

AFRICA UNIVERSITY  
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PROSPECTS FOR THE ESTABLISHMENT OF KILOMBERO RICE FROM  
KARONGA DISTRICT IN MALAWI AS GEOGRAPHICAL INDICATION  
PROTECTION

BY

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A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE  
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## **Abstract**

The purpose of this study was to assess and examine the prospects of establishment of Kilombero Rice from Karonga district in Malawian as a Geographical Indication. Kilombero Rice farmers lack protection from dishonest dealers who abuse them, deprive them of the benefits of Kilombero Rice, even as they fetch low prices for their rice at both the local and international market. It was argued that although the Government has put in place a GI law, it is not being implemented. Furthermore, the study noted that agriculture trading associations and companies that buy Kilombero Rice from Karonga rice schemes end up giving the rice a different brand resulting in counterfeit products being sold as KR from Karonga District. The study used Karonga district as geographical indication protection of KR growers. Quantitative research approach was utilized and qualitative data were collected in addition to rigorous literature review and analysis. Consequently, the study found that growers lost ownership of Kilombero Rice. The dissertation acknowledged significant progress made by government in putting in place GI legal framework to ensure farmers of Kilombero Rice in Karonga District are protected. The above notwithstanding more needs to be done to ensure enhanced sustainable rural development in Karonga District through the protection of Kilombero rice as a Geographical indication. Therefore, the research recommended that the Government of the Republic of Malawi ought to enforce the implementation of GI law to benefit growers of KR in order to ensure maximum benefits from Kilombero Rice. More significantly, rice schemes in Karonga District should have effective management structures which must be strengthened and essential agricultural production activities and services be devolved.

## **Key Words**

Geographical Indication, Sustainable Rural Development, Trade-Related Aspects of Intellectual Property Rights.

### **Declaration**

I declare that this dissertation is my own original work except where sources have been cited and acknowledged. This work has never been submitted, nor will it ever be submitted to another university for the award of a degree.




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Student's Full Name

Student's Signature 11/06/2020

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## **Dedication**

To my silent motivator Matayo CHILOMBA beloved father, who never lived to see his great work, through me got completed.**Zororai murugare.**

### **List of Acronyms /Abbreviation**

ARIPO:	Africa Region Intellectual Property Organization
FCPA:	Foreign Corrupt Practices Act
GATT:	Agreement on Tariffs and Trade
GI:	Geographical Indication
GNP:	Gross National Product
GOM:	Government of Malawi
INPI:	French National Intellectual Property Institute
IP:	Intellectual Property
KA:	Karonga District
KR:	Kilombero Rice
MOA:	Ministry of Agriculture
MTIC:	Ministry Of Trade, Industry and Commerce
NGOs:	Non-Governmental Organizations
OAPI:	African Intellectual Property Organization
OECD:	Organization for Economic Co-operation and Development
RG:	Registrar General
SMEs:	Small and Medium Enterprises
TRIPS:	Agreement on Trade Related Aspects
WTO:	World Trade Organization



## Table of Contents

Abstract .....	ii
Key Words .....	ii
Declaration .....	iii
Copyright .....	iv
Acknowledgments.....	v
Dedication .....	vi
List of Acronyms /Abbreviation .....	vii
List of Tables.....	xii
List of Figures .....	xiii
CHAPTER 1: INTRODUCTION .....	1
1.1    Introduction .....	1
1.2    Background to the Study .....	1
1.3    Statement of the Problem .....	3
1.4. Purpose of the Study.....	3
1.5.    Objectives of the study .....	4
1.6. Research Questions .....	4
1.7. Assumptions/Hypotheses .....	4
1.9.    Delimitation of the Study .....	5
1.10.    Limitation of the Study .....	5
1.11.    Structure of the Study .....	6
1.11.1. Chapter one:.....	6
1.11.2. Chapter two:.....	6
1.11.3. Chapter three:.....	6
1.11.4. Chapter Four: .....	6
1.11.5. Chapter Five:.....	6
1.12.    Chapter Summary .....	7
CHAPTER 2: REVIEW OF RELATED LITERATURE.....	8
2.1. Introduction .....	8
2.2. Theoretical Framework .....	8
2.3. Relevance of the Theoretical Frame to the Study .....	8

2.4. Sustainable Development .....	9
2.5. Conventions Theory .....	9
2.6. Culture Economy .....	10
2.7. Embeddedness Concept.....	11
2.8. Endogenous Development Model .....	11
2.9. Legislative Framework within Which Geographical Indications Operate .....	13
2.10. The Concept of Geographical Indications.....	13
2.11. Indications of source .....	14
2.12. Geographical indications .....	14
2.13. Appellation of origin.....	15
2.14. Protection at International level.....	18
2.15. Prior to 1994.....	19
2.16. Paris Convention .....	19
2.17. The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods .....	20
2.18. The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. ....	22
2.19. After 1994.....	24
2.20. TRIPS Agreement .....	26
2.21. Protection at Europe Region.....	31
2.22. Scope .....	32
2.23. Definitions .....	32
2.24. Registration Procedure .....	33
2.25. Objection Procedure .....	34
2.26. Section 15 procedure .....	35
2.26. Protection at Africa Regional .....	36
2.28. The Banjul Protocol on Marks of the African Regional Intellectual Property Organization (ARIPO). ....	37
The Framework of protection in Regional law for Geographical Indications in Africa .....	37
2.29. Protection of Geographical Indications at National Level .....	38
2.30. Laws focusing on business practices .....	38

2.31. Trademark laws .....	39
2.31. Special protection .....	40
2.32. Protection of Geographical Indication in Malawi .....	40
2.33. The Study Business Case .....	40
2.34. Chapter Summary .....	41
CHAPTER 3: METHODOLOGY .....	42
3.1. Introduction .....	42
3.2. The Research Design and Strategy .....	42
3.3. Population and Sampling .....	43
3.4. Study Sample and Sampling Techniques .....	44
3.5. Data Collection Methods and Instruments .....	45
3.6. In Depth Interview .....	45
3.7. Questionnaires .....	45
3.8. Focus Group Discussion .....	46
3.9. Pilot Study .....	46
3.10. Ethical Consideration .....	46
3.11. Data Analysis .....	47
3.12. Chapter Summary .....	48
CHAPTER 4: DATA PRESENTATION, ANALYSIS AND INTERPRETATION .....	49
4.0 Introduction .....	49
4.2. Presentations, Analysis and Interpretation of Results .....	49
4.3. Objective 1: To assess with evidence-specific ways in which geographical indications promote sustainable rural development in Karonga District. ....	49
4.4. Objective 2: To examine the effectiveness of the existing legal framework for the protection of KR in KA as GI .....	51
4.5 Objective 3: To explore the potential constraints towards the protection of KR in KA as GI .....	53
4.6 Objective 4: To recommend strategies for enhancing the protection of KR in KA as GI .....	55
4.7 Summary .....	<b>Error! Bookmark not defined.</b>
CHAPTER 5: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS .....	58
5.0. Introduction .....	58

5.1. Summary .....	58
5.2. Conclusion.....	59
5.2..1. Assess with evidence specific ways in which geographical indications promote sustainable rural development in Karonga District .....	59
5.2..2. Examine the effectiveness of the existing legal framework for the protection of Kilombero Rice (KR) in Karonga as a geographical indication.....	60
5.2..3. Explore the potential constraints towards the protection of KR in Karonga as a geographical indication. ....	61
5.2..4. Recommend Strategies for enhancing the protection of Kilombero Rice in Karonga as a geographical indication. ....	61
5.3.. Recommendations .....	62
REFERENCES.....	64
APPENDIX 1: Questionnaire Survey Instrument.....	67
INTERVIEW GUIDE/GROUP DISCUSSION .....	72
Appendix 2:Questionnaire from Min of Industry, Trade &Tourism .....	76
Appendix 3: Minutes from the Office of the Registrar General.....	78
Appendix4: Questionnaire from Registrar General .....	82
Appendix 5: AUREC Approval Letter.....	90
Appendix 6:Questionnaire from Farmers Union of Malawi .....	90

## List of Tables

Table 2.1: Comparison between appellation of origin and geographical indications .....	16
Table 2.3: An outline of the TRIPS provisions relating to geographical indications .....	27
Table 3.1 : Population of the study .....	<b>Error! Bookmark not defined.</b>
Table 3.2 : Study Samples.....	<b>Error! Bookmark not defined.</b>
Figure 4.5 and 4.6: KR Consumers and KR Growers.....	53
Figure 4.8 .....	<b>Error! Bookmark not defined.</b>
Figure 4.9: .....	<b>Error! Bookmark not defined.</b>
Figure 4.10 .....	56

## List of Figures

Figure 2.1: Schematic presentations of the relationship between appellations of origin, geographical indications and indications of source .....	18
Figure 4.1 .....	50
Figure 4.2 .....	50
Figure 4.3 .....	51
Figure 4.4 .....	52
Figure 4.5 and 4.6 : KR Consumers and KR Growers.....	53
Figure 4.7 .....	53
Figure 4.8 .....	54
Figure 4.9 .....	55
Figure 4.10 .....	56

## **CHAPTER 1: INTRODUCTION**

### **1.1 Introduction**

The Republic of Malawi is a land-locked country in Southern Africa that was formerly known as Nyasaland, a British Protectorate. It borders Zambia to the West, Mozambique to the South and East and Tanzania to the North. Malawi spans over 118,484km<sup>2</sup> of which 20 percent is water and Lake Malawi takes up about a third of it. Karonga is a Kilombero rice growing district in the Northern Region of Malawi. The district covers an area of 3,355km<sup>2</sup> and a population of 194,572 (NSO, 2018). It is a border district with Tanzania to the North mainly occupied by the Nkhonde tribe. Other tribes include Henga tribe (mainly occupy the southern part), Nyakyusa tribes (migrants from Tanzania). The Traditional authorities are Wasambo, Kyungu, Mwakaboko, Kilipula, Mwirang'ombwe and Karonga.

This chapter presents a background of the study on use of geographical indications for agricultural products and their significance to the socio economic status of the community in particular and the country in general. Furthermore the study discussed Kilombero rice in Karonga as a potential geographical indication in Malawi. However, it is not protected as a geographical indication, which makes it prone to misappropriation, misuse or a *counterfeit* by unscrupulous and dishonest commercial operators.

### **1.2 Background to the Study**

Indisputably, the context of African nations, public sector development and governance and service delivery are rooted in their Development Policy and Strategy Papers premised on their democratic constitutions. This study focused on Karonga District and the Republic of Malawi. A geographical indication (GI) is a name or sign used on certain products which corresponds to a specific geographical location or origin such as a town, region, or country. The use of a GI may act as a certification that the product possesses certain qualities, is made according to traditional methods, or enjoys a certain reputation,

due to its geographical origin (WIPO, 2012). A geographical indication is used to identify the origin of goods, it points to a specific place or region of the production that confers particular characteristics and qualities on the product. Due to the fact that the geographical indication is understood by consumers to denote the origin and the quality of the products, it acquires a high commercial value, and valuable reputation which, if not adequately protected may be misappropriated, misused, and or counterfeited by dishonest commercial operators. To avoid the intimated scenario, it needs to be protected supposedly under property rights. Arguably, if it is not protected, false use of geographical indication by unauthorized dealers or parties can be detrimental to the consumers as well as legitimate producers. In *this vein*, consumers and producers are deceived and presumably led to believe that they are buying a genuine product with specific qualities and characteristics, while in reality they are purchasing a counterfeit or a worthless imitation. In this regard, the latter suffer damage because they are deprived of valuable business and the established reputation for their product is damaged too (WIPO, 2000)

Historically, it is the misappropriation of the names of geographical regions and to some extent other indigenous resources that led to the protection of geographical indication. The geographical indication systems ensured that only producers within a specific geographical region benefited from the commercial exploitation of their heritage. In addition, the protection of geographical indication acts as a valuable marketing tool through which access to international markets can be achieved, and it also promotes niche products. This in turn has important implications for rural development because it provides an opportunity to improve rural livelihoods based on local resources (Bramley, 2011)

Malawi is endowed with diverse agricultural and natural resources, which qualify as geographical indications like Kilombero rice in Karonga. However, Kilombero rice in Karonga is not protected as a geographical indication and as such, is prone to misappropriation, misuse, imitation or false use of geographical indication by unauthorized entities (Dalgety, 2019). In this regard, an inference of lack of financial resources, legal and technical expertise can be drawn. On the other hand, a fair share of



the benefits accruing from Kilombero rice is difficult to be realized as such affecting rural development and the socio economic status of the communities (GOM, 2014)The study attempts to look at these challenges the Kilombero rice farmers face and investigate the prospects to establish the geographical indication for the protection of Kilombero rice of Malawi's northern district of Karonga.

### **1.3 Statement of the Problem**

In recent times, there are big entrepreneurs in the agribusiness industry from cities in Malawi and foreign countries, who have been exploiting the Kilombero rice from Karonga at the expense of the locals and thereafter packaging and marketing it as though it is grown and produced by them. (Newspaper, 2019)For instance, the National Small Holder Farmers Association of Malawi (NASFAM) which is a registered Limited Liability Company, buys Kilombero rice from Karonga, then packages, brands and finally markets it as its own product or brand. A typical case in point is when NASFAM was awarded a certification quality by the Malawi Bureau of Standards for its Kilombero rice brand (MBC, 2019).Vendors dealing in agro business and selling rice in cities and towns allege to customers that they are selling Kilombero rice from Karonga, capitalizing on its popularity and demand. This is misleading the customers as well as misrepresentation of the reputation of Kilombero rice from Karonga. As such, despite having the law in place, Kilombero rice from Karonga does not contribute to the economic growth and development of the country but although it qualifies for geographical indication protection, it remains unprotected under the GI system (Unke, 2012)In order to avert these external infringement and exploitation of Karonga Kilombero rice, there is a need for Intellectual Property protection regime.

### **1.4. Purpose of the Study**

The purpose of this study was to examine the prospects for the establishment of Kilombero rice in Karonga District as a GI protection.

### **1.5. Objectives of the study**

Specifically, the study sought to:

- i. Assess with evidence specific ways in which GI promote sustainable rural development in KA District.
- ii. Examine the effectiveness of the existing legal framework for the protection of KR in KA as a geographical indication.
- iii. Explore the potential constraints towards the protection of KR in KA as a geographical indication.
- iv. Recommend strategies for enhancing the protection of KR in KA as a geographical indication.

### **1.6. Research Questions**

The research study answered the following questions:

- i. How can GI promote sustainable rural development in KA District?
- ii. How effective is the legal framework in the protection of KR in KA as GI
- iii. What are the potential constraints towards the protection of KR in KA as GI
- iv. What are the recommendations for enhancing the protection of KR in KA as GI

### **1.7. Assumptions/Hypotheses**

As indicated above, the general objective in explanatory research was to gain insights and ideas and is particularly helpful in breaking broad, vague problem statements into smaller, more precise sub-problem statements in the form of specific hypotheses. A good hypothesis is a statement that specifies how two or more measurable variables are related and carries clear implications for the testing of stated relationships (Churchill and Iacobucci, 2002)). According to (Churchill and Iacobucci 2002) research should realize that in the absence of perfect information such as the case with sampling, the best thing to do is to form a hypothesis or assumptions about what is true. Also, since conclusions about these assumptions can be wrong, there is always some probability of errors in accepting any testable hypothesis. In view of this, the hypothesis of this research are:

*Protection of Kilombero Rice using geographical indications for marketing will offer the Growers/Producers a sustainable competitive advantage in their marketing of Kilombero Rice.*

### **1.8. Significance of the Study**

This study is crucial to Malawi as it touched on social, economic and legal aspects of GI protection in the country. The research brought about the awareness on GI protection and potential economic development to relevant authorities, producers such as smallholder farmers and cultural industries and consumers in Malawi.

### **1.9. Delimitation of the Study**

Karonga District is broad covering several traditional authorities where Kilombero rice is grown which cannot be covered by this study, however for clarity and for effectiveness of this work, this study was mainly focused on Hara, Wovwe and Ngerenge schemes in traditional authorities Wasambo, Mwirang'ombwe and Kilipula respectively. The focus was government departments and agencies, traditional authorities and farmers themselves in the said schemes. Actually the researcher's general subject area was located in the producers of Kilombero Rice in Karonga which is split into two: (i). Upstream being the production, ownership, and distribution of Kilombero Rice (see appendix 3) and (ii) Downstream which basically involves procurement, branding, packaging and marketing Kilombero Rice. Both streams are critical key components not only to SCM of KR in Karonga, but to any organization in the public and private sector. Basing on the concept map the researcher generated interest and focus in the upstream (i.e. production, distribution, and ownership), hence the research topic assessed the prospects of protecting Intellectual Property of Kilombero Rice in Karonga District. Due to this topic the research study concentrated on and limited itself to assessing the prospects of protecting Intellectual Property of Kilombero Rice in Karonga District.

### **1.10. Limitation of the Study**

Government agencies and some traditional leaders were not collaborative with regard to interviews and filling questionnaires. Bureaucracy among state institutions and other

traditional leaders delayed the data collection process, however the researcher before embarking on that trip met with representatives of the relevant Ministries, Local Government which deals with traditional leaders and Ministry of Trade Industry and Commerce so as to give the clearance for this interview.

### **1.11. Structure of the Study**

The structure of the research study is summarized below:

#### **1.11.1. Chapter one:**

This chapter contains research overview, background information, problem statement, research questions, research objectives and significance of the study.

#### **1.11.2. Chapter two:**

The chapter essentially provides the critical literature review regarding the information that was previously provided by other researchers that are related or similar in nature to this project paper.

#### **1.11.3. Chapter three:**

This chapter has presents the research methodology used by the researcher as well as the technical approach used in data collection analysis, and interpretation and sampling procedures. It also includes research work and limitations to the study.

#### **1.11.4. Chapter Four:**

The chapter analyzed the data and also discusses survey findings that were discovered from research questions and objectives. Data has been interpreted by graphs and supported by secondary data.

#### **1.11.5. Chapter Five:**

This is the last chapter of the research which includes conclusions and recommendations and bears references to the study findings in chapter four.

### **1.12. Chapter Summary**

Chapter one introduced the study and provided an overview of prospects of intellectual property and the entire study covering problem statement, background to the study, research objectives, research Questions and rationale for the study. The next section has dwelt on literature review.

## **CHAPTER 2: REVIEW OF RELATED LITERATURE**

### **2.1. Introduction**

This chapter reviewed the theoretical framework which as well as the literature relevant literature. Different terminologies were used in various legal instruments to on the concept of geographical indications and further attempts to outline the protection at international, regional and national levels. It also highlighted the socio-economic importance of geographical indications in sustaining rural development.

### **2.2. Theoretical Framework**

The study will use an integrative theory approach to link geographical indication to sustainable rural development. These theories and models include endogenous development, conventions theory, cultural economy, and the embeddedness concept which all fall under the umbrella of sustainable development. .

### **2.3. Relevance of the Theoretical Frame to the Study**

These theories and models were chosen because they have been formerly linked to value added products in (Sylvander, 2011).The theory was relevant to the study of KR in KA district as distinctive signs for agro-food products with specific quality, geographical indications provide an institutional tool through which to address these problems and consequently promote rural development. Identifying noteworthy products such as KR which contribute to their recognition and economic valorization means encouraging production and marketing methods that are socially fair, economically viable and respectful of the environment and that also embody cultural values (World Bank., 2003)This enforces the potential of geographical indications to allow small producers to benefit from market opportunities by adding value to their products and gaining market share, not only in local markets but also in export markets, thereby providing them with the opportunity to improve their living conditions. By increasing the value of the natural

resource, indirect goals such as the preservation of biodiversity and traditional knowledge is also achieved.

#### **2.4. Sustainable Development**

Sustainable Development is relevant to this study in that the KR growers have not achieved it due to non-establishment of KR from Karonga District as a geographical indication. The later would enhance sustainable development of KR mainly because GI protection roles can guarantee that KR Growers are protected from exploitation and abuse and besides it could help growers to access markets locally and globally. Attention was first drawn to Sustainable Development in 1987 Brundtland Report. Development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs (Brundtland, 1987). This is the most widely used definition of sustainable development.

The goal of KR growers in Karonga district is to achieve sustainable development in the sense that the production of KR and its marketing should be sustainable. This is despite sustainable development being a broad concept. Actually, sustainable development is a holistic view that sees humankind and environment not as separate entities, but as part of an independent and interconnected web of life (Grundy, 1993). Therefore, for rural development to be sustainable, such as in the case of KR production and marketing, we must look beyond merely economic development criteria and the largely economic focus of the market. This requirement should be particularly obvious when the environment is the source of our required resources, such as in the case of agriculture.

#### **2.5. Conventions Theory**

This theory was related to this research study in that it concerned ways of coordinating commodity networks such as KR through norms and values. Hence, convention theory appears to be the most common theory linked to the geographical indication (Barham, 2003). Each convention considers different capitals to formulate and maintain a path of

action. These capitals include Social Capital, Human Capital, Cultural Capital, Natural Capital, Political Capital, Financial Capital and Built Capital. Convention theory can illustrate that the use of “typical” agro-food products such as geographical indications represents a step towards ethically and spatially situated alternative economies. This convention theory fitted well with KR in KA in the sense that KR growers have formed associations which are regulated by rules and regulations formed by its members. These rules are necessary to control the quality and standards of KR for its members. The conventions theory therefore extends further than current neo-liberal economic thought, which focuses singularly on the market world (Barham, 2003).

## **2.6. Culture Economy**

Culture Economy is an attempt by actors such as KR growers to localize economic control (Ray, 1998). The idea of Culture Economy focuses on production side, hence pertinent to KR production and marketing: the territory, its culture systems and the network of actors that construct a set of resources to be used in the best interest of the local community. Geographical Indication can be linked to the culture economy as they focus on the “territory” and “local actors” as geographical indications are embedded in the local region they stem from. The Culture Economy system also recognizes exogenous or extra actors. The exogenous actors in the culture economy are consumers. The recognition of consumers and their values are key to the success of geographical indications, if there is no consumer interest for value added products then there is little purpose for geographical indications. The culture economy views the market in a similar way to conventions theory and the embeddedness concept. Illustrating that the free market does not account for consumer wishes for non-co-modified attributes (Ray, 1998). In other words the culture theory recognizes that there is a desire amongst consumer for value added products such as products that are linked to place (geographical indications), however the free markets does not account for this desire because it does not allow for the protection of these products.

The culture economy is a decentralized system that draws on local knowledge and local resources for production processes, this ensures sustainability because the local



community is more likely to use their own local resources in a sustainable manner, as compared to a centralized system of control.

## **2.7. Embeddedness Concept**

According to (Polanyi, 1957), the key creator of embeddedness concept theories that free market capitalism must be subject to social and environmental constraints if it is not to destroy the basis of the economy itself. Furthermore, in recognizing the relationship between producers and nature, a relationship they say is hidden if food is only considered at its face value as a co-modified object. (Raynolds, 2000) also stress the importance of the social and environmental relations on which the economy depends. Quality labeling such as geographical indications attempt to reconnect consumers to non-market values (Barham, 2003) Geographical Indications connect consumers to non-market values such value of place, value of tradition, value of production methods and value of diversity. Through this connection to non-market values geographical indications are recognizing the value of relationship between the product, the producers and nature, a desirable situation in the case of KR.

## **2.8. Endogenous Development Model**

Endogenous development is a territorial approach to economic growth and structural change (Massey, 1984). Endogenous development encourages economic development firmly based on local resources, human and physical (Ray, 1998). This reformulation of development based on local specificity – local cultural resources are seen as the key to improving the social and economic well-being of local rural areas (Rays, 1998).

Endogenous development is a relatively new approach that focuses on a territorial process rather than a functional process. Endogenous development draws on the benefit of decentralized decision making by local actors rather than development policies that are carried out by central administrations (Vaquez-Barquero, 2006). (Aydalot, 1985) breaks development processes down into three main characteristics. One of these key characteristics Aydalot calls “diversity” (Diversity in techniques, in products, in tastes, in

culture and policies, which facilitate the opening up of various development paths for the different territories according to their own potential). A central theme to geographical indications is that they promote the diversification of agro-food products.

The question lies not in whether the productive system of a locality or territory is formed by large or small firms, but rather in the organization of the production system and its effects on behavior of productivity and competitiveness (Vazquez-Barquero, 2006). In other words the sustainability of firms involved with geographical indications products is not dependent on size of the production operation but how they are organized. The emergence and consolidation of local productive systems' arose in areas in which the social and cultural systems are strongly rooted within the territory (Putman, 1993). On the other hand, increased competition in the markets requires efficient responses and strategic cooperation of actors and local organizations, and as pointed out by (Cooke, 2002) the development of clusters in "knowledge-based" economies, requires social capital (norms of reciprocity and trust) and collective learning. The protection of geographical indication is a collective property owned usually by the state, or region rather than an individual (c.f. trademarks), the collective ownership allows for social cohesion amongst actors.

Endogenous development is concerned not only with economic growth (quantitative transformation of economy and society), but also economic development, the qualitative transformation of the economy and society (Vazquez-Barquer, 2006). The endogenous model fits with geographical indications because they are locally embedded products that are firmly based on local resources, both material and immaterial. The protection of geographical indication is an example of the market placing value on more than just economic factors. A geographical indications is differentiated product that is linked to the geography and culture of the place it is produced (natural and human factors). Consider the Jersey Royal Potato for example it is hand planted on steep slopes (cotils) on the island of Jersey. When a consumer purchases Jersey Royals some of the price they pay reflects the production method. Furthermore the Jersey Royal like some of the price they pay reflects the production method. Furthermore the Jersey Royal like other geographical indications is differentiated product, a way in which geographical indications are

differentiated is through their genetic makeup. Differentiated products may therefore lead to increased biodiversity, which is an ecological value. Geographical indications are “value added products “measured on more than simply economics, because geographical indications are based on more than just financial criteria their place in market and their production is more likely to be sustainable.

## **2.9. Legislative Framework within Which Geographical Indications Operate**

### **2.10. The Concept of Geographical Indications**

There is a wide range of expressions that are used to define geographical indications as a form of intellectual property right in the world. As such, the purpose of this section is to elucidate the current terminology encountered in the context of protecting geographical indications. The terms “indication of source”, “geographic indication” and “appellation of origin” are used in different legal instruments. The rights and obligations flowing from these instruments exist only in relation to the category of geographical indication to which the instrument in question refers (WIPO, 2002) This necessitates an attempt to define geographical indications based on the different regulations and agreements that are in place for its protection.

According to (Escudero, 2001), unlike other categories of international property rights such as patents and trademarks, there is no general definition accepted worldwide for geographical indications:

“With the exception of design law, there is probably no category of intellectual property law where there exists such a variety of concepts of protection as in the field of geographical indications. This is may be best demonstrated by the term geographical indication itself which is relatively new and appeared only recently in international negotiations.”

This section will clarify the terminology used by looking at the different types of geographical indications recognized by legal doctrine and the various characteristics of each.

### **2.11. Indications of source**

The expression “indication of source” is used in both the Paris Convention for the Protection of Industrial Property of 1883 (Article 1.2 and Article 10) and the Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods of 1891 (Article 1). All these treaties do not define indication of source but Article 1.1 of the Madrid Agreement contains language which clarifies what is meant by the term (WIPO, 2002). Consequently an indication of source can be defined as (Baeumer, 1999)

“An indication referring to a country or to a place situated therein as being the country or place of origin of a product.”

Three key components have been identified and linked to this concept (Rangnekar, 2003)

1. There is a clear link between the indication and geographical origin;
2. Unlike other indications of geographical origin, there is no requirement for distinguishing qualities or attributes of the good;
3. The protected indication can be constituted by words or phrases that directly indicate geographical origin or phrases, symbol or iconic emblems associated with the area of geographic origin.

In general, an indication of source is distinguished from a geographical indication in that its definition does not imply any special quality, reputation or characteristic that is attributable to its geographical origin. As such, an indication of source is dependent only on the products’ geographical origin and not necessarily its inherent qualities.

### **2.12. Geographical indications**

Part II, Section 3 (three) of the TRIPS Agreement deals with the protection of geographical indications. The concept of geographical indications has been defined in Article 22.1 of the TRIPS Agreement as:

“Indications which identify a good as originating in the territory of a Member (of the WTO), or region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.”

On this concept, three conditions which have to be met are (Rangnekar, 2003):

1. The indication must necessarily identify a good and can be non-geographical names, iconic symbols, words or symbols;
2. The good must necessarily possess given quality, reputation or other characteristics that are essentially attributed to the designated geographical area of origin;
3. The designated geographical area must be identified by the indication.

The definition is apparently based on the definition of “appellation of origin” in the Lisbon Agreement for the protection of Appellations of Origin and their International Registration of 1958 (Article 2) (WIPO, 2002). It differs, however, in that TRIPS defines geographical indications as indications which identify a good (Article 22.1) whereas Article 2 of the Lisbon Agreement defines appellations of origin as the geographical name of a country, region, or locality, which serves to designate a product [...].” Therefore, signs other than geographical names, for example, a non-geographical name or an emblem, would not be covered by Article 2 of the Lisbon Agreement. They would however, fall into the category of signs that could constitute geographical indications under the TRIPS Agreement.

Furthermore, the Lisbon Agreement requires that the quality and the characteristics of the product in question be due exclusively, or essentially, to the geographical environment, including natural and human factors. The TRIPS Agreement covers goods which have a given quality, reputation or other characteristic that is essentially attributable to their geographic origin. Under the TRIPS Agreement, quality, reputation or other characteristic are thus each in own right a sufficient condition, *ceteris paribus*, for the grant of a geographical indication (Rangnekar, 2003; Grant 2006). Consequently, goods which merely have a certain reputation, but not a specific quality being due to their place of origin, will be protected under the TRIPS Agreement although they fall outside the realm of appellation of origin.

### **2.13. Appellation of origin**

The Paris Convention (Article 1.2) and the Lisbon Agreement has the term “appellation of origin” mentioned and expressly defined in the Lisbon Agreement as follows (Article 2.1):

“Appellations of origin means the geographical name of a country, region or locality which serves to designate a product originating therein, the quality and characteristic of which are due exclusively or essentially to the geographical environment, including natural and human factors.”

According to (Rangnekar,2003) the three components to this concept are:

1. Appellations must be direct geographical names;
2. The appellations must serve as a designation of geographical origin of the product;
3. Quality and characteristic exhibited by the product must be essentially attributable to the designated area of geographical origin.

Appellations or origin can therefore be regarded as a special type of indication of source in that they not only convey the geographical source of a product but make a direct link between a product’s quality and its geographical origin. Table 2.1 provides a useful summary of the differences between appellations of origin and geographical indications. From the above discussion, it is clear that indication of source is the broadest term. It includes both geographical indications and appellations of origin. In turn, geographical indications are more broadly defined than appellations of origin. Thus all appellations of origin are geographical indications but some geographical indications are not appellations of origin. Figure 2.1 presents diagrammatically the intertwining nature of the terminologies.

As will be seen in the following sections, the terminology has different connotations on the legal effects and protection of a particular geographical indication.

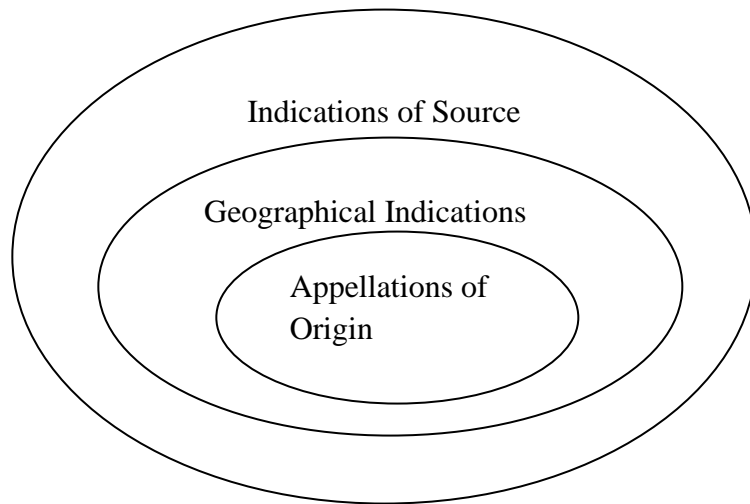
**Table 2.1: Comparison between appellation of origin and geographical indications**

<b>Appellations of origin (AO) as defined in the Lisbon Agreement</b>	<b>Geographical indications (GI) as defined in the TRIPS Agreement</b>
-----------------------------------------------------------------------	------------------------------------------------------------------------

AOs are necessarily <i>geographical names</i> of a country, region or locality, such as Porto, Tequila, Jerez	GIs can be any <i>indication</i> pointing to a given country, region or locality and could therefore include symbols.
AO <i>designates</i> a product. The product's name is the same as the AO. For instance, Champagne, Bordeaux, etc	GI <i>identifies</i> a good. That means that a GI could be any expression - not necessarily the name of the place where the product originated - that could serve the purpose of identifying a given geographical place. For instance the French flag for identifying wines of certain quality or reputation.
To qualify as an AO both the quality <i>and</i> characteristics of a product must be attributable to its geographical origin.	The quality, characteristic <i>or</i> reputation of a product that is attributable to its geographical origin is each in own right a sufficient condition for the existence of a GI
Mere <i>reputation</i> is not sufficient to qualify as an AO.	It is possible to qualify as a GI if product has a certain <i>reputation</i> essentially attributable to its geographical origin.
AO specifically refers to the <i>geographical environment</i> where the product comes from, including natural and human factors.	GIs only refer to geographical origin in general.

Source: adopted from (Escudero, S., 2001)

For purposes of this study the term geographical indication will be used in the broad sense. However, it is emphasized that different terminology is used in the different international legal instruments and that the rights and obligations flowing from these instruments exist only in relation to the category of geographical indication to which the instrument in question refers. It will therefore sometimes be necessary to make a distinction in the context of the regulation or agreement under consideration (WIPO, 2002).



**Figure 2.1: Schematic presentations of the relationship between appellations of origin, geographical indications and indications of source**

#### **2.14. Protection at International level**

International protection for geographical indications consists in principle of four multilateral agreements, each with a varying member base. These international agreements do not have a uniform approach to geographical indication protection as some protect against confusing or misleading use and others have established a system of proprietary rights. They are discussed here in chronological order in a timeframe before 1994 and thereafter.



## **2.15. Prior to 1994**

### **2.16. Paris Convention**

Prior to 1994 Paris Convention was held, The beginning of international protection of geographical indications dates back to the conclusion of the Paris Convention for the Protection of Intellectual property in 1883 (Paris Convention), which included as an object of protection “indications of source “or “appellations of origin” (Conrad, 1996) Although this ensured that the principle of national treatment specified in section 2 of the Convention would apply to geographical indications ( (Bodenhausen, 1968) protection for geographical indications under the Convention is very limited.

The Convention originally provided a qualified prohibition on false indications of origin only in cases where the false indication of origin was joined with a fictitious trade name or was used with fraudulent intent. This requirement of fraudulent intent was attacked as being too narrow and at the 1958 Lisbon Revision Conference it was proposed that section 10 prohibit importation of “any product which bears directly or indirectly a false or misleading indication of origin...” The proposal was rejected due to an objection by South Africa that the term “misleading” was vague and uncertain as it would have to be interpreted by the courts of each nation (Bendekgey and Mead, 1992) However, the prohibition was expanded to the present provisions of section 10 which requires the seizure or prohibition of importation of goods “in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer or merchant.” Fraudulent intent is thus not presently required in terms of section 10. Also, at the 1958 conference, a new section 10bis was proposed which included a prohibition against:

“[I]ndications or allegations, the use of which in the course of trade is liable to mislead the public as to the nature, the origin, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of the goods.”

The United States vetoed the word “origin” and it was accordingly struck out and the proposal passed to become paragraph 3.3 of section 10 *bis*. As presently worded, the Paris Convention thus requires each signatory nation to prohibit the importation of goods which bear a false indication of source. The present prohibition in section 10 *bis* of “liable to

mislead” indications does not apply to misleading geographical indications. The United States vetoed the word “origin” and it was accordingly struck out and the proposal passed to become paragraph 3.3 of section 10 *bis*. As presently worded, the Paris Convention thus requires each signatory nation to prohibit the importation of goods which bear a false indication of source. The present prohibition in section 10 *bis* of “liable to mislead” indications do not apply to misleading geographical indications. The Paris Convention thus only prohibits the importation of goods containing false geographical indications but is not applicable to indications that are merely misleading (Conrad, 1996). Consequently, the importation of goods marked with a geographic indication that might be liable to mislead without rising to the level of being false, need not be protected by the Paris Convention (Benson, 1978). The decision when a representation is false is left to the Member country (OECD, 2000)). Sanctions provided for include seizure upon importation, prohibition of importation or seizure within the country (section 9). This seizure shall take place at the request of the public prosecutor, or any other competent authority or interested party (WIPO, 2002). Originally signed by eleven countries, the Convention now has 169 Members.

## **2.17. The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods**

The unwillingness of a number of countries to strengthen the prohibition in the Paris Convention resulted in the conclusion of the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (Madrid Agreement) in 1891. This was facilitated by the Paris Convention expressly reserving for Members of the Paris Union the right to make special agreements among themselves for the protection of intellectual property (section 19). The proposal for the Madrid Agreement was submitted at the Madrid Revision Conference of the Paris Convention of 1890 on behalf of those countries which had expressed dissatisfaction with the then narrow protection afforded indications of origin by the Paris Convention. The Madrid Agreement provides that (section 1.1):

“All goods bearing a false or misleading indication, by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin, shall be seized on importation into any of the said countries. “While the mechanisms for enforcement were basically those as provided for in section 9 of the Paris Convention, the Madrid Agreement goes beyond the Paris Convention in that its provisions are not restricted to false indications but also included, misleading indications (WIPO, 2002).

Also, while indications are excluded from the Madrid Agreement that in the domestic context are deemed descriptive or generic, no such exclusion was to be applied to appellations of wine and wine-related products. In this regard, section 4 prohibits national courts from considering geographical indications of wines as generic. The difference is important because it demonstrates how the Madrid Agreement serves as a link between the Paris Convention, which recognizes geographical indications without proprietary protection, and the Lisbon Agreement<sup>14</sup>, that is solely based on the concept of proprietary rights for appellations of origin (Heath, 2002) In essence, the Agreement thus exceeds protection under the Paris Convention in three respects (Conrad, 1996):

- ✓ It extends protection to misleading geographical indications;
- ✓ Section 3*bis* prohibits the use of false representations on the product itself and in advertising or other forms of public announcements;
- ✓ Section 4 prohibits Member countries from treating geographical indications of wines as generic terms.

The Madrid Union, as it became known, did, however, not receive much support. The main source of criticism against the Madrid Agreement is its approach appellations that have become generic (Bendeckey & Mead, 1992). Under its provisions each country can decide whether appellations have become generic except for products of the vine (section 4):

“The Tribunals of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this agreement, regional appellations

concerning the source of products of the vine being, however, exclude from the reserve specified by this article.”

According to (Mcharthy and Devitt, 1979) this explains the United States’ reluctance to join the Madrid Agreement, since many foreign appellations have become generic in the United States for a wide variety of wines. In contrast, the Agreement was based on a French proposal clearly reflecting their vested interests. Fear that strengthening section 10 of the Paris Convention might cause other countries to renounce the Madrid Agreement with its higher protection for geographical indications of wine explains French opposition to the revision of the Paris Convention to include appellations of origin. It has been said that the Madrid Agreement is of minor importance except for certain regional wine appellations (Benson, 1978) initially signed by eight countries, it now has 34 Members.

#### **2.18. The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.**

In a further attempt to improve the international protection of geographical indications within the framework of the Paris Convention and the Madrid Agreement, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon Agreement) was concluded in 1958. The Agreement was proposed at the time of the Lisbon Revision Conference of the Paris Convention in 1958 and provides for an international system of registration and protection of appellations of origin not unlike the one adopted by the Madrid Agreement on the International Protection of Trade Marks. It has been referred to as a radical departure from both the Paris Convention and the Madrid Agreement in that it is not restricted to border measures (Benson, 1978) but also includes the adoption of a registration system comparable to that for trademarks created under the Madrid Agreement on the International Protection of Trade Marks.

The Lisbon Agreement pertains only to appellations of origin as defined in section 2.1:

“The geographical name of a country, region or locality which serves to designate a product originating therein, the quality characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.”

This definition is based on the French “*appellation d’origine*” and as such restricts protection to indications of which the quality and characteristics are “exclusively or essentially due to the geographical environment, including natural and human factors” (Conrad, 1996). There are two basic requirements for an appellation to be protected under this Agreement: (1) the appellation should be protected in its country of origin and (2) the appellation should be registered in the International Register of WIPO (Escudero, 2001). Member countries have limited discretion to deny protection of a valid registration. Following the receipt of a notification of registration, a Member State is given a period of one year to object to its registration (WIPO, 2002). If no objection is raised the State is obliged to protect the appellation which was the subject of the notification for as long as it is protected in its country of origin. The implication is that it only applies to appellations of origin that are already protected at national level in the country of origin (Conrad, 1996). It is thus the courts in the country of origin that determine whether an appellation qualify for protection. The courts in the country where protection is sought have no jurisdiction over whether the indication may be protected. This is in contrast to the position under the Madrid Agreement where protection against false or misleading indications is a domestic matter that has to be decided not upon protection in the country of origin, but the country of importation, use or sale.

The Lisbon Agreement allows Member countries to adopt any registration procedure, be it judicial or administrative. Once registered, a geographical indication is protected in other Member countries “in accordance with this Agreement” (section 1). International registration is valid for as long as the appellation remains protected in its country of origin. There is no requirement for renewal of international registration (Escudero, 2001).

The Agreement prohibits use of an appellation even if the true origin of the product is indicated or if the appellation is used in conjunction with terms such as “type” or “style” (Mcharthy & Devitt, 1979). Also, no geographical indication can be deemed generic in any other country as long as it is protected in its country of origin (section 6). This Agreement thus achieves absolute protection for appellations of origin, regardless of

whether another's use is liable to mislead or not. The only issue is whether there was in fact use of the registered appellation by someone unauthorized to use it (Benson, 1978).

The system is notable insofar as it has been used both for European legislation protecting geographical indications in general and those for wines in particular and also because bilateral agreements<sup>15</sup> on the protection of geographical indications follow the same pattern. Its main shortcoming is however, its small membership base with only 23 members by 2005. Conrad (1996) highlights two critical points that have prevented nations from joining. The first point is that protection is granted only if the geographical indication is protected in the country of origin as such. As a result, protection through the law of unfair competition or the law of advertising is not recognized. Consequently, a number of States would have to transform their system of protection in order to be compatible with the provisions of the Lisbon Agreement. The second point is that the Agreement does not make exceptions for terms that have already become generic in some Member countries.

In summary, protection under these international conventions results in three concentric groups of states (Conrad, 1996):

- A small number of members of the Lisbon Agreement with strict protection under an international register of geographical indications;
- A larger number of member states of the Madrid Agreement with the scope of protection mainly circumscribed to border measures and to prevent the dilution of geographical indications into generic terms;
- An even larger number of member states of the Paris Convention with protection limited to border measures for false indications.

## **2.19. After 1994**

Member countries have limited discretion to deny protection of a valid registration. Following the receipt of a notification of registration, a Member State is given a period of one year to object to its registration (WIPO, 2002). If no objection is raised the State is obliged to protect the appellation which was the subject of the notification for as long as

it is protected in its country of origin. The implication is that it only applies to appellations of origin that are already protected at national level in the country of origin (Conrad, 1996). It is thus the courts in the country of origin that determine whether an appellation qualify for protection. The courts in the country where protection is sought have no jurisdiction over whether the indication may be protected. This is in contrast to the position under the Madrid Agreement where protection against false or misleading indications is a domestic matter that has to be decided not upon protection in the country of origin, but the country of importation, use or sale.

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provisions of the Lisbon Agreement. The second point is that the Agreement does not make exceptions for terms that have already become generic in some Member countries.

## **2.20. TRIPS Agreement**

The Agreements discussed above have only limited number of members that varies from one agreement to another. In addition, no provision is made for a dispute settlement mechanism. Consequently, these agreements do not afford significant protection to geographical indications. The Uruguay Round of the General Agreement on Tariffs and Trade (GATT) provided an opportunity to include geographical indications in an international agreement that would guarantee protection in all WTO Member countries of which Malawi is a member (Maluwa, 2008)

The conclusion of a separate agreement for intellectual property within the WTO framework was initiated by the United States of America who desired protection for its intellectual property rights abroad. However, given that little stood to be gained by United States industry from the protection of geographical indications it showed little interest in including geographical indications within the TRIPS provisions (Heath, 2002). As such, it was mainly the European Union and Switzerland who pushed for the topic to be placed on the agenda of the TRIPS negotiations (Conrad, 1996). A draft agreement was presented by the European Union, which will discuss the most important changes TRIPS brought about in the field of international protection for geographical indications.

In trying to define geographical indications in the previous section, it was mentioned that Part II (Section 3) of the TRIPS Agreement deals with the provisions relating to geographical indications and that geographical indications are defined in Article 22.1.

According to Spivey (Spivey, 1997) the definition given in Article 22.1 of the TRIPS Agreement subsumes both the concept indication of source (denoting the origin of a product) and appellation of origin (which assumes that a product has certain characteristics associated with its place of origin). The result of the inclusion of this definition is that Member countries are obliged to respect and protect names falling within its ambit at national level according to the requirements set out in Articles 22, 23 and 24 (OECD,



2002). Table 2.2 provides a layout of these provisions of which short discussions of each have been made.

Article 22 pertains to the general level of protection afforded to all products and goods including agricultural products. Protection under this Article in non-proprietary with Article 22.2 (a) aimed at consumer protection and Article 22.2 (b) aimed at protecting producers. According to (Conrad,1996), two requirements must be met in order to constitute a violation. Firstly, there needs to be a geographically descriptive indication on a good and secondly, this representation should be false or misleading.

**Table 2.3: An outline of the TRIPS provisions relating to geographical indications**

<b>Field</b>	<b>Article 22</b>	<b>Article 23</b>	<b>Article 24</b>
Definition of subject matter	Article 22.1: defines the concept of geographical indication		
Basic protection	Articles 22.2 - 22.4: sets out the general standard of protection that		

	applies to all products		
Additional protection		Article 23: sets out the additional protection available to geographical indications of wine and spirits products.	
Exceptions			Articles 24.3 – 24.9: provides for exceptions to obligations.
Further negotiations			Articles 24.1 – 24.2: outlines provisions for future negotiations

Source: Adapted from Rangnekar (2003).

The summary in Table 2.2 indicates that Article 23 provides additional protection for geographical indications of wine and spirits in cases where they are used to identify wine and spirits not originating in the place indicated by the geographical indication. This hierarchical nature of protection is the most prominent feature of the TRIPS provisions relating to geographical indications. Article 23 states that:

“Each member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question [...] even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as ‘kind’ ‘type’, ‘style’, ‘imitation’ or the like.”

The protection afforded under Article 23 is thus independent from any requirement of deception or unfair competition and more comprehensive than under Article 22, as use of a geographical indication for wine or spirits is prohibited regardless of whether the true origin is indicated or whether it is used in conjunction with words such as kind and type (Rangnekar, 2003). This is in line with the protection that was provided by the Madrid Agreement (Carboli, 2006). It seems that the *raison d'être* lies in the prevention of the degeneration of geographical indications into generic terms. Although Article 23 cannot claim back terms that have already become generic, it seems to implement a fairly effective method for preventing further geographical indications from becoming generic terms (Conrad, 1996).

In addition, Article 23.2 provides for the refusal or invalidation of trademarks that contain or consist of geographical indications for wine and spirits on wine and spirits products not originating from the indicated origin (WIPO, 2002). Other than under Article 22, this protection is available regardless of whether the public is misled or not. Both Article 22 and 23 should be read together with the exceptions provided for in Article 24. The TRIPS Agreement allows each member to determine how it will incorporate the provisions of the Agreement into their legal framework (Article 1.1). It is thus possible for countries to apply their own national regimes in order to comply with the provisions of TRIPS (Conrad, 1996).

Article 24 is partly a result of a failure to reach agreement on the method and level of protection of geographical indications at the time when Part II (Section 3) was negotiated. It contains a number of exceptions to the obligations under Article 22 and 23 which can be broadly divided into three categories, namely continued and similar use of geographical indications for wine and spirits, prior good faith trademark rights and generic designations (WIPO, 2002). Since the negotiations were deeply contested, the only way forward was to agree on a built-in agenda for future negotiations (Watal, 2001)

Article 23.4 lays down the first provision which Members are obliged to negotiate in the field of the international protection of geographical indications, in particular with a view to establishing a multilateral register for wines and spirits (Rangnekar, 2003; (Gervais,

1998)“In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for Trade Related Aspects of Intellectual Property Rights concerning the establishment of a multilateral system of notification and registration of (Geiger et al, 2010)geographical indications for wines eligible for protection in those Members participating in the system.”

The objective of the proposed negotiations has been laid down in paragraph 18 of the 2001 Doha Declaration. The establishment of a multilateral register for the registration of geographical indications, at least for wines and spirits, is considered as a *sine qua non* for the conclusion of the Doha Round agreements and the 2005 Hong Kong declaration, in paragraph 29 insists on the importance of the negotiations on this issue for the success of the Doha Round (Geiger et al., 2010).

A number of WTO members and groups of members have submitted proposals concerning the multinational register (Geiger at al., 2010) including the Hungarian proposal, joint proposal of the US, Canada, Chile and Japan. On the occasion of the “mini-ministerial” conference held in Geneva from July 21–29, 2008, the European Community together with Switzerland, Turkey and certain developing countries such as Brazil, China, India, the African, Caribbean and Pacific countries and the African Group proposed the following approach to the negotiations:

“Members agreed to establish a register open to geographical indications for wines and spirits protected by any of the WTO Members as per TRIPS. Following receipt of the notification of the geographical indication, the WTO Secretariat shall register the notified geographical indication on the register. The elements of the notification will be agreed. Each WTO Member shall provide that domestic authorities will consult the Register and take its information into account when making decisions regarding registration and protection of trademarks and geographical indications in accordance with its domestic procedures. In the framework of these procedures, and in the absence of proof to the contrary in the course of these, the Register shall be considered as a *prima facie* evidence that, in that Member, the registered geographical indication meets the definition of ‘geographical indication’ laid down in TRIPS Article 22.1. In the framework of

these procedures, domestic authorities shall consider assertions on the genericness exception laid down in TRIPS Article 24.6 only if these are substantiated.”

Nevertheless, there are still numerous points of disagreement on the matter — notably on participation in the registration system and the latter’s legal effects — and other members have agitated for extension of protection for non-false or misleading uses of GI beyond wines and spirits (Calboli, 2006)

In summary, TRIPS agreement’s contribution to the international protection of geographical indications is as follows (Conrad, 1996; Grant, 2006; Calboli, 2006):

1. The provisions relating to enforcement promise that protection will be more effective than under any of the previous agreements;
2. Although border measures are familiar from the Paris Convention, Madrid Agreement and Lisbon Agreement, the inclusion of substantive measures and the opportunity for each Member to police other Member’s national laws to the extent provided by TRIPS is completely new;
3. The number of Member States is far greater than that of any previous agreement on the protection of geographical indications.

## **2.21. Protection at Europe Region**

The most comprehensive protection for geographical indications at regional level is found in the European Union. Prior to implementation of the current European system, Southern and Northern European countries followed a distinctly different approach to protecting geographical indications. Northern European countries based their protection on unfair competition laws while Southern European countries followed the Romanistic system of registration. The current European Union system for protecting geographical indications is based on the Southern approach and is mainly derived from the French system (Conrad, 1996). (Thiedig and Sylvander, 2000) Consequently remark that the current European Union system for protecting geographical indications essentially pushes Northern European countries into a Romanistic system.

Although a number of directives and regulations deal either directly or indirectly with the protection of geographical indications in the European Union, two regulations serve as the mainstay of protection. The first is Council Regulation (EEC) No.2081/92 (EU Regulation 2081/92) which recognizes and sets out a protection procedure for protected geographical indications (PGI) and protected designation of origin (PDO) (Tinlot and Juban, 1998) and the second is Council Regulation (EEC) No.2082/92 dealing with products of specific character. Given its relevance for purposes of this study and the inevitable time and space constraints this section will limit itself to a discussion of EU Regulation No 2081/92.

## **2.22. Scope**

The Regulation applies to agricultural products and foodstuffs as specified in the Regulation, notably excluding wine and spirits.

## **2.23. Definitions**

In terms of section 2, a distinction is made between protected designation of origin (PDO) and protected geographical indications (PGI). PDO is defined as (section 2.2.a):

“the name of a region, specific place or country describing a product originating in that region, specific place or country and the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors and the production and processing and preparation of which take place in the defined geographical area.”

PGI is defined as (section 2.2.b):

“The name of a region, specific place or country referring to a product originating in that region, specific place or country and which possesses a specific quality, reputation or characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which takes place in the defined geographical area.”

The fundamental difference between PDO and PGI is thus that the geographical link must be established in all stages of production, processing and preparation for the first and in at least one for the latter (Ilbery and Kneafsey, 2000). The European Union thus protects two denominations, which relate to two different levels of link between product and

geographical origin. Interestingly, the reputation element is only found in the definition for PGI, despite this being a fundamental element in the economic theory underpinning special labelling systems (OECD, 2000).

In order to qualify for a PGI or PDO designation, the Regulation provides that a product must comply with a specification which shall include at least the following (section 4):

- ✓ the name and description of the product;
- ✓ the definition of the geographical area;
- ✓ proof that the product originates in the said area,
- ✓ the methods of preparation;
- ✓ details indicating the link with the geographical area,
- ✓ details of the inspection structures in place
- ✓ specific labelling details and legislative requirements that must be met.

#### **2.24. Registration Procedure**

Protection under this Regulation takes place by way of registration through competent national authorities, similar to the systems previously in place in Southern Europe. In order to enjoy protection in all the Member States, geographical indications have to be registered at Community level. The register is kept by the Commission of the European Communities (Schwab, 1995) The Regulation provides that any group of producers, irrespective of its legal form or composition or, in exceptional circumstances, a natural or legal person, may apply for registration of a PGI or PDO

(section 5.1). Two registration procedures are provided for: a normal and a simplified procedure (Schwab, 1995).

Under the normal procedure the application is sent to the Member State in which the geographical area in which the product originates is located. The Member State checks that it satisfies the requirements and forwards it to the other Member States and the Commission. The latter examines it within a period of six months to ensure that it contains all the specifications laid down in section 4. It also controls if the name is not generic within the meaning of section 3. In assessing whether a name has become generic, account is taken (1) of the situation existing in the Member State where the name has its origin (2)

the existing situation in areas of consumption and (3) the situation existing in the other Member States (section 3). It is thus not impossible for a name that has become generic in one part of the European Union to be registered at Community level. Subsequent to these inspections, the Commission informs the Member States of its conclusion and if satisfied that the name fulfills the requirements for protection, it is published in the Official Journal of the European Communities. If no objections are notified within six months, the PGI or PDO is entered in a register called the “Register of Protected Designations of Origin and Protected Geographical Indications”. Once registered, names are protected in all Member States in terms of section 13.

Section 17 provides a simplified procedure in terms of which Member States are given a six month period from the date of entry into force of the Regulation to notify the Commission of those names protected nationally which they wish to register under the section 17 procedure. This period expired on 26 January 1994.

## **2.25. Objection Procedure**

In terms of section 7, Member States may object to registration within six months of publication of the application. Also, any natural or legal person may object to registration, lodging a statement to that effect with the competent authority in the Member State in which he resides. The Member State then decides whether the opponent has a legitimate interest and whether the objection is duly substantiated. Member States are required to forward to the Commission any objection that satisfies these conditions (Schwab, 1995). It is up to the Commission to determine the admissibility of an objection. In order to be admissible, a statement of objection has to (Schwab, 1995):

- Indicate that the conditions laid down in section 2 with respect to the definition of protected geographical names have not been satisfied;
- Show that the registration of the name would jeopardize the existence of a trademark or other sign;

Section 17 provides a simplified procedure in terms of which Member States are given a six-month period from the date of entry into force of the Regulation to notify the Commission of those names protected nationally which they wish to register under the section 17 procedure. This period expired on 26 January 1994.



## **2.26. Section 15 procedure**

Section 15 provides for a Committee composed of the representatives of the Member States to assist the Commission. If no decision is reached within three months from the date the objection was referred, the Commission either rejects the application or enters the denomination into the register. In the event of the denomination being rejected on grounds that the name has become generic, the decision is published by the Commission in the Official Journal of the European Communities. Appeal against both Commission and Committee decisions may be lodged with the Court of Justice by either the Member State or by any natural or legal person concerned with the (Bodenhausen, 1968) decision.

In order to register a PGI or PDO under EU Regulation No 2081/92, the non-member country must be able to give guarantees comparable to those given by Member states, specifically that the product meets the appropriate specifications, that the third country has the necessary inspection arrangements and that the third country can provide equivalent protection for EU products (section 12). As a result many other countries are adopting similar systems in order to access and provide protection for their denominations in European markets.

Regarding the relationship between EU Regulation No 2081/92 and national laws, it should be noted that the Community regulation supersedes national laws. This is in line with the Community goal of ensuring conformity and equal competition between the different PDOs and PGIs. As such, once a name is registered under the Regulation, national protection ceases to apply (Schwab, 1995). In this regard section 17.3 states that Member states may maintain national protection for names communicated until a decision on registration has been taken. Nationally protected names that are not communicated within the six month period as well as names which have been refused registration cease to be protected. Although it is possible to apply for registration for names not communicated within the six month period, these names will remain unprotected until a decision on registration has been taken (Schwab, 1995).

## **2.26. Protection at Africa Regional**

Apart from the TRIPS Agreement, there are a number of instruments that have been developed at the regional level or the signing of bilateral agreements. The African Intellectual Property Organization (OAPI) Agreement. The African Intellectual Property Organization (OAPI), also known as *Organisation Africaine de la Propriété Intellectuelle* in French, was created in 1977 under the Bangui Agreement which regulates regional trade. OAPI was created to promote social and economic needs, cooperation among Member States. The protection of GIs are also covered by the OAPI. In order to be protected, the GIs must be registered by the OAPI or be treated as having been registered by virtue of an international convention to which Member States are parties. Member States of OAPI need to „renounce“ their national sovereignty to a limited extent in order to adopt a single uniform trade mark law. OAPI practically undertakes all forms of registration and acts as the national office for Member States in order to ensure high levels of expertise and save costs: it therefore, serves as the National Office of Industrial Property and the Central Agency for information and documentation of Intellectual Property in each Member State.

The OAPI agreement has the effect of national law in all the Member States and applies directly within the territory of each Member State. Trademark applications can be filed with the Member State, the application containing the filing date must be sent to OAPI. Applications filed with OAPI or office of the Member State is deemed equivalent to a national filing in each Member State. A trademark owner who wishes to ensure protection throughout the African region must file separate applications with OAPI and ARIPO, and the national offices of all other countries not affiliated to the two organizations.

The OAPI Agreement is an example of regional agreements which are relevant to the protection of GIs. The African Intellectual Property Organization (OAPI) Agreement was signed in Bangui on 2nd March 1977, replacing the first Agreement signed at Libreville on 13 September 1962, which established African Intellectual Property Organization. The OAPI or Bangui Agreement was revised in 1999 and entered into force in February 2002.

There are, however, positive signs with the existence of a cooperation agreement between the French National Intellectual Property Institute (INPI) and OAPI where products are to be developed into GIs such as Oku white honey and Njombe pepper from Cameroon; Atcheke of Grand Lahou and the Khorogho garment from Coted'Ivoire; Diama coffee and the Mafeya pineapple from Guinea; and MassinaKwite butter and the Souflou green beans from Burkina Faso (Musungu, 2008).

## **2.28. The Banjul Protocol on Marks of the African Regional Intellectual Property Organization (ARIPO).**

### **The Framework of protection in Regional law for Geographical Indications in Africa**

ARIPO was established by the Lusaka Agreement, adopted in December 1976. The reasons for establishing ARIPO was to pool resources of its Member States, avoiding duplication of human and financial resources. ARIPO has the capacity to process applications for registered trademarks and patents in its Member States who are parties to the Banjul Protocol on Marks and the Harare Protocol on Patents and Industrial Designs, though not all members join both. The filing systems under the Protocols coincide with and do not replace the national system of each Member State which acceded and ratified the Protocol. The Banjul Protocol on Marks establishes a trademark filing system. The African Regional Intellectual Property Organization (ARIPO) was established by the Lusaka Agreement, adopted in Lusaka, Zambia on December 16<sup>th</sup>, 1976. The purpose of ARIPO was to consolidate the resources of its member countries (English speaking African countries) in intellectual property matters in order to avoid duplication of work. The Banjul Protocol on Marks, which was adopted by the Administrative Council in 1993, establishes a trademark filing system. Under the Banjul Protocol an applicant may file a single application either at one of the contracting states or directly with the ARIPO Office and designate states where protection of the mark is sought (ARIPO, 2011).

The Banjul Protocol came into force on 6<sup>th</sup> March 1997 and States currently party to the Protocol are: Botswana, Lesotho, Malawi, Namibia, Swaziland, Tanzania, Uganda and Zimbabwe (ARIPO, 2011). Since 1997 the Protocol has been extensively revised in order to make it compatible with the TRIPS Agreement and the Trademark Law Treaty, as well as make it more user-friendly. Under Banjul Protocol, GIs can be protected as collective or certification trademarks (Masungu, 2008).

### **2.29. Protection of Geographical Indications at National Level**

There are significant divergences, with regard to the principles and the reasons of protecting GIs at national level. The difference in approaches is largely due to historical reasons. As in some countries, the reputation of certain products goes back to centuries ago and their continued protection is intertwined with other reasons such as commerce, culture and pride (Makafu, 2009)

The protection of geographical indications as a form of intellectual property at national level, fall into three main categories (World Trade Report, 2004; Makafu, 2009; Giovannucci et al., 2009):

1. Horizontal laws focusing on business practices
2. Trademark laws; and
3. Special means of protection

Other countries also combine these approaches. This section will look at these approaches and give examples of countries using such approaches.

### **2.30. Laws focusing on business practices**

Under this approach, GIs are practically protected by all members via laws focusing on business practices. This category covers laws which, while not specifically providing for the protection of GIs, do prohibit business practices which can involve misuse of GIs (Hughes, 2003) Many of these laws relate to the suppression of unfair competition or the protection of consumers either in general terms or specifically regarding matters such as labeling of products, health protection and food safety ( (McCluskey and Loureiro,

2003) Common law such as “passing off” also applies. In legal proceedings under such laws, the question at stake will normally be whether the practices prescribed by the law have occurred, nor whether particular term should be determined to have the status of a protected GI (Makafu, 2009).

Under unfair competition and consumer protection laws, an important factor is the extent to which the geographical term in question is known as a GI to the public. If it is not so known or it has become generic term then protection is not granted. Similarly where passing off is applicable, a complainant is supposed to demonstrate that (Hughes, 2003):

- a) Their product has acquired goodwill with the purchasing public;
- b) Misrepresentation by the defendant is likely to lead the public to believe that the products offered are those of the plaintiff; and
- c) Damages or a likelihood of damages resulted from such use

In Africa, the common law approach of passing off has been applied extensively and includes cases in Kenya, Uganda, Tanzania and South Africa (Makafu, 2009) which have an influence of the British Law.

### **2.31. Trademark laws**

GIs may be protected within the trademark system as collective, certification or guarantee marks. For example, United States protects its GIs using the trademark laws (World Trade Report, 2004 pp.72). The regulation for collective marks defines the group of companies eligible to use the mark. In some countries these regulations must include a provision to the effect that any person whose goods or services originates in a geographical area concerned and fulfill the conditions set out in the regulations shall be eligible to become a member of the association and shall be admitted to the group of persons having authority to use the mark. In the case of certification or guarantee marks, common characteristics are established that relate to materials, production methods, geographical origin and or other criteria (Makafu, 2009).

However, the primary purpose of certification or guarantee mark is to perform a guarantee function or certify certain characteristics. It is normally required that, they be accessible to anyone who meets the conditions for use (Makafu, 2009). Ugandan, Malawian and Kenyan laws incorporate certification and or collective marks though largely not couched

to accommodate GIs protection as is the case for US' collective and certification marks save for Kenya under its collective marks.

### **2.31. Special protection**

This category covers those laws specifically dedicated to protect GIs such as the Geographical Indications of Goods (Registration and Protection) Act (1999) of India, or special protection of GIs contained in other laws such as Trade Practices Act and Liquor Products Act of South Africa (Grant, 2006). Some of these laws provide sui generis protection that relate to products with specifically defined characteristics or methods of production. In general, the protection provided under this category is stronger than that available under other categories. Sometimes these different categories can coexist in a single country, for example, according to (Xiaobing and Kireeva, 2010), China has three options for protecting GIs which includes the Trademark Law, the Provisions on the Protection of Geographical Indication Products and Measures for Administration of Geographical Indications of Agricultural Products (the Measures).

### **2.32. Protection of Geographical Indication in Malawi**

The new Trademarks Act No.2 of 2018 provides for the protection of Geographical Indications (GIs). This chapter focuses on the provisions regarding the application for registration of a GI, the contents of application including name, address and nationality of applicants, examination of GI application, opposition procedures and registration of GI, right to use of GI, invalidation and rectification of registration, misleading marks and exceptions regarding prior users. Further, the act provides offences under the act such as falsification of entries in the register, false representation of registered Trademark amongst others.

### **2.33. The Study Business Case**

Kilombero Rice is a highly demanded product in Malawi and indeed in the region. However its production and marketing are not properly coordinated thereby putting

growers at a serious economic disadvantage. In this regard application of ERP would ensure improved production marketing. According to (Lysons and Farrindton, 2006)) ERP is the business management system that supported multimodal application of software integrates all the departments or functions of an enterprise. It further states that enterprise resource planning is the integration of financial, manufacturing and human resource on a single computer system. The principle behind ERP is to run off a single database so that the various departments can more easily share information and communicates with each other.

Application of ERP in KR Growers Association can greatly assist growers in the procurement function, because critical information and data can more easily be obtained and shared with all growers and consumers. This can bring various advantages including improved growers' assistance which results into provision of the right products in the right place at the right time, thus increasing customer satisfaction as stated by (Lysons K, Farrington B, 2006).

#### **2.34. Chapter Summary**

This chapter has highlighted theoretical literature review and theory of Intellectual Property that pertain to property rights. The chapter has also evaluated literature relating to Geographical Indications (GIs) integrating with sustainable rural development incorporating of endogenous development, conventions theory, cultural economy as well as the embeddedness concept thereby gaining from what others have done on the subject. Additionally, The foregoing discussion represents a review of various literatures relates to this work.

## **CHAPTER 3: METHODOLOGY**

### **3.1. Introduction**

This chapter presents research methodology which covered methods used to collect, analyze and present data. The researcher employed techniques and procedures of collecting and processing data. Further, this chapter covered other attributes of research design; sampling and target population.

### **3.2. The Research Design and Strategy**

The study used a triangulation methodological approach which used both quantitative and qualitative research to ensure validity and reliability of the findings. This approach was chosen because the study needed to address the research questions in detail. Furthermore,



there are various perceptions on the value of Kilombero Rice from Karonga as GIs protection; a quantitative and qualitative approach to the research was decided would be best suited to gathering and evaluating these perceptions. The qualitative approach was highly inductive while the quantitative approach was exploratory in design and well detailed, to better appreciate the actual picture of what Kilombero Rice from Karonga as GI protection entails.

### 3.3. Population and Sampling

The research study targeted farmers from Hara, Ngerengere and Mwirang'ombwe rice schemes in Karonga, traditional leaders within the rice schemes, customers and government officials from Registrar General's office, Ministry of Trade Industry and Commerce (MTIC) and Ministry of Agriculture, Irrigation and Water Development. This was the case because most of these were directly or indirectly involved in decision making, growing of rice and marketing of the Kilombero Rice products. The population of this study which also consisted of officers, managers and directors and other stakeholders put together as described in the table below:

Area	Number of elements
Farmers /Growers	60
Registrar General Officers/Directors	5
Ministry of Trade, Industry and Commerce	10
NASFAM Managers	5
Customers/Consumers	30
Traditional Chiefs	15
Ministry of Agriculture, Irrigation and Water Development	25
Total Population	150

**Table 3.1: Population of the Study**

### 3.4. Study Sample and Sampling Techniques

The researcher used 80 percent rate of the total population (80% x 150 total targeted population) to arrive at the sample size which translated to 120 respondents. The researcher used probability sampling method where simple random sampling technique was employed. Sampling is a process of extracting a portion of the population from which generalization to the population can be made (Amin, Blumenthal and Silverman, 2005)). The study used both random sampling technique and purposive sampling techniques so as to give equal chances for subjects to be sampled, but also to targeted individuals who have the relevant information needed for the study. (Kothari, 2004) defines random sampling techniques as a method of sample selection which gives each possible sample combination an equal probability of being picked up and each item in the entire population to have an equal chance of being included in the sample. Purposive sampling technique is a non-probability sampling that is most effective when one needs to study a certain cultural domain with knowledgeable expert within (Tongco, 2007). This researcher opted this method due to the nature of the data and respondents. The purpose sampling assisted researcher to obtain relevant data. This provided equal chances for all elements involved in the study chosen as respondents. Thus, sample size for this study was 120 respondents as depicted in table 3.2 below:

Area	Number of elements
Farmers /Growers	55
Registrar General Officers/Directors	3
Ministry of Trade, Industry and Commerce	5
NASFAM Managers	2
Customers/Consumers	25
Traditional Chiefs	10
Ministry of Agriculture, Irrigation and Water Development	20
Total Study Sample	120

### **Table 3.2: Study Sample**

#### **3.5. Data Collection Methods and Instruments**

During the collection of data, the study took into consideration a number of factors that include; availability of resources, time and precision in selecting type of instruments to be used.

The researcher used the following instruments and methods:

#### **3.6. In Depth Interview**

In Depth Interview is a research instrument that is open- ended, discovery oriented and is used in gathering in-depth information from respondents by way of conversation. This instrument aimed at exploring preliminary information that can be used to develop more concrete questions.

#### **3.7. Questionnaires**

The research strategy also took the form of a questionnaire, deliberately designed for any an offline survey and focus group discussion taking the form of an interactive workshop style and completing questionnaire in the end. This makes respondents together in a room to talk about the research topic. This discussion was directed by a coordinator (moderator) and notes were taken by research assistant (Churchhill, 1998)The survey questions were framed in such a way that when a respondent responded in affirmative he/she was directed to a set of questions, if negative would be large amount of data in a highly economical way from a sizeable population in Karonga district where the research was based (Saunders, Barber and Taylor, 2006).Another questionnaire was designed for growers to give an alternative view on the research topic as direct and very important target for product quality. Purposefully, one questionnaire was designed for guidelines for senior managers and officials in the Ministry of Agriculture, Register General and NASFAM, involving semi-structured interviews. The data elicited was analyzed by using SPSS/excel made it possible to produce pie charts and graphs which have been presented in chapter four. Preliminary step included editing data (field edit and office edit), coding, and simple tabulation.

### **3.8. Focus Group Discussion**

This is a qualitative method for gathering data, whereby focus groups bring together several participants to discuss a topic of mutual interest to themselves and the researcher (Morgan and Spanish, 1985). Focus groups discussion was considered as a self-contained data collection strategy because it gave a chance to the researcher to explore more information comparing to other methods. Prior to conducting the discussion, the researcher selected potential respondents and prepared open-ended topic to be discussed. In this method, the researcher met 25 Kilombero rice farmers in groups from three different rice schemes namely Hara, Wowvwe and Ngerenge respectively.

### **3.9. Pilot Study**

A pilot study conducted to try out the data collection instrument. Pre-testing the interview guide helped to check clarity of the questions. Trying out the data collection instrument was also necessary to determine whether the instrument would collect the intended data during that main data collection. Piloting the data collection instrument assisted to help to estimate the amount of time that an interview session would take.

Questions that seemed not clear during the pilot study were restructured to make them straight forward. In general, feedback from the pilot study helped to improve the quality of the data collection instruments.

### **3.10. Ethical Consideration**

Prior to commencing research clearance was granted by the University Ethics committee, the AU office and GoM. During data collection, participants were informed about the purpose of the study and the researcher explained any other aspects of the research which the participants asked. For participants to provide reliable information, they were assured of confidentiality and anonymity. Any information collected about individual participants were treated without attaching or mentioning their names or names of their institutions. The researcher also ensured that the interview environment was conducive for

participants to feel comfortable, secure and at ease enough to speak openly about their view points.

Apparently, this research study presented a number of ethical and moral dilemmas which the research identified and addressed prior to carrying out the research study. This was done in order to protect all participants from potential harm. This study only commenced once ethical approval was granted by the research ethics committee. Effectively, the following ethical principles were followed to ensure no harm comes to the participants.

### **3.11. Data Analysis**

Analyses of qualitative data begun as soon as data collection commenced and continue after data collection. This was helpful because the memories of the interviews were still fresh in the minds. The analysis focused on how individual participants responded to each question. Therefore, all the data for each question was put together. After organising the data by questions, themes were identified and then organized into coherent categories. In this way, the data was reduced by coding into both pre-set and emergent categories in relation to the study objectives.

### **3.12. Chapter Summary**

The methodology section has greatly helped the researcher to identify strategies, design and approaches to research investigations and selected instruments for data collection based on carefully studied research philosophies, the leading philosophy being positivism supplemented by interpretivism. The population and research samples were selected based on statistical sampling technique.

## **CHAPTER 4: DATA PRESENTATION, ANALYSIS AND INTERPRETATION**

### **4.0 Introduction**

The chapter has presented the study findings from primary and secondary data as well as response rate. Data analyses were done using the statistical program, SPSS PC+ version 7.0 and excel package and computed graphs, pie charts and cross tabulations. Definitely, people have spoken as the analysis has shown. Regarding sample characteristics, there were three types one for Ministry of Trade, Industry and Commerce, Registrar General and Officers from NASFAM, the second from Ministry of Agriculture, Irrigation and Water Development (MOA) and the third from KR Growers, Vendors and Consumers. Initially, a selected set of characteristics of the sample were given, followed by the major findings of the research study. Among 120 respondents 103 interview schedules were completed. Seventeen respondents did not turn up and were treated as non-respondents.

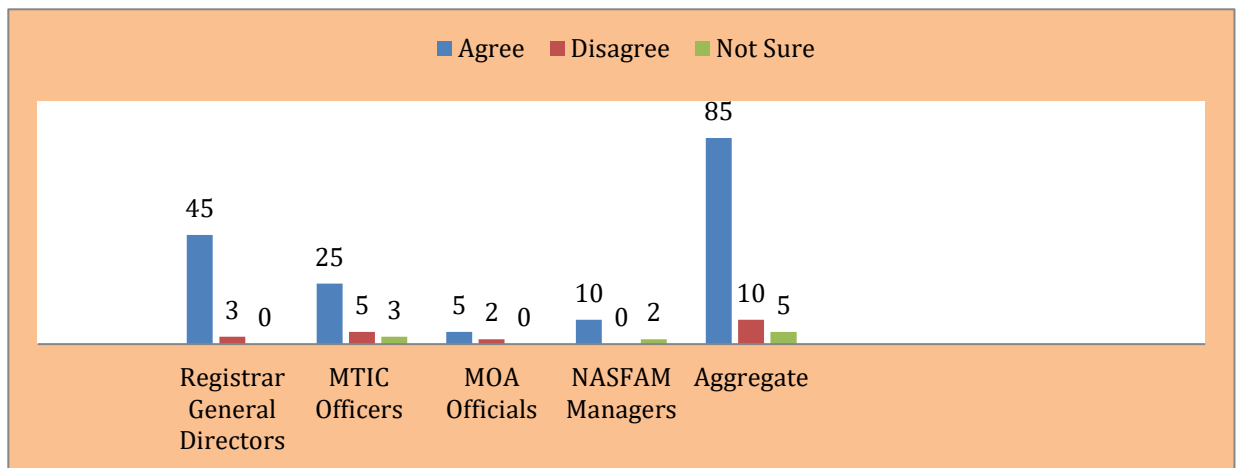
### **4.2. Presentations, Analysis and Interpretation of Results**

This part is going to present analysis and interpret findings obtained on the field during collection of data. The researcher is going to employ tables, figures and statements to clarify the results.

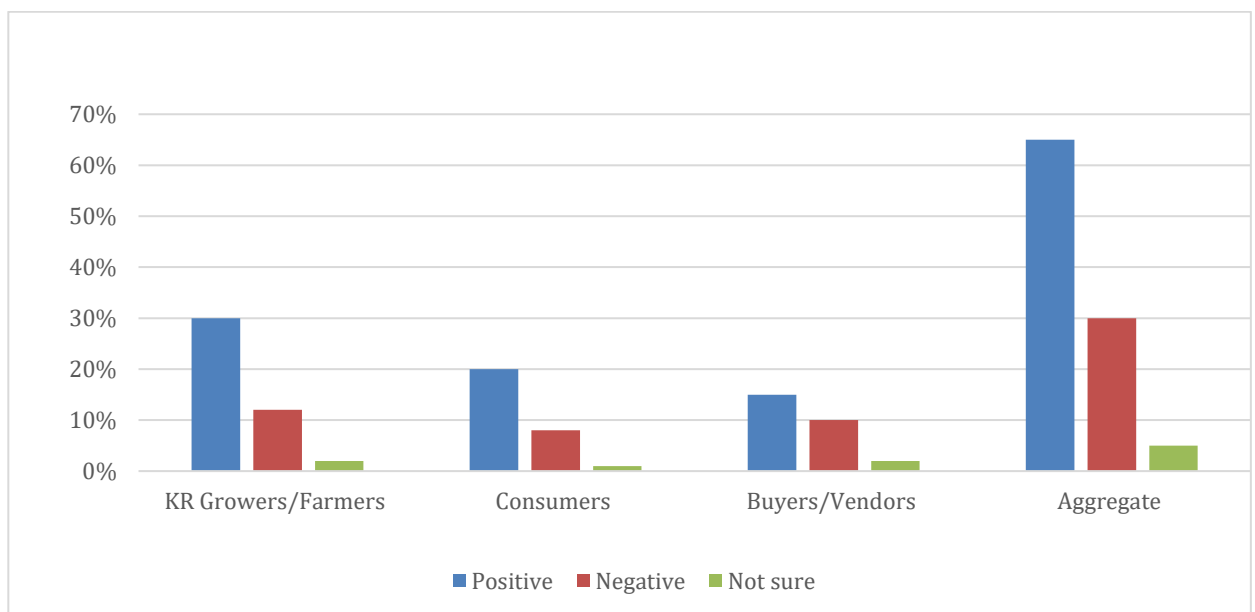
### **4.3. Objective 1: To assess with evidence-specific ways in which geographical indications promote sustainable rural development in Karonga District.**

The respondents from table 4.1 and 4.2 were asked specific ways in which GI promote sustainable rural development in KA district. This question intended to know whether KR can bring sustainable rural development in KA. The findings revealed that in figure 4.1, about 80 percent of the participants drawn from various organizations indicated that they strongly agreed that KR can bring sustainable development in KA District. While figure 4.2 were participants drawn from KR growers, consumers and buyers. This was evidenced by their responses that KR as GI encourage social networks and collaboration amongst stakeholders. This is can be seen by various associations that have been formed that deal with KR. 30 percent of KR growers said that there is sharing of traditional knowledge on

how to conserve the KR seed and soil so that it keeps on being productive.55 percent stated that KR as GI has managed to provide sustainable employment therefore reducing rural exodus to towns in search of employment. To this end, the analysis has shown that the role of GI is significant in that it promotes sustainable development according to the majority of respondents as depicted in figure 4.1 and 4.2 respectively below.



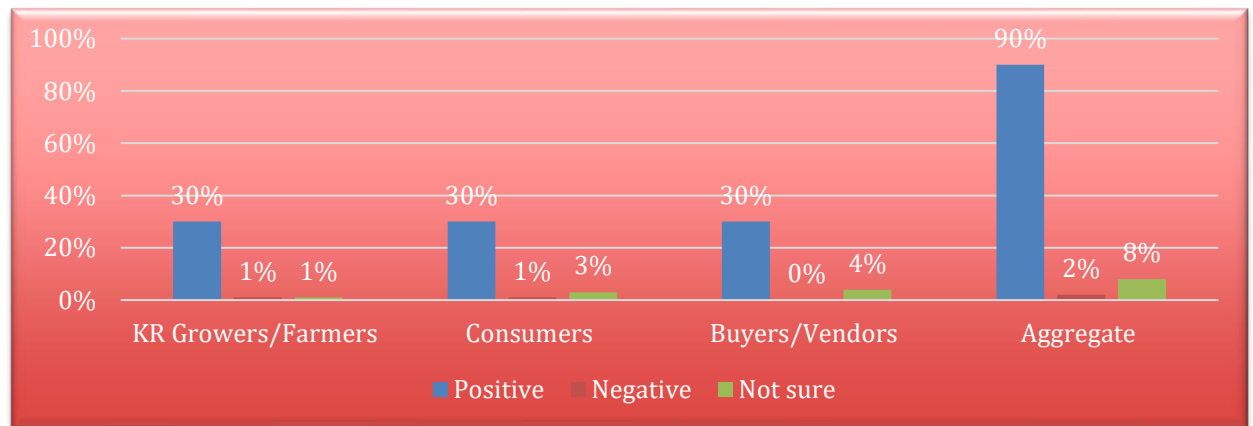
**Figure 4.1**



**Figure 4.2**



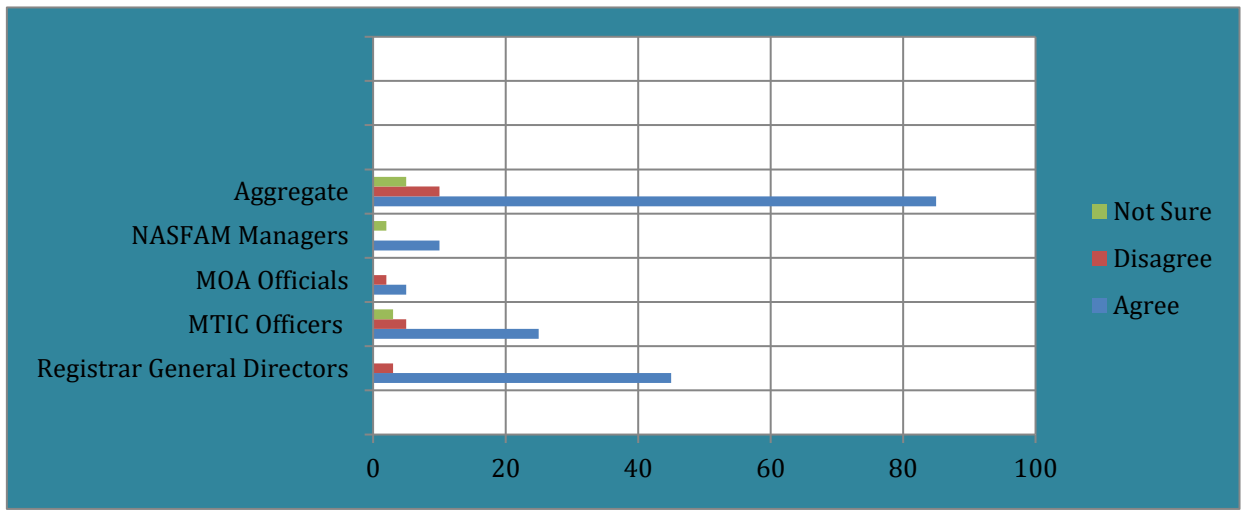
From the responses as depicted in figure 4.3 below, show that 89 percent of respondents were positive that KR is linked to biodiversity that is to ecologically sustainable production methods. Consumers of KR could differentiate KR of Karonga and KR from the rest of the world based on taste and quality. This implies that Consumers of KR can differentiate KR of Karonga and KR from the rest of the world based on taste and quality as depicted in the blow in figure 4.3.



**Figure 4.3**

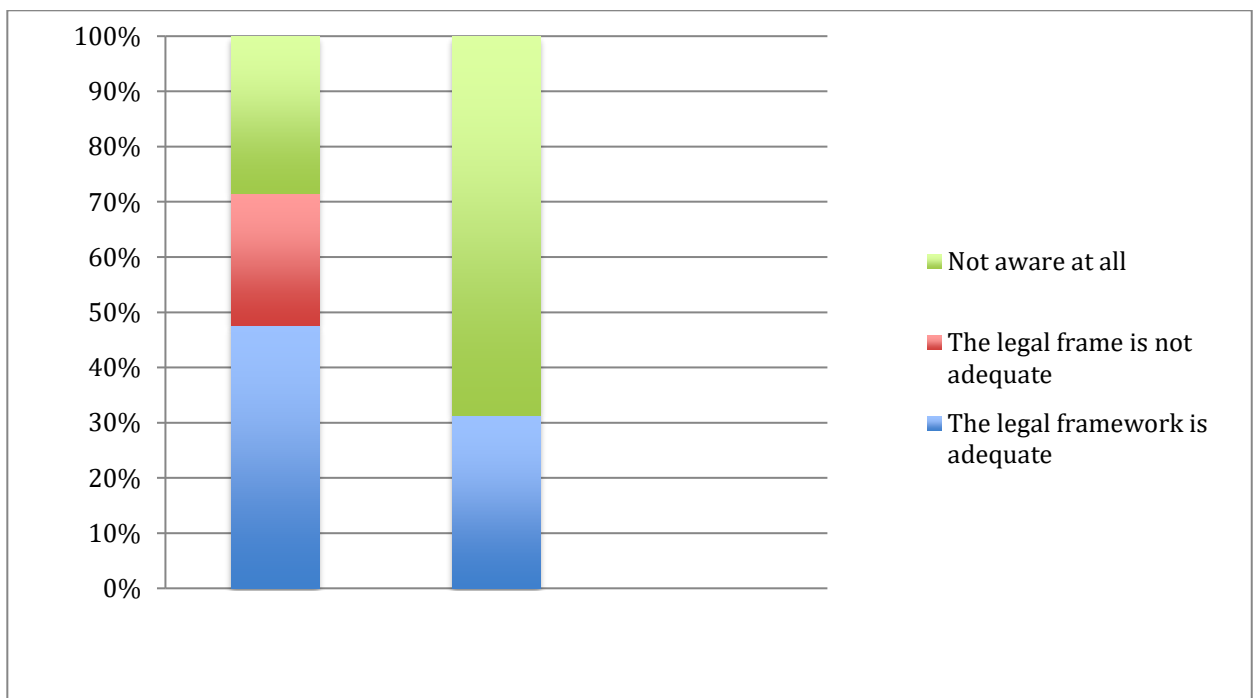
#### **4.4. Objective 2: To examine the effectiveness of the existing legal framework for the protection of KR in KA as GI**

The question was examining the effectiveness of the existing legal framework for the protection of KR in KA as GI. The findings from stakeholders in figure 4.4 revealed that 85 percent of the respondents indicated affirmatively that the existing legal framework for the protection of KR in KA as GI was effective. However, 10 percent of the other respondents do not agree that there legal framework is effective in protecting KR in KA as GI and 5 percent were not sure either it is effective or not.



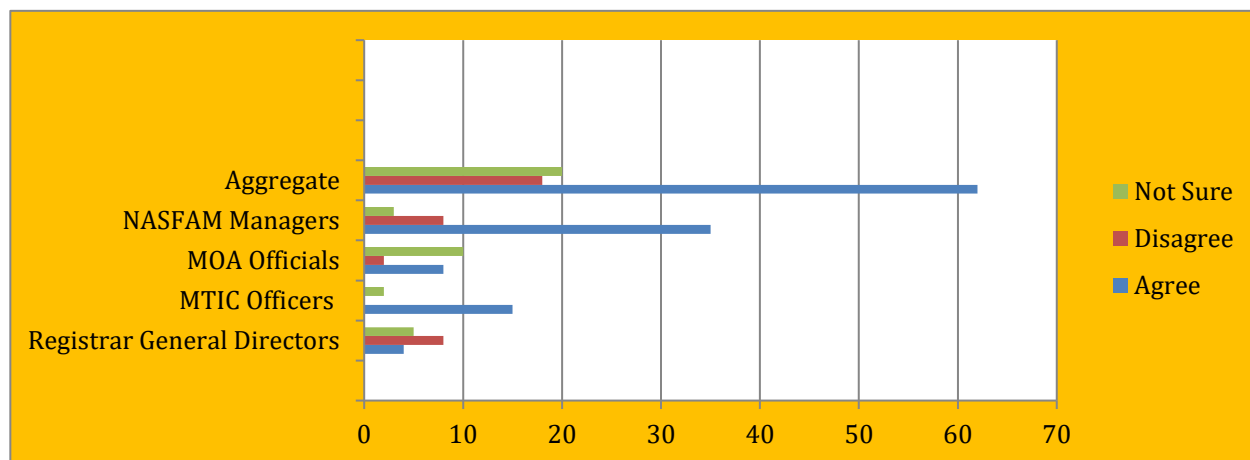
**Figure 4.4**

Figure 4.5 and 4.6 below depicts the adequacy of the existing of the effectiveness of the legal framework for the protection of geographical indications as answered by the KR Consumers and KR growers. The blue colour depicts that the state has effective legal framework while the red colour depicts that the legal framework is not effective and green colour depicts the respondents who answered that they were not aware of the answer.



**Figure 4.5 and 4.6: KR Consumers and KR Growers**

**4.5 Objective 3: To explore the potential constraints towards the protection of KR in KA as GI**

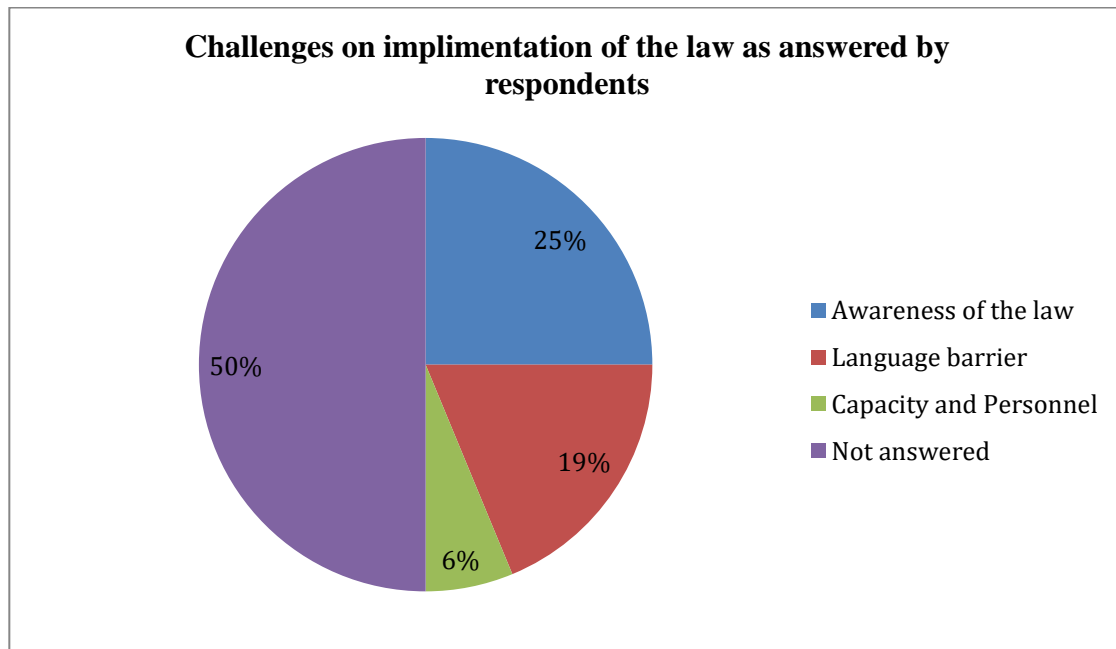


**Figure 4.7**

Figure 4.7 above felt that about 64 percent of the respondents from the stakeholders, knew the gaps or promotional challenges of market and commercial value of KA from KA. This included post-harvest issues such as transportation, storage, marketing and trans-border issues with neighboring Tanzania. The trans-border issues include the KR which is grown in Tanzania and this affect the prices of the commodity. Furthermore, it was revealed during the study that some local large entrepreneurship were exploiting the KR growers as some buy from the growers at low prices and later brand and market the product as if they are producers and growers of the KR. The survey also revealed that the stakeholders who are involved with KR they work in isolation which affects the KR growers in terms of input and output. It was also revealed that KR lacks branding of this product as coming from KA as most traders only brand the KR leaving the area where it is coming from.

In order to get actual picture, the researcher asked respondents the same question in interview and focus group discussions and other individual consumers on the constraints

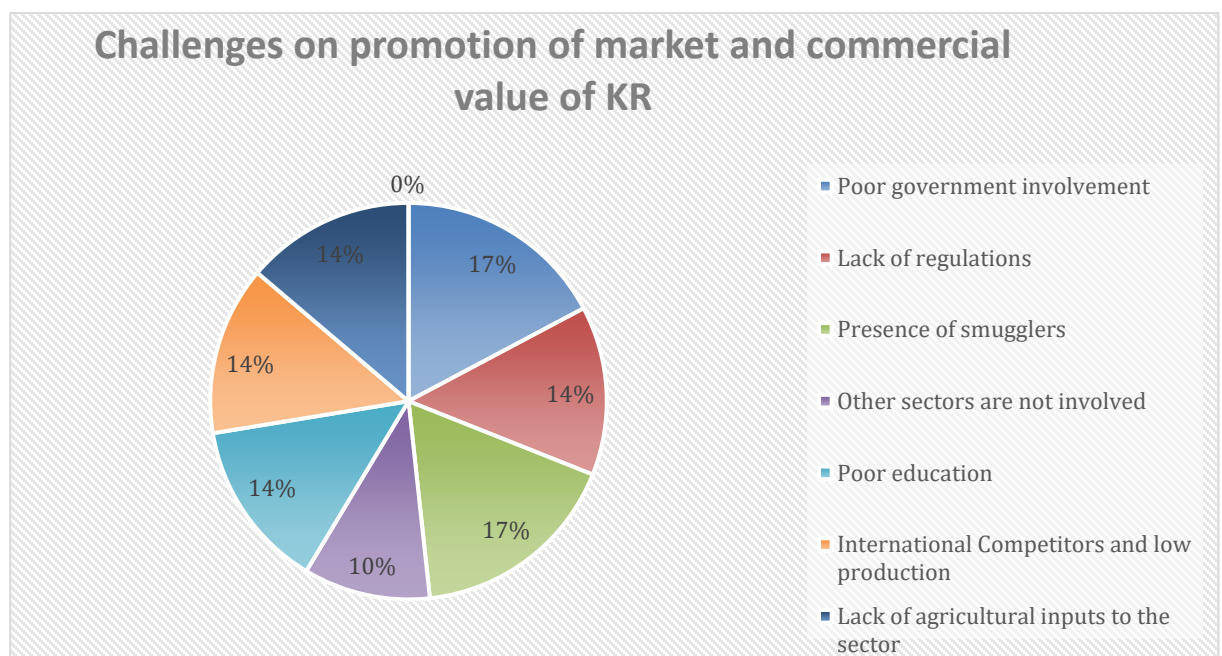
towards the protection of KR as GI. In their responses in figure 4.8, 25 percent were aware of the law, 19 percent said language was a barrier in sense that KA district has over 32 dialects and by virtue that it is border town with Tanzania the situation is worse. As such it's difficult to implement government rules and regulations under that environment. The 6 percent said that the state lacks enough personnel to implement laws and the 50 percent could not respond.



**Figure 4.8**

This study also aimed to identify the gaps or challenges on market and commercial value of KR in KA. Both respondents who filled in questionnaires and interviewed were asked that what are the gaps (challenges) on promotion the market and commercial value of KR as distinctive products from KA. The following were the responses: 17percent of the respondents said that poor participation of government in the sector is a challenge on promotion of market and commercial value of the KR, 14 percent of the respondents said that lack of regulations of the KR Growers Associations and most of the big entrepreneurs who come to make business with hem. Most of the contracts they enter lack the rules and regulations to guide the two parties. The 17 percent of the respondents said that presence of smugglers contributes to lack of monitoring of quality of products and loss of income

to farmers and producers. Moreover, 14 percent of the respondents said that the presence of international competitors and low production reduce market spread of the product, 10 percent of the respondents said that other sectors are not well involved in monitoring and control of quality of products. 14 percent of the respondents said that poor education and technology applied by farmers and producers that end up producing poor quality of products and 14 percent of respondents said that lack of agricultural inputs also contributes to production of poor quality of products. The figure 4.9 below depicts the gaps (challenges) on promotion of market and commercial value of the KR in KA district.

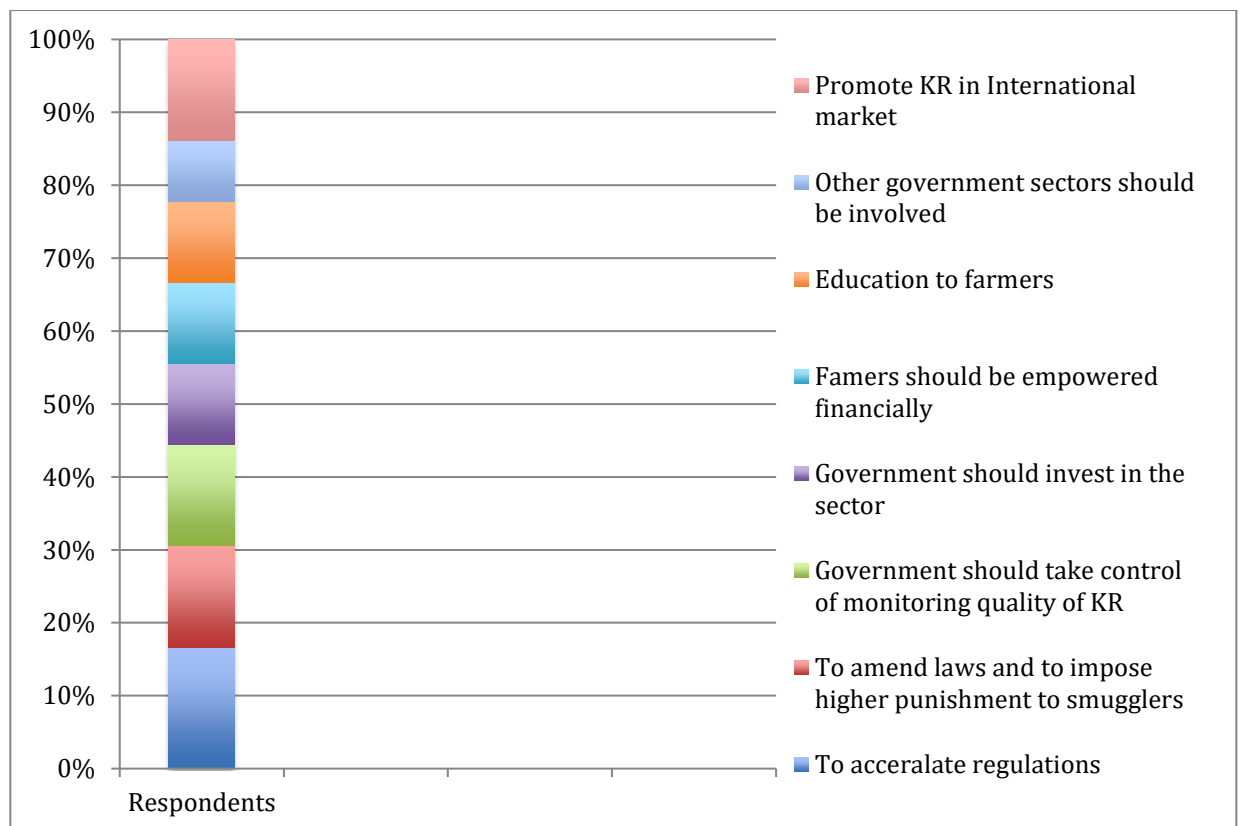


**Figure 4.9**

#### **4.6 Objective 4: To recommend strategies for enhancing the protection of KR in KA as GI**

All the respondents were asked for recommendations that can be made to promote the market and commercial value of KR as distinctive product from KA district. In this question the researcher wanted to know the comments of respondents on promotion of market and commercial value of KR. 40 percent of the respondents said that the government should promote KR on international markets through the office of Malawi

Investment Promotion Agency in liaison with MO. The other 20 percent is of the view that other government sectors and NGOs who are into agriculture should be involved in the KR in the marketing and promotion of it as KA product. 10 percent said that the government should empower farmers financially so that they should be able to buy inputs and modern implements to boost their production. Education to farmers was highly recommended on training, post-harvest management programmes and packaging. Then 20 percent respondents said that the laws should be revised and impose higher punishment to smugglers and 10 percent respondents said the government should take control of monitoring quality of products through their association. Figure 4.10 below depicts recommendations on promotion of market and commercial value of KR.



**Figure 4.10**

#### **4.7.Chapter Summary**

This chapter has covered aspects relating to the data collection and analysis and based on the data collected and analyzed has presented results in the form of bar charts, graphs and tabulations. The following chapter, therefore, is making conclusions and recommendations based on the analysis of this chapter. The foregoing chapter highlighted the analysis and presentation of findings collected by researcher. The analysis and presentation of findings confined to research questions and questions directed to the respondents. The main purpose of this work was to examine the prospects of the establishment of KR from KR district as GI. Respondents were asked to comment on to assess with evidence-specific ways in which geographical indications promote sustainable rural development in Karonga District, to examine the effectiveness of the existing legal framework for the protection of KA in KA as GI, to explore the potential constraints towards the protection of KR in KA as GI .Further, the respondents were asked to mention and explain the gaps (challenges) facing market of KR. The majority of respondents said presence of smuggling, lack state involvement, poor markets as a result of lack of value addition. On the same line the respondents were asked to give recommendation on the improvement of market, the majority said that there is need for government involvement to support and KR farmers in KA, KR growers to train on value addition and marketing.

## **CHAPTER 5: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

### **5.0. Introduction**

This chapter concludes the study and to highlights the recommendations. The recommendations are based on the findings presented and discussed in the last chapter. The scrutiny of recommendations was confined to the results of findings and partly derived from the reviewed literature. Further the study also gives a composite conclusion and general results of the findings.

### **5.1. Summary**

Based on the objectives and conceptual framework that guided the study, which focused on assessing and examining the prospects of the establishment of KR from Karonga district in Malawi as Geographical Indication protection. The study indicated several factors that are detrimental to KR farmers, such as lack of protection from dishonest dealers who abuse them, deprive them of the benefits of KR, as they even fetch low prices for their rice on the local and international market. Furthermore, the study noted that agriculture trading associations and companies that buy KR from Karonga rice schemes end up giving the rice a different brand resulting in counterfeit products being sold as KR from Karonga District

The research objective of the study revealed that the Government has the legal framework in place for GI protection laws and most of the respondents agreed that it was effective. However 30% of the respondents felt that the government need to do more by implementing and enforcing it. It was established that KR as GI protection brings



sustainable development to the district by creating jobs, reducing migration to cities and empowering the locals socially and economically.

The study also tackled on the challenges which the KR growers meet in their quest for establishing a GI protection which included post-harvest issues such as transportation, storage, marketing and trans- border issues with neighboring Tanzania. The trans-border issues include the KR which is grown in Tanzania and this affect the prices of the commodity. The other constraints which were noted were poor government involvement, lack of regulations, smugglers who are involved in KR during post-harvest, poor education on the part of the KR growers and lack of agriculture input.

## **5.2. Conclusion**

The purpose of this study was proposing the establishment of the KR from KA district as GI protection so as to promote and protect KR. The major findings of the study were as follows

### **5.2.1. Assess with evidence specific ways in which geographical indications promote sustainable rural development in Karonga District**

This objective of assessing with evidence specific ways in which geographical indications promote sustainable rural development in Karonga district. This objective was achieved, the findings revealed that about 80 percent of the participants drawn from various organizations indicated that they strongly agreed that KR can bring sustainable development in KA District while 20 percent said were negative about it. While participants drawn from KR growers, consumers and buyers, said that it encourage social networks and collaboration amongst stakeholders as 30percent of KR growers said that there is sharing of traditional knowledge on how to conserve the KR seed and soil so that it keeps on being productive.55 percent stated that KR as GI has managed to provide sustainable employment therefore reducing rural exodus to towns in search of employment. As such the researcher was able to specific ways in which GI promote sustainable rural development in Karonga district.

The literature review identifies a number of ways in which GIs are generally linked to Sustainable Rural Development, which we might assume would fit the KR from KA as GIs investigated in this study. The first aim of the literature review was to establish that sustainable development consists of more than merely economic factors, a number of integrated theories and models were investigated to illustrate this, for example Culture Economy, Conventions Theory, and Embeddedness Concept. KR from KA fit within these models and theories. The embeddedness of both products in the local nature and local culture avoids the risk of relocation to be produced more economically elsewhere. Before specific non-market values are investigated more closely such as ecological and social values the assumption can be made that KR as GI is likely to trend toward sustainable development because they contain more than just economic or traditional market values. Furthermore, KR growers have formed associations which are guided by rules and regulation on how to run them as well as control the KR in terms of quality and standards which fit well with the convention theory.

With respect to rural development the literature review identified that different regions have different strategies for rural development, for example KA appears focused on linking agriculture to traditional practices, lifestyles, climatic and environmental conditions fit for KR.

#### **5.2.2. Examine the effectiveness of the existing legal framework for the protection of Kilombero Rice (KR) in Karonga as a geographical indication.**

The objective was to examine the effectiveness of the existing legal framework for the protection of KR in Karonga as a GI. This objective was achieved as the researcher was able to get responses as 85 percent of the respondents indicated affirmatively that the existing legal framework for the protection of KR in KA as GI was effective. However, 10 percent of the other respondents do not agree that there legal framework is effective in protecting KR in KA as GI and 5 percent were not sure either it is effective or not.

### **5.2.3. Explore the potential constraints towards the protection of KR in Karonga as a geographical indication.**

The fourth objective was to explore the potential constraints towards the protection of KR in KA as a GI. It was observed that 64 percent of the respondents from the stakeholders, knew the gaps or promotional challenges of market and commercial value of KA from KA as the major players with money take advantage of the KR growers and market the product the way they want to their advantage at the disadvantage of the KR growers. This included post-harvest issues such as transportation, storage, marketing and trans border issues with neighboring Tanzania. The trans-border issues include the KR which is grown in Tanzania and this affect the prices of the commodity. The other constraints which were noted were poor government involvement, lack of regulations, smugglers who are involved in KR during post-harvest, poor education on the part of the KR growers and lack of agriculture input.

### **5.2.4. Recommend Strategies for enhancing the protection of Kilombero Rice in Karonga as a geographical indication.**

The final objective was to recommend strategies for enhancing the protection of KR from KA as a GI. In this question the researcher wanted to know the comments of respondents on promotion of market and commercial value of KR. 40 percent of the respondents said that the government should promote KR on international markets through the office of Malawi Investment Promotion Agency in liaison with MO. The other 20 percent is of the view that other government sectors and NGOs who are into agriculture should be involved in the KR in the marketing and promotion of it as KA product. 10 percent said that the government should empower farmers financially so that they should be able to buy inputs and modern implements to boost their production. Education to farmers was highly recommended on training, post-harvest management programs and packaging. Then 20 percent respondents said that the laws should be revised and impose higher punishment to smugglers and 10 percent respondents said the government should take control of monitoring quality of products through their association.

### **5.3. Recommendations**

Based on the research findings, the study has made the following recommendations:

- The government should quickly implement its reforms as stated in its Intellectual Property Policy that the office of the Registrar General should be an autonomous office unlike the current situation where the office is under Ministry of Justice. If the office becomes independent it will quickly move on and act on issues to protect and promote KR from KA as GI.
- The state needs to increase capacity in sectors dealing with Intellectual Property such as Department of Registrar General, Intellectual Property Office and Ministry of Trade, Industry and Commerce by employing more trained personnel who will oversee the implementation of the law and GI system in general.
- The official structures of government in the Ministry of Trade, Industry and Commerce, Department of Registrar General and Ministry of Agriculture (MOA) is perceived by the Public to be a close-knit group protecting its own interests in the Agricultural production and marketing of crops thereby depriving KR growers of essential protection services from unscrupulous and dishonest businessmen. As such these offices need to collaborate and work together for the good of the farmers such as those of KR in KA.
- Government should create and increase awareness on GI as a means to protect Malawi agricultural products to various stakeholders and users including producer associations, indigenous and peasant communities, cooperatives, women's groups, Small and Medium Enterprises (SMEs), Non-Government Organizations (NGOs) and the public at large. This would encourage the Malawi society to use IP as a tool for economic development. Generally, this would help with clear enforcement of the law and empowering communities. Inarguably, this study observed that lack of awareness of the law has proved a practical challenge in the implementation of the intimated laws.
- In order to have a competitive international market, the government of Malawi should embark on promotion of Malawi agricultural products in international markets, to sign bilateral and multilateral treaties in order to fight against

smugglers and to regulate quality of Malawi agricultural products. Moreover, the State has to ensure that only premium and quality crops are exposed in market.

- It is suggested that the state should of necessity establish a (commodity) bureau that shall monitor and control quality of Malawi agricultural products to ensure that crops exported meet quality and set standards. On top of that, the state should provide support to stakeholders such as loans, agricultural inputs and training to improve the sector.
- This study has further recommended that GI should adopt as the best method to protect Malawi agricultural products. For this reason, the study has reviewed findings and various literatures, which has suggested that GI is the best method over all possible methods that can be adopted and employed to protect Malawi agricultural products.
- There is need for trainings for KR growers on post-harvest management such as storage, packaging and value addition which shall see KR being branded and labelled as a product of KA.
- The government should embark on research on breeding seed variety of KR so as to protect it as well as aimed at bumper harvest, disease and drought resistance.
- The government should empower the KR farmers financially so that they improve on infrastructure and farming equipment.
- Additionally, the study recommended that the government should establish a special regulatory mechanism that would oversee the implementation of GIs in Malawi. This regulatory mechanism to be tasked with a role to supervises and assesses the implementation of the law, policies and other strategies particularly in the protection and promotion of Malawi agricultural products in both national and international level.

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## **APPENDIX 1: Questionnaire Survey Instrument**

### **RESEARCH QUESTIONNAIRE**

**Designed to:** REGISTRAR GENERAL OFFICE / IP PRACTITIONER / OFFICERS  
FROM MINISTRY OF TRADE, INDUSTRY AND COMMERCE

Dear Respondent,

I, Hillary Chilomba, a student at Africa University, Zimbabwe pursuing Masters of Intellectual Property. The following survey is part of a research and data analysis for a research project course being done by the writer in partial fulfilment of the Masters in Intellectual Property programme with Africa University. The purpose of this questionnaire is to analyse and to make proposals on the establishment of Kilombero Rice in Karonga District as Geographical Indication. Please you are kindly asked to fill in this form which is one of the instruments used to collect information. I promise and undertake that the information collected will be used for research purposes only and will be held in strict confidence. .

#### **Fill in the appropriate response**

Indicate the office that you work for.....

1. A good number of farmers in Karonga have been growing Kilombero rice for a long time still their lives remain the same. In your experience what are the challenges facing these farmers?

.....  
.....  
.....

.....  
.....  
.....

2. Agriculture is the main source of income for the Government of Malawi in particular from cash crops. Does the Government appreciate this economic activity? .....Yes / No

a) *If yes* what are the efforts taken by the government to protect rice farmers and make sure that income from this sector increases?

.....  
.....  
.....  
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.....

3. The Government has put in place the law to implement and protect geographical indication to protect the agriculture products in Malawi. What has your office so far done to implement this?

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.....  
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.....

4. Have you ever heard of Geographical Indication as means to protect agricultural products?

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.....

5. Are the farmers and other interested groups are aware of the geographical indication protection law?

a) If yes can, explain by providing evidence

.....  
.....  
.....  
.....  
.....  
.....

b) If no, can you provide the reasons for this?

.....  
.....  
.....  
.....  
.....

6. What are challenges in implementing current legal framework for protection of Geographical Indications?

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.....

7. In your view what products can qualify for GI protection in Malawi?

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a) Why do you say so?

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.....  
.....  
.....

8. Which are the regularly exported agricultural crops?

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.....

9. From your experience, is Kilombero rice fetching a good price on the market within and outside Malawi?

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10. What are gaps/challenges on promotion of market and commercial value of Kilombero rice from Karonga?

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11. What are the recommendations on promotion of market and commercial value for Kilombero rice?

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12. What should be done in order to increase and create awareness of GIs as a means to protect agricultural products like Kilombero rice in Malawi to the public at large?

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.....

**Thank you for your cooperation**

## **INTERVIEW GUIDE/GROUP DISCUSSION**

### **PART A**

#### **Design to Kilombero Rice in Karonga**

1. Are you working individually or under an organization/association?
2.
  - a. What are the name of the rice variety you are dealing in?
  - b. Do these variety have any special characteristics or quality that can only be found in Karonga and not any other place?
3. Who are your customers?
4. Do you also export your rice?
5. What are the legal requirements you need to comply with before exportation your rice?
6. What are the challenges do you meet in exporting rice?
7. Do you have sufficient market for your rice in international market?
8. What challenges do you face in the domestic and foreign market?
9. Do you know any law that protects agriculture products such as Kilombero Rice?
10. Have you ever heard of Geographical Indication?
11. Does the law for Geographical Indication adequate?
12. How can geographical indication promote sustainable rural development in Karonga?
13. What are the challenges on implementation of the laws and the protection of Kilombero Rice?
14. Have you encountered any case of improper use of Kilombero Rice from elsewhere packaged as if they are from Karonga. If so what have you done?
15. In your view what are the best method to protect Kilombero Rice that suits Karonga environment?

## **PART B**

### **Designed to THE FARMERS OF KILOMBERO RICE**

1. When did you start rice farming activities?
2. What is the scale of your farming activities?  
(i) Large Scale (ii) Medium Scale (iii) Small scale
3. Do you know any law that protects agricultural products in Malawi?
4. Have you ever heard of Geographical Indication?
5. Does the law for Geographical Indication adequate?
6. How can geographical indication promote sustainable rural development in Karonga?
6. What are the challenges on implementation of the laws and the protection of Kilombero Rice in Karonga?
7. Is there any effort made by the government to protect farmers from fluctuation of price in the market?
8. Who are your immediate buyers for your crops?
9. Is the income derived from selling of your product conforms to the input employed by the farmers?
10. Does the Government promote farmers to make sure that production of Kilombero Rice increases?
11. As a farmer, what would be your opinion on the implementation of the laws to deal with protection of GI particularly agricultural products?
12. In your view what are the best method to protect Kilombero Rice that suits Kalonnga environment?

## **PART C**

### **Design to *CONSUMERS OF KILOMBERO RICE***

1. Do you consume Kilombero Rice? For how long?
2. Have you ever consumed any rice apart from Kilombero?
3. Can you differentiate Kilombero Rice of Karonga and Kilombero from the rest of the world in term of taste and quality?
4. From the above question, which one is the best?
6. Have you ever heard of Geographical Indication?
7. Are you aware of any law that governs the protection of GI?
8. Does the law provide for protection of GI is adequate?
9. What are challenges on implementation of the laws in Malawi?
11. How do you rate the lives of farmers of Kilombero rice in Karonga? Is this economy activity worthwhile for them?
12. In your view what are the best method to protect Kilombero rice that suits Karonga environment?

**Thank you for your cooperation**





## Appendix 2: Questionnaire from Min of Industry, Trade & Tourism

Min of Industry, Trade, & Tourism

1. A good number of farmers in Karonga have been growing Kilombero rice for a long time still their lives remain the same. In your experience what are the challenges facing these farmers?

.....  
..... Limited access to quality markets, .....  
.....  
.....

2. Agriculture is the main source of income for the Government of Malawi in particular from cash crops. Does the Government appreciate this economic activity? ..... Yes /

No

a) If yes what are the efforts taken by the government to protect rice farmers and make sure that income from this sector increases?

.....  
..... Have farmer cooperatives to .....  
..... increase bargaining power of the .....  
..... farmers .....  
.....  
.....

3. The Government has put in place the law to implement and protect geographical indication to protect the agriculture products in Malawi. What has your office so far done to implement this?

### Appendix:3 Questionnaire from Farmers' Union of Malawi

FARMERS' UNION OF MALAWI

1. A good number of farmers in Karonga have been growing Kilombero rice for a long time still their lives remain the same. In your experience what are the challenges facing these farmers?

- availability of seed, they use recycled seed which affect productivity
- accessing some inputs such as fertilizer
- accessing machinery as they use manual labour, result in low yield

2. Agriculture is the main source of income for the Government of Malawi in particular from cash crops. Does the Government appreciate this economic activity? ..... Yes

No

a) If yes what are the efforts taken by the government to protect rice farmers and make sure that income from this sector increases?

- research by govt on breeding, agronomy, extension services etc
- trainings on value addition such as packaging and rice milling

3. The Government has put in place the law to implement and protect geographical indication to protect the agriculture products in Malawi. What has your office so far done to implement this?

## **Appendix 4: Minutes from the Office of the Registrar General**

### **ROUND TABLE MEETING ON THE PROTECTION OF GEOGRAPHICAL INDICATIONS IN MALAWI, 15<sup>TH</sup> MAY, 2019, MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS (MoJ) MAIN CONFERENCE ROOM, CAPITAL HILL, LILONGWE.**

**Compiled By**

**CHIFWAI M.K. CHIRAMBO, CHIEF ASSISTANT REGISTRAR GENERAL,  
HEAD (INDUSTRIAL PROPERTY REGISTRY)**

#### **BACKGROUND**

The Department of the Registrar General organized a round table meeting on the protection of Geographical Indications (GI) in Malawi, which was held on 15<sup>th</sup> May, 2019, in the Ministry of Justice and Constitutional Affairs Main Conference Room, Capitol Hill, in Lilongwe.

#### **MEETING OBJECTIVE**

The main objective of the meeting was to commence the stakeholder discourse on the identification of products/goods that have potential to benefit from protection as geographical indications in the ARIPO region.

#### **LINKAGE WITH NATIONAL POLICIES AND LAWS**

This initiative is in line with Priority Areas 2 and 3 of our National Intellectual Property Policy on the generation and protection of intellectual property assets, and effective exploitation and commercialization of intellectual property assets respectively. It I in this

spirit that the Trademarks Act (Cap. 49:01) was reviewed and protection for geographical indications provided.

## **PROJECT SYNOPSIS**

This initiative is a result of the World Intellectual Property Organization (WIPO)'s cooperation with the African Regional Intellectual Property Organization (ARIPO) and the Organisation Africaine de la Propriete Intellectuelle (OAPI) Secretariats in the development of a project for the protection of GIs in Africa. The ARIPO Secretariat is also representing its membership on the Consultative Committee for the implementation of the Continental Strategy on Geographical Indications in Africa that was developed by the African Union and is also supported by the European Union.

## **PARTICIPATION**

The meeting was chaired by the Solicitor General and Secretary for Justice and Constitutional Affairs and facilitated by the Registrar General. A focused group of participants was invited from the Department of Fisheries and the Department of Agricultural Research Services in the Ministry of Agriculture, Ministry of Industry, Trade and Tourism, Mzuzu Coffee, Coffee Grower's Union, Lilongwe University of Agriculture and Natural Resources, NASFAM and FAO. Please refer to the list of participants attached hereto for details.

## **PRESENTATION AND PLENARY**

The Department made a brief presentation on the regime for the protection of geographical indications in Malawi in order to stimulate debate on possible products by the task force.

The discussions during the plenary centred mainly around whether the approach to be taken is one that involves merely listing the prioritized agricultural products (For example,

Coffee, Honey etc) or going as far as identifying the various national level geographical indications (Nyika Raw Forest Honey for example)

## **CONCLUSIONS, RESOLUTIONS AND NEXT STEPS**

### **Conclusions and Recommendations**

The task force agreed to state the prioritized agricultural products in broad terms at this stage and leave room for the identification of several different geographical indications for the same product. Examples were given of Nyika Honey and Phunga Honey within the Nyika area which has a unique whitish appearance due to pollen from the yellow Phunga flower which only grows naturally on the Nyika Plateau.

The task force therefore agreed to prepare two lists of products for consideration, the first being prioritized and the second, which would be populated at a later date, as a contingency.

As a starting point, the task force resolved to prioritize the following broad categories of products which would later be discussed in detail in order to identify the specific product sub-types and their unique characteristics:

- i. Fish and Fish Products;
- ii. Rice;
- iii. Coffee;
- iv. Honey; and
- v. Tea.

The second group of products identified were Chillies (Capiscum/Kambuzi and Birdseye/piripiri), Legumes (such as Chalimbananuts and certain varieties of beans such as Kamtauzgeni and Nyauzembe), non-timber forestry products such as indigenous mushrooms and botanical pesticides.

The meeting also noted that there was need for producers of the identified products to be grouped into associations or cooperatives in order for issues such as resolution on the rules governing the GI, traceability, marketing and production capacity to be addressed holistically.

## **Next Steps**

There is need for the task force to research extensively in order to develop a list of key agricultural products which can benefit from the project. This will also involve the identification of key stakeholders in specific areas who are already in production.

A good starting point for this process would be with the Department of Agricultural Research of the Ministry of Agriculture and the Buy Malawi Strategy team in the Ministry of Industry, Trade and Tourism as these already interact with producers of some of the potential beneficiary products.

The representatives from the UNs Food and Agriculture Organization (FAO) indicated that the initiative was very timely and expressed their willingness to include any identified products in their project activities as contained in the Country Profile Framework for Malawi which was already being prepared. They cautioned that the identified products would need to meet requirements on registration, traceability, and marketing and production capacity. The inclusion of non-timber forestry products such as some types of indigenous mushrooms and botanical pesticides was also recommended.

There is also need for the task force to make wider consultations with various other key stakeholder groups in order to gather adequate information to inform the development of the comprehensive list of goods. It was also noted that this task was technical in nature and would therefore require technical assistance from WIPO and benchmarking against other countries in the region for best practices.

In the area of implementation, it was resolved that the institutions in attendance would form the National Task Force on GIs and the Registrar General's Department would play the leading coordinating role.

**Chifwayi M.K. Chirambo**

**CHIEF ASSISTANT REGISTRAR GENERAL.**

**18/05/2018**

**Appendix4: Questionnaire from Registrar General  
Designed to:**

Dear Respondent,

I, Hillary Chilomba, a student at Africa University, Zimbabwe pursuing Master of Intellectual Property. The following survey is part of a research and data analysis for a research project course being done by the writer in partial fulfilment of the Masters in Intellectual Property programme with Africa University. The purpose of this questionnaire is to analyse and to make proposals on the establishment of

Kilombero Rice in Karonga District as Geographical Indication. Please you are kindly asked to fill in this form which is one of the instruments used to collect information. I promise and undertake that the information collected will be used for research purposes only and will be held in strict confidence. .

**Fill in the appropriate response**

Indicate the office that you work for DEPARTMENT OF THE REGISTRAR  
GENERAL

1. A good number of farmers in Karonga have been growing Kilombero rice for a long time still their lives remain the same. In your experience what are the challenges facing these farmers?



**The main challenge is lack of value addition since the crop is mainly sold as a raw commodity which fetches a lower price. A second challenge is lack of quality consistency since the pure strain is mixed with other rice varieties which lower product quality.**

**Interestingly, since we are looking at GI protection, there is no place in Malawi by the name Kilombero. Kilombero is a place in Tanzania some 80-100 Kms after Songwe Border. In addition, you might want to research into the actual origins of the Kilombero variety by engaging the Department of Research in the Ministry of Agriculture, but it is said to have been introduced during Banda's era from Japan.**

2. Agriculture is the main source of income for the Government of Malawi in particular from cash crops. Does the Government appreciate this economic activity? ..... **Yes**

a) *If yes* what are the efforts taken by the government to protect rice farmers and make sure that income from this sector increases?

**Although Malawi is an Agro-economy, rice schemes which promoted research and rice irrigation farming during the pre-multiparty era have all fallen into disuse and there has been very little investment in the rice area.....**

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3. The Government has put in place the law to implement and protect geographical indication to protect the agriculture products in Malawi. What has your office so far done to implement this?

**So far, not a lot has been done to implement this new mandate due to capacity challenges at the national IP office and the absence of implementing regulations for the Act itself, including the Part on GIs. However, efforts are being made to increase the offices capacity in GI administration and draft implementation regulations, as well as identify potential GIs in Malawi. A recent meeting of the Stakeholder task force o GIs identified five potential products, which include Kilombero. Towards this end, a project is being crafted to identify GI potential in**

4. Have you ever heard of Geographical Indication as means to protect agricultural products?

YES

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5. Are the farmers and other interested groups are aware of the geographical indication protection law? NO

a) If yes can, explain by providing evidence

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b) If no, can you provide the reasons for this?

**Lack of awareness on IP matters in that sector at all levels and lack of resources for the implementation of the necessary sensitization initiatives by the office.**

6. What are challenges in implementing current legal framework for protection of Geographical Indications?

**Lack of institutional capacity in the area of GI protection and administration as well as the absence of implementing regulations for the Act itself, including the**

**Part**

**on**

**GIs.....**

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7. In your view what products can qualify for GI protection in Malawi?

At this stage, rice, fish and fish products, honest, tea, and coffee. There is also great potential in weaver, curios and pottery.

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b) Why do you say so?

This is a result of stakeholder consultations conducted during the GI Stakeholder’s meeting held in May 2019 (Minutes attached hereto) and consultations with the Director of Research in the Ministry of Agriculture at Chitedze.....

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8. Which are the regularly exported agricultural crops?

Ministry of Agriculture and Trade can provide this detail. However, I am aware of Tobacco, Tea and Coffee, as well as rice.....

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9. From your experience, is Kilombero rice fetching a good price on the market within and outside Malawi?

Kilombero rice is a demanded product both locally and internationally and has great potential.....

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10. What are gaps/challenges on promotion of market and commercial value of Kilombero rice from Karonga?

Lack of stakeholder (Farmers) organization and value addition.....

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11. What are the recommendations on promotion of market and commercial value for Kilombero rice?

A project addressing the above challenges and branding and packaging aspects of the value-chain, as well as access to external markets.....  
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12. What should be done in order to increase and create awareness of GIs as a means to protect agricultural products like Kilombero rice in Malawi to the public at large?

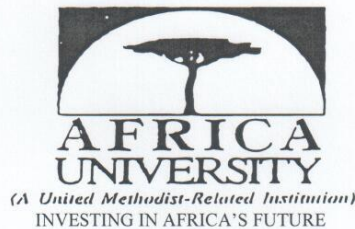
Awareness and sensitization of key stakeholders at all levels, as well as creation of a sui generis GI protection and administrative regime benchmarked against the EU one which was the first and is the largest.  
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**Thank you for your cooperation**

## Appendix 5: AUREC Approval Letter



### AFRICA UNIVERSITY RESEARCH ETHICS COMMITTEE (AUREC)

P.O. Box 1320 Mutare, Zimbabwe, Off Nyanga Road, Old Mutare-Tel (+263-20) 60075/60026/61611 Fax: (+263 20) 61785 website: www.africau.edu

Ref: AU1266/19

10 January, 2020

Hillary Chilomba  
C/O CBPLG  
Africa University  
Box 1320  
Mutare

**RE: PROSPECTS FOR THE ESTABLISHMENT OF KILOMBERO RICE IN KARANGA DISTRICT IN MALAWI AS GEOGRAPHICAL INDICATION**

Thank you for the above titled proposal that you submitted to the Africa University Research Ethics Committee for review. Please be advised that AUREC has reviewed and approved your application to conduct the above research.

The approval is based on the following.

- a) Research proposal
- b) Questionnaires
- c) Informed consent form

- **APPROVAL NUMBER** AUREC1266/19

This number should be used on all correspondences, consent forms, and appropriate documents.

- **AUREC MEETING DATE** NA
- **APPROVAL DATE** January 10, 2020
- **EXPIRATION DATE** January 10, 2021
- **TYPE OF MEETING** Expedited

After the expiration date this research may only continue upon renewal. For purposes of renewal, a progress report on a standard AUREC form should be submitted a month before expiration date.

- **SERIOUS ADVERSE EVENTS** All serious problems having to do with subject safety must be reported to AUREC within 3 working days on standard AUREC form.
- **MODIFICATIONS** Prior AUREC approval is required before implementing any changes in the proposal (including changes in the consent documents)
- **TERMINATION OF STUDY** Upon termination of the study a report has to be submitted to AUREC.

Yours Faithfully

MARY CHINZOU – A/AUREC ADMINISTRATOR  
FOR CHAIRPERSON, AFRICA UNIVERSITY RESEARCH ETHICS COMMITTEE





## APPENDIX 1

### RESEARCH QUESTIONNAIRE

**Designed to:** REGISTRAR GENERAL OFFICE / IP PRACTITIONER / OFFICERS  
FROM MINISTRY OF TRADE, INDUSTRY AND COMMERCE

Dear Respondent,

I, Hillary Chilomba, a student at Africa University, Zimbabwe pursuing Masters of Intellectual Property. The following survey is part of a research and data analysis for a research project course being done by the writer in partial fulfilment of the Masters in Intellectual Property programme with Africa University. The purpose of this questionnaire is to analyse and to make proposals on the establishment of Kilombero Rice in Karonga District as Geographical Indication. Please you are kindly asked to fill in this form which is one of the instruments used to collect information. I promise and undertake that the information collected will be used for research purposes only and will be held in strict confidence. .

**Fill in the appropriate response**

Indicate the office that you work for.....

Farmers Union of Malawi

# FARMERS WHO UNION OF MALAWI

1. A good number of farmers in Karonga have been growing Kilombero rice for a long time still their lives remain the same. In your experience what are the challenges facing these farmers?

- availability of seed, they use recycled seed which affect productivity
- accessing some inputs such as fertilizer
- accessing machinery as they use manual labour, result in low yield

2. Agriculture is the main source of income for the Government of Malawi in particular from cash crops. Does the Government appreciate this economic activity? ..... ☒ Yes

No

a) If yes what are the efforts taken by the government to protect rice farmers and make sure that income from this sector increases?

- research by govt on breeding, agronomy, extension services etc
- trainings on value addition such as packaging and rice milling

3. The Government has put in place the law to implement and protect geographical indication to protect the agriculture products in Malawi. What has your office so far done to implement this?

Nothing has been done as  
we do not know that law

4. Have you ever heard of Geographical Indication as means to protect agricultural products?

No I haven't heard it.

5. Are the farmers and other interested groups are aware of the geographical indication protection law?

a) If yes can, explain by providing evidence

No away from the law

b) If no, can you provide the reasons for this?

lack of awareness and involvement

6. What are challenges in implementing current legal framework for protection of Geographical Indications?

lack of awareness and involvement

7. In your view what products can qualify for GI protection in Malawi?

Kilimbero Rice  
Sugar  
Coffee / Coffee

a) Why do you say so?

they have specific areas where they are grown, suit the climate, soil and weather of that particular area.

8. Which are the regularly exported agricultural crops?

tobacco

tea

coffee

legumes

9. From your experience, is Kilombero rice fetching a good price on the market within and outside Malawi?

Within Malawi it does fetch a good price but outside it does not

10. What are gaps/challenges on promotion of market and commercial value of Kilombero rice from Karonga?

- lack of Infrastructure
- lack of market
- limited business contracts and unpredicted markets

11. What are the recommendations on promotion of market and commercial value for

Kilombero rice?

On production: improved seed, market  
infrastructure, good agriculture practices  
Extension services  
- storage systems  
- transport

12. What should be done in order to increase and create awareness of GIs as a means to

protect agricultural products like Kilombero rice in Malawi to the public at large?

First evaluate what we are missing/  
losing as a result for not  
protected as GI, if we are losing  
then what is it that we  
we get once protected.

Thank you for your cooperation



## Appendix 7: National Smallholder Association of Farmers

### APPENDIX 1

#### RESEARCH QUESTIONNAIRE

**Designed to:** REGISTRAR GENERAL OFFICE / IP PRACTITIONER / OFFICERS  
FROM MINISTRY OF TRADE, INDUSTRY AND COMMERCE

Dear Respondent,

I, Hillary Chilomba, a student at Africa University, Zimbabwe pursuing Masters of Intellectual Property. The following survey is part of a research and data analysis for a research project course being done by the writer in partial fulfilment of the Masters in Intellectual Property programme with Africa University. The purpose of this questionnaire is to analyse and to make proposals on the establishment of Kilombero Rice in Karonga District as Geographical Indication. Please you are kindly asked to fill in this form which is one of the instruments used to collect information. I promise and undertake that the information collected will be used for research purposes only and will be held in strict confidence. .

**Fill in the appropriate response**

Indicate the office that you work for..... NASFAM .....

1. A good number of farmers in Karonga have been growing Kilombero rice for a long time still their lives remain the same. In your experience what are the challenges facing these farmers?

- a) I partly don't agree with the statement. Most farmers have improved their livelihood in terms of sending children to schools, buying livestock, building better houses, etc.
- b) I agree. Most rice is bought by Tanzanian Intermediate Buyers who come in farming communities early and buy at very low prices.

2. Agriculture is the main source of income for the Government of Malawi in particular from cash crops. Does the Government appreciate this economic activity? ..... Yes

No

a) If yes what are the efforts taken by the government to protect rice farmers and make sure that income from this sector increases?

1. By promoting the SRI production approach that enhances higher yield
2. By breeding more relevant varieties in terms of adaptability, yield and aroma.
3. By promoting food diversification where rice is promoted to be among main staple foods.

3. The Government has put in place the law to implement and protect geographical indication to protect the agriculture products in Malawi. What has your office so far done to implement this?



NASFAM promotes only Kulombero Rice in Karonga  
for its rice farmers

It also promotes only Birds Eye Chilli for its  
Mulanje, Thyolo and Phalombe farmers

⇒ However NASFAM does not promote <sup>this in line with</sup> the Govt law of GI  
but as a normal program. This started late 1990s.

4. Have you ever heard of Geographical Indication as means to protect agricultural  
products?

Not really, but by the definition on your  
introduction, it looks close to One Village  
One Product of the Malawi Government.

5. Are the farmers and other interested groups are aware of the geographical indication  
protection law? Not sure.

a) If yes can, explain by providing evidence

b) If no, can you provide the reasons for this?

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6. What are challenges in implementing current legal framework for protection of Geographical Indications?

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7. In your view what products can qualify for GI protection in Malawi?

- > Kilombero Rice
- > Sesame
- > Birds Eye Chilli
- > Baka Groundnut
- > Kakoma Groundnut

a) Why do you say so?

- > The crops are area-specific e.g. Kakoma Groundnuts favour lakeshore areas of Central Region while Karonga has Baka Chilli
- > Birds Eye Chilli is best grown in Thyolo, Mulanje and Phalombe Districts.

8. Which are the regularly exported agricultural crops?

Tea	}	Chilli
Coffee		Soybean
Macadamia		Almond
Tobacco		Rice

9. From your experience, is Kilombero rice fetching a good price on the market within and outside Malawi?

Kilombero Rice fetches a good price outside Malawi than within

10. What are gaps/challenges on promotion of market and commercial value of Kilombero rice from Karonga?

- a) Admixtures - Intermediate Buyers buy Kilombero rice that is mixed with other varieties
- b) Being a low yielding variety, most farmers prefer other high yielding varieties
- c) Farmers get low prices because of late opening of ADMARC

11. What are the recommendations on promotion of market and commercial value for Kilombero rice?

- > Increase buying price for Kilombero-farm gate
- > Build capacity in both farmers and extension officers in Kilombero Rice Production
- > Strategies to protect farmer from exploitative IB's

12. What should be done in order to increase and create awareness of GIs as a means to protect agricultural products like Kilombero rice in Malawi to the public at large?

The responsible agencies to conduct sensitizations to relevant communities with plan of actions and proper resources

Thank you for your cooperation

