neirotti R, ‘Barriers to development: Pushing the boundaries’, *Rev Bras Cir Cardiovasc.*, 30, 1, 2015, pp. 104–113.

11 FAO, ‘Rural women: Striving for gender-transformative impacts’, *Global Forum on Food Security and Nutrition*, 142, <http://www.fao.org/3/a-i8222e.pdf>, accessed 22 July 2019.

12 EU, *op. cit.*

presence, production and consumption of that specific product in the area in centuries past. This excludes all those who did not have a written voice historically: most farmers, and especially women farmers, were not able to read or write. It is difficult to reconstruct that proof where the mark of their activities on a geographical and human environment did not come in a written form. This is especially so with regard to women's IP.

Even seemingly neutral aspects of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), a multilateral agreement administered by WIPO on international IP, can have gender implications. Article 67 provides that in order to facilitate the implementation of the agreement, developed country members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country members. Their assistance rarely leads to the development of productive capacities or active government policies and measures to stimulate the accumulation of capital. Rather, it often results in national policies that represent neither the unique circumstances of developing countries nor the unique role of rural women in agricultural production. Rural women are further disempowered through stringent requirements imported from international treaties.

Treaties that provide for GIs do not take into consideration how the redistribution of revenue, transfers of technology, and participation in political decisions on agriculture and production are heavily influenced by gender relationships in any given community. It is necessary to closely assess how Ghanaian women producers of shea butter will fare in this whole imbroglio of international protection of GIs.

Ghana's Geographical Indication Act has already implemented the terms of the above treaties, but there is a need to assess roles, power, agency and autonomy in shea-processing communities. This will show how the provisions meet Ghana's local circumstances as a developing black nation where women form over 50% of the agricultural workforce. It is equally disheartening to note after a close analysis of the FAO and UNIDO guides that no reference is made to the unique role women play in food production. Ironically, the images of food production used in the FAO guide are those of women, yet without the text making any reference to their role. Rather, both documents emphasise the need for stronger GI protection as provided in the legal framework.

The forms and reforms of local, regional and export markets for shea from the vantage point of the rural women whose livelihoods depend on its processing and trade are not considered by studies on GIs and their value, nor do they take cognisance of issues regarding who grows/produces what in the varied gender and social structures.¹³ The Organization for an International Geographical Indications Network (OriGIN), launched in Geneva in 2003 by producers of GIs from Africa, Asia, Latin and North America, and Eastern and Western Europe, reflects this same lapse. The Swiss-based organisation, representing

13 Parasecoli F, 'The gender of geographical indications: Women, place, and the marketing of identities', *Cultural Studies & Critical Methodologies*, 10, 6, 2010, pp. 467-478.

over 2 million producers of traditional products from more than 30 countries, aims to promote GIs as ‘an instrument of development and protection for local knowledge’ and to create a network of producers from both the Global North and South with the goal of exchanging information. However, on the OriGIn website no mention is made of social and gender issues in the communities producing the protected foodstuffs.¹⁴ The goal seems to be to enhance the economic value of GIs in the international arena rather than dealing with local issues, redistribution of revenue, and exploitation of disadvantaged social categories. Again women are erased at the origin of products that have gained the commercially relevant status of GI.

Implications for Ghanaian women as entrepreneurs in a developing country

Women in developing countries play a significant role in entrepreneurial activities. According to the Global Entrepreneurship Monitor,¹⁵ Africa has the highest number of female entrepreneurs in the world. However, despite various interventions by local and international human rights groups, women, who account for almost half of the entire population, generally lag behind in all aspects of life (economically, socially, politically and intellectually). Current dimensional¹⁶ studies reveal that women from developing countries are on the lowest rung of poverty. Ghanaian shea butter is produced by rural women who are mostly farmers and illiterate but who have considerable traditional knowledge. These women are marginalised by a whole range of factors, ranging from infrastructural deficiencies and the high cost of finance to legal regimes that do not afford women the same opportunities as their male counterparts, owing in part to deep-rooted discriminatory socio-cultural norms that perceive them as wives and mothers. Women also have limited access to finance. They do not need to be further shackled by a GI regime.

Gender distinctions in law affect women in both developing and developed economies. However, its effect on women in developing economies is exacerbated by the socio-cultural context of these countries. GIs cannot be helpful to local women farmers, who often favour direct sales or short distribution channels and lack the advanced supply structure that is required for the success of efficiently marketing GI.

An alternative way to leverage the growth and expansion of Ghanaian shea butter is collective place branding. This is the practice of applying brand strategy and other marketing techniques and disciplines to the economic, social, political and cultural development of cities, regions and countries. Collective place brands are strategies to jointly

14 OriGIn, <https://www.origin-gi.com/>, accessed 11 July 2019.

15 GEM (Global Entrepreneurship Monitor), *GEM 2016/2017 Women's Entrepreneurship Report*, <https://www.gemconsortium.org/report/gem-20162017-womens-entrepreneurship-report>, accessed 13 July 2019.

16 UN Women, 'Facts and figures: Economic empowerment', <http://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>, accessed 12 July 2019.

valorise and promote a package of place-specific (food) products and services, based on a distinctive territorial identity.¹⁷ Collective branding allows enterprises to come together while providing them with a common image and brand awareness among consumers. Women shea butter producers traditionally work in groups, which makes this more advantageous to them. Also, unlike GIs, these brands represent an integrated approach to territorial development, involve various local actors, are more flexible in use, and are less subjected to legal and administrative rules. These factors make them suitable for women entrepreneurs in developing countries.

Policy recommendations

- Instead of GIs, collective place branding should be used as an alternative scheme that can enable women entrepreneurs to benefit from improvements to their shea butter products.
- Adult education should be provided at the rural level to create awareness about collective place branding and the various options available to these women entrepreneurs, because of the pervasive influence of the IP regime globally.
- Further investigation should be carried out about the role, power, agency and autonomy of women in shea-processing communities.
- Further research is needed to provide empirical data on the value of GIs as a tool for the socio-economic development of developing countries, as the debate continues.

¹⁷ Donner M, 'Collective Place Branding: An Alternative Strategy for Territorial Development Compared to Geographical Indications?', Presented at Forum Origine, Diversité et Territoires, Turin, 20-22 September 2016, p. 17, <https://prodinra.inra.fr/record/384203>, accessed 12 February 2019.

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Cover image

Women use traditional methods to make shea butter in Leo, south-central Burkina Faso, on 24 January 2014 (Lionel Bonaventure/AFP/Getty Images)

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