



Traditional Knowledge and the Nigerian Intellectual Property Framework: Towards a Sui Generis Protection Regime?

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Abstract

Traditional knowledge (TK) and traditional cultural expressions (TCEs) also referred to as indigenous cultural expressions (ICEs)', are invaluable assets for Nigeria's indigenous communities, underpinning cultural identity, biodiversity conservation, socioeconomic wealth and sustainable development. However, Nigeria's current intellectual property (IP) framework, rooted in Western legal traditions, inadequately protects these communal resources, leaving them vulnerable to misappropriation and bio-piracy. Adopting a doctrinal, comparative and qualitative legal research design, this study examines the limitations of Nigeria's existing IP laws in safeguarding TK and TCEs. The doctrinal method analyses Nigeria's IP statutes and case law; the comparative method draws on sui generis models from other jurisdictions; and qualitative analysis of secondary literature on indigenous community practices supplies indigenous perspectives on customary knowledge governance. The study finds that Nigeria's copyright, patent and trademark regimes cannot accommodate the collective, perpetual and orally-transmitted character of TK and TCEs, leaving communities without effective legal recourse against misappropriation. The study recommends legislative reform establishing a sui generis framework that recognises collective, community-based ownership of TK and TCEs; statutory benefit-sharing mechanisms; formal integration of customary law and community governance structures into the protection framework; and domestication of relevant international instruments, such as the Nagoya Protocol, to strengthen Nigeria's legal defences against bio-piracy. It concludes that effective preservation and equitable use of Nigeria's traditional knowledge heritage requires a dedicated sui generis regime grounded in community participation and ethical access, rather than continued reliance on conventional IP instruments.

Key Words: Traditional Knowledge, Traditional Cultural Expressions, Sui generis, Folklore, Intellectual property.

1. Introduction

Nigeria is a nation endowed with rich tapestry of cultures, customs, and traditional knowledge systems passed down through generations. From herbal medicinal practices among the Yorùbá, to intricate textile designs in the North, to unique folklore, performing arts and agricultural methods in the South-South, Nigeria's indigenous communities possess extraordinary wealth of knowledge and creative expressions. These cultural assets not only serve as repositories of identity and continuity

but also carry significant economic, medicinal, and environmental value. However, in the face of globalisation, digitisation, and growing commercial interest in indigenous resources, traditional knowledge (TK) and indigenous cultural expressions (ICEs) are increasingly vulnerable to misappropriation and exploitation, often without recognition or benefit to the originating communities.

The mainstream intellectual property (IP) framework in Nigeria, while modelled on Western legal traditions and international treaties, has proven inadequate in protecting the dynamic and communal nature of TK and ICEs. Existing statutes such as the Copyright Act 2022, the Patents and Designs Act, and the Trademarks Act are ill-equipped to recognise the communal ownership, oral transmission, and spiritual significance that underpin many traditional practices. The State-centric model of ownership is just as much a part of the problem, particularly in how folklore is treated under the Copyright Act, where it has often displaced traditional custodians and widened the gap between law and lived cultural reality.

This paper contends that the current Nigerian IP regime is ill-suited to adequately safeguard traditional knowledge and cultural expressions. It argues for the development of a *sui generis* system, an autonomous legal framework that reflects Nigeria's socio-cultural diversity, customary law systems, and the unique characteristics of TK. Such a system, while informed by international best practices and comparative African experiences, must be tailored to local realities and anchored in community participation.

Research Objective: This paper aims to critically examine the extent to which Nigeria's existing intellectual property framework protects traditional knowledge (TK) and traditional cultural expressions (TCEs), with a focus on identifying legal gaps and challenges that undermine the rights of indigenous communities. It seeks to analyse how current laws, which primarily recognise individual ownership, fail to accommodate the communal and intergenerational nature of TK, and to explore what a *sui generis* protection regime (an independent, tailor-made legal system) would need to look like in order to effectively safeguard Nigeria's rich and diverse traditional knowledge

heritage. By drawing on comparative international models and indigenous perspectives, the paper proposes a framework that integrates customary law, benefit-sharing mechanisms, and community participation to ensure equitable protection and sustainable use of TK. Ultimately, the objective is to contribute to policy discourse and legal reform efforts aimed at preserving Nigeria's cultural heritage and promoting inclusive innovation.

Significance: The preservation of traditional knowledge (TK) is vital to safeguarding Nigeria's rich cultural heritage. TK embodies the collective wisdom, practices, and beliefs that define the identity and continuity of indigenous communities. It is deeply embedded in rituals, languages, folklore, and social customs, serving as a living archive of cultural expressions passed down through generations. Protecting TK thus ensures the survival of these unique cultural identities and fosters social cohesion within Nigeria's diverse ethnic landscape.

Beyond cultural preservation, TK holds significant economic value, particularly for rural and indigenous communities that rely on traditional medicine, agriculture, and artisanal crafts for their livelihoods. The commercialisation of TK without adequate legal protection often leads to exploitation and bio-piracy, where external entities appropriate indigenous knowledge without fair compensation or recognition. Effective protection mechanisms promote economic equity by ensuring that communities retain control over their knowledge and receive equitable benefits from its use, thereby empowering indigenous practitioners and supporting sustainable development.¹

TK also plays a crucial role in biodiversity conservation and environmental sustainability. Indigenous communities possess intricate ecological knowledge that guides the sustainable use of natural resources, agricultural biodiversity, and medicinal plants. This knowledge contributes to the conservation of ecosystems and genetic diversity, which are essential for food security and resilience against climate change.² Preserving TK supports the maintenance of these bio-cultural

¹ Ogheneteme Annabel Ovwigho, "Protecting Indigenous Knowledge And Traditional Medicine Under Intellectual Property Law In Nigeria", <https://www.mondaq.com/nigeria/copyright/1603052/protecting-indigenous-knowledge-and-traditional-medicine-under-intellectual-property-law-in-nigeria> accessed 24th March, 2025.

² Omigie, Christopher Agbeniaru, Makinde, Theresa Osasu, and Adeniran, Ademola Victor, "Documentation of Nigerian Indigenous Knowledge System: The Role of the Library" (2022). Library Philosophy and Practice (e-journal).

systems, aligning with global environmental goals and Nigeria's commitment to sustainable development.³ Thus, protecting traditional knowledge is not only about promoting economic justice and conserving biodiversity but also about preserving cultural heritage. A legal framework that recognises and safeguards TK is essential to uphold the rights of indigenous communities, foster inclusive growth, and maintain Nigeria's ecological and cultural wealth for future generations.

2. Understanding Traditional Knowledge, Indigenous Cultural Expressions and Intellectual Property: A Conceptual Framework

The protection of traditional knowledge (TK) and indigenous cultural expressions (ICEs) occupies a contested and evolving space at the intersection of culture, law, and development. While intellectual property (IP) law aims to incentivise innovation and creativity through limited monopolies, its foundational assumptions such as individual authorship, fixation, and novelty, often conflict with the communal, inter-generational, and spiritual nature of traditional knowledge systems. A clear conceptual understanding is necessary to appreciate the limitations of the current IP framework and the need for a sui generis approach.

2.1 What is Traditional Knowledge (TK)?

Traditional Knowledge (TK) refers to the cumulative body of knowledge, know-how, innovations, practices, and skills developed, sustained, and passed down by indigenous and local communities over generations, often in close interaction with their environment and the community's cultural identity.⁴ It encompasses a wide range of domains including but not limited to agricultural practices and seeds, traditional medicine and healing systems, biodiversity management. It also includes

7506. <<https://digitalcommons.unl.edu/libphilprac/7506>>;
<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=14530&context=libphilprac> Accessed 10 June, 2025

³ Richard U. Oyiwona, & Zion Machem Lashom, "The Need for Protection of Traditional Knowledge under the Nigerian Intellectual Property Framework", *Journal of Customary and Religious Law*, Vol. 2(1). <
<https://journals.unizik.edu.ng/jocar/article/download/5406/4484/12287>> Accessed 14 June, 2025

⁴ Ann Marie Sullivan, "Cultural Heritage & New Media: A Future For The Past", *The John Marshall Review Of Intellectual Property Law* < <https://repository.law.uic.edu/cgi/viewcontent.cgi?article=1392&context=ripl>> accessed 5th June, 2025.

folklore, stories, music and dance, cultural rituals, religious knowledge, scriptural beliefs, craftsmanship, weaving, and textile patterns.

TK is typically unwritten, collectively held, and transmitted orally or through practice. Its value lies not only in utility but also in its embeddedness in identity, spirituality, and cultural continuity. TK is not static; but evolves dynamically through continuous adaptation and innovation within the community context.

2.2 Indigenous Cultural Expressions (ICE) and Folklore

Indigenous cultural expressions, sometimes referred to as Traditional Cultural Expressions (TCEs), or expressions of folklore, are manifestations of traditional culture that may include tangible and intangible cultural heritage such as music, dance, rituals, designs, symbols, architectural forms, language, dress and artistic works that embody the cultural and spiritual values of a community.⁵ Like TK, TCEs are collectively created and maintained, reflecting the community's worldview and social practices.⁶ These expressions, while creative and performative, are often seen as sacred or culturally significant, and thus not commodified in the way Western IP law might expect.

A defining characteristic of both TK and TCEs is their communal ownership and custodianship. Unlike conventional intellectual property (IP) rights that vest ownership in individuals or corporations, TK and TCEs are held collectively by communities as a form of collective cultural heritage.⁷ The knowledge and expressions are often regarded as sacred and inseparable from the community's identity, land, and customary laws. Custodianship implies that communities act as stewards rather than owners in the legal sense, responsible for regulating access, use, and transmission according to customary norms and spiritual beliefs.

⁵ WIPO, Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions, <<https://www.wipo.int/en/web/traditional-knowledge>> accessed 5th June, 2025.

⁶ International Institute for Environment and Development, 'Protecting Community Rights over Traditional Knowledge Implications of customary laws and practices' <<https://www.iied.org/sites/default/files/pdfs/migrate/14591IIED.pdf>> accessed 6th June, 2025

⁷ Cultural Intellectual Property Traditional Knowledge - a Cultural Intellectual Property <<https://www.culturalintellectualproperty.com/post/traditional-knowledge-a-cultural-intellectual-property>> accessed 4th June, 2025

The intergenerational transmission of TK and TCEs is central to their vitality. These knowledge and expressions are orally or practically passed down through family lines, apprenticeships, rituals, and communal activities, ensuring continuity and adaptation over time. This process involves collective decision-making and shared responsibility, which challenges the individualistic and time-limited nature of conventional IP protections.

2.3 Differentiating Traditional Knowledge (TK) from Conventional/Classical IP

There is a growing consensus, led by both Global South scholars and indigenous communities, that conventional IP regimes are inherently unsuited to protecting TK and ICEs. The reasons come back to the same handful of structural mismatches each time.

1. Ownership sits with a community or ethnic group rather than an identifiable individual inventor or creator, which conventional IP has no real vocabulary for.
2. Duration is open-ended as TK often has no clear date of origin and may persist across generations in a way that makes a fixed-term monopoly beside the point.
3. Much of it never had a commercial motive in the first place as plenty of traditional practices evolved for cultural or spiritual reasons rather than economic exploitation; so treating them as commercial assets from the outset misreads what they are.
4. Furthermore, a great deal of TK is transmitted orally rather than fixed in the tangible, documented form that copyright and patent law both assume as a threshold requirement. Put together, these four mismatches are not minor technical gaps that a small statutory amendment could patch; they go to the basic assumptions conventional IP is built on.

TK and TCEs are holistic, evolving, and communally held resources, embedded within the social, cultural, spiritual, and ecological fabric of indigenous communities. Their protection requires recognition of their unique characteristics: collective custodianship, sacredness, and intergenerational transmission that differ fundamentally from Western IP paradigms.

2.4 Traditional knowledge (TK) in Global Context: Overview of International Efforts and Evolving Standards

Internationally, the protection of traditional knowledge (TK) has become a prominent issue, with various forums and legal instruments seeking to address the unique needs of indigenous and local communities. The World Intellectual Property Organization (WIPO) established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) in 2001, which has since developed draft instruments on the protection of TK and traditional cultural expressions. The IGC is conducting ongoing negotiations aimed at finalising an international legal instrument (binding or non-binding), for the effective protection of TK, traditional cultural expressions (TCEs), and genetic resources, addressing both defensive and positive protection mechanisms.⁸ These negotiations are inclusive, with active participation from indigenous and local community representatives, ensuring their perspectives shape the emerging framework.⁹

Under the Convention on Biological Diversity (CBD), the Nagoya Protocol on Access and Benefit-Sharing ensures access to genetic resources and associated TK is based on prior informed consent and equitable benefit-sharing. In addition, the UN Declaration on the Rights of Indigenous Peoples emphasises the rights of indigenous peoples to maintain, control, and protect their TK and cultural heritage. In like manner, the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage emphasises the importance of respecting and protecting indigenous knowledge systems. Although these frameworks are not binding IP instruments, they signal a normative shift toward recognition of TK as worthy of legal protection.¹⁰

⁸ WIPO, “Traditional Knowledge and Intellectual Property <<https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-1-en-traditional-knowledge-and-intellectual-property.pdf>> accessed 15 June, 2025.

⁹ WIPO, “Intergovernmental Committee (IGC)”, <<https://www.wipo.int/en/web/igc>> accessed 15 June, 2025.

¹⁰ Meenal Sharma, “Role of International Forums in Protection of Traditional Knowledge”, <<https://blog.ipleaders.in/role-international-forums-protection-traditional-knowledge/>> accessed 15 June, 2025.

The African Regional Intellectual Property Organization (ARIPO)'s 2010 Swakopmund Protocol, offers one of the most progressive regional efforts, aiming to protect TK and folklore through a sui generis model rooted in African realities. Nigeria, although a member of ARIPO, is not yet a party to the Protocol and has yet to domesticate its principles.

Despite these efforts, challenges persist due to the diversity of TK systems and the need for solutions that respect community autonomy, cultural diversity, and customary laws. Much of this comes down to implementation, which depends on national legal adaptation that remains lacking across most African countries, all of which face broadly the same difficulty integrating TK into their national IP regimes. Colonial legal systems, a disconnect between formal law and customary norms, and weak enforcement mechanisms contribute to the marginalisation of indigenous knowledge.

3. The Nigerian IP Framework and Its Shortcomings as it applies to TK and ICE

Nigeria's intellectual property (IP) regime is largely modelled after Western legal traditions and international treaties, with statutes focusing primarily on individual creativity, fixation, and novelty. This creates a normative and structural misfit when applied to traditional knowledge (TK) and indigenous cultural expressions (ICEs), which are often communal, orally transmitted, and culturally sacred. The current legal framework offers fragmented and insufficient protection for TK and ICEs, failing to reflect the lived realities and rights of Nigeria's diverse indigenous communities.

3.1 Critique of the Existing Laws

3.1.1 The Copyright Act 2022 and the Limitations of Folklore Protection

The recently enacted Nigerian Copyright Act 2022¹¹ represents a significant overhaul of Nigeria's copyright regime. Section 2(d) of the Act provides some recognition for traditional cultural expressions (TCEs), by recognising folklore as a protected category under copyright and defining "folklore" as group-oriented, tradition-based creations of groups or individuals reflecting the

¹¹ Copyright Act 2022, Federal Republic of Nigeria. <<https://copyright.gov.ng/>> accessed 15 May, 2025.

expectations of a community... passed from one generation to another.” (e.g., folk songs, dances, art).¹²

Protection is granted against reproduction, public performance, broadcasting, and adaptation for commercial purposes or outside customary contexts. However, the Act vests ownership of folklore in the Federal Government of Nigeria, rather than the originating indigenous communities, and centralises control in the Nigerian Copyright Commission (NCC).¹³

This approach poses several major issues:

- **Displacement of traditional custodians:** Assigning ownership to the state, rather than to the originating community, marginalises indigenous communities as stakeholders and rights-holders in knowledge that is, by any reasonable account, theirs.
- **Lack of communal agency and benefit-sharing mechanisms:** The Act does not ensure communities are involved in decision-making or receive any benefit from commercialising their own folklore as there are no clear benefit-sharing provisions at all. This puts Nigeria out of step with international norms on access and equitable benefit-sharing such as those under the Nagoya Protocol.¹⁴

The Act’s narrow scope: The Act covers literary, musical and artistic expressions but says nothing about the knowledge systems, rituals, agricultural techniques or medicinal practices that make up the core of TK, and even within the material it does cover, it does not seriously grapple with the communal, intergenerational character of that knowledge. Finally, the fair dealing, education and incidental-use exceptions the Act allows are reasonable in principle but, without careful enforcement, are just as capable of diluting the protection the Act claims to offer.¹⁵

¹² WIPO, “Traditional Knowledge Laws: Nigeria”, (Copyright Act - Chapter C28) <https://www.wipo.int/en/web/traditional-knowledge/w/tklaws/article_0060 >, accessed 18 May, 2025.

¹³ Copyright Act, *ibid.*, s. 20(4).

¹⁴ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation, 2010.

¹⁵ WIPO, “Traditional Knowledge Laws: Nigeria”, *ibid.*

3.1.2 Patents and Designs Act Cap. P2 LFN 2004: Incompatibility with community-owned knowledge.

Nigeria's Patents and Designs Act Cap. P2 LFN 2004 focuses on inventions that are new, results from inventive activities, and are capable of industrial application, criteria that often exclude TK, which is typically collectively owned, developed and transmitted over generations.

The Act does not provide for defensive protection of TK (i.e., measures to prevent third parties from patenting community knowledge), nor does it recognise communal inventorship or facilitate benefit-sharing with TK holders. As a result, pharmaceutical companies and researchers can potentially patent products derived from Nigerian TK without acknowledgment or compensation to the source communities. TK therefore fails to satisfy the formal patent requirements.

Additionally, the Act makes no provision for disclosure of origin of biological resources or associated traditional knowledge; prior informed consent of indigenous knowledge holders; or benefit-sharing mechanisms for the use of community knowledge in pharmaceutical or biotechnological research.

These omissions not only hinder protection under patent law but also expose Nigerian communities to bio-piracy, where local knowledge is exploited by foreign firms without compensation, e.g., the case of *Zobo* (*Hibiscus Sabdariffa*) and its documented use for hypertension treatment.¹⁶

3.1.3 Trademarks Act and the Challenge of Cultural Symbols

The Trademarks Act¹⁷ permits the registration of distinctive marks, including words, devices, and logos. It primarily protects individual or corporate marks and does not explicitly recognise or provide sui generis rights protection for culturally significant signs, motifs, or designs that are communally used by ethnic groups (TKs or TCEs).¹⁸

¹⁶ Egharevba, H.O. et al. (2015). "*Antihypertensive Effect of Zobo Drink: A Review of Scientific Evidence*", Nigerian Journal of Natural Products and Medicine, 19(1), pp. 87-93.

¹⁷ Trademarks Act, Cap T13, Laws of the Federation of Nigeria 2004.

¹⁸ Olaniwun Ajayi, "Trademarks And Cultural Appropriation: What Is Really Unprotectable?", <https://www.olaniwunajayi.net/blog/wp-content/uploads/2021/11/TRADEMARKS-AND-CULTURAL-APPROPRIATION-WHAT-IS-REALY-UNPROTECTABLE_.pdf> accessed 6 June, 2025.

While passing off actions may offer some indirect protection if a community's reputation is misused, there is no statutory provision for registering or enforcing community-owned marks or symbols derived from TK.¹⁹ For example, the *Nsibidi* script used by the *Ekpe* society in Southeastern Nigeria, an indigenous writing system that predates colonialism, remains unprotected from commercial appropriation or dilution. Under current law, anyone could potentially register *Nsibidi* symbols as private trademarks, effectively dispossessing the originating community of cultural patrimony.

Nigerian law does have collective marks and certification marks that could, in principle, do some of this work, but they are underused and poorly publicised among the rural communities who might actually benefit from them, most of whom have little reason to know these mechanisms exist at all. The Act also lacks mechanisms to prevent cultural appropriation or unauthorised commercial exploitation of traditional symbols and names by outsiders.²⁰ There is also the issue of the absence of mechanisms for benefit-sharing, prior informed consent, or community ownership.²¹

3.2 Institutional Gaps and the Absence of a Unified Framework

Beyond statutory limitations, Nigeria suffers from institutional fragmentation which we will discuss below:

3.2.1 Lack of Recognition for TK as a Primary Cultural and Economic Right

Nigerian IP laws are rooted in Western concepts of individual ownership, failing to recognise TK as a collective, cultural, and economic right of indigenous communities.²² There is thus, no explicit

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Richard U. Oyiwona and Zion Machem Lashom, "The Need for Protection of Traditional Knowledge under the Nigerian Intellectual Property Framework", *Journal of Customary and Religious Law*, Vol. 2(1), February 2025. P. 16-22

<file:///C:/Users/ANNE/Downloads/The+Need+for+Protection+of+Traditional+Knowledge+under+the+Nigerian+Intellectual++Property+Framework%20(2).pdf> accessed 5 June, 2025.

legal provision that positions TK as a protected right in itself, separate from conventional IP subject matter.²³

3.2.2 Lack of a specialised Agency to regulate TK/ICE

There is no specialised agency or desk within the IP enforcement architecture tasked with the protection of traditional knowledge. Coordination between relevant bodies such as the Nigerian Copyright Commission (NCC), the National Office for Technology Acquisition and Promotion (NOTAP), and the National Institute for Cultural Orientation (NICO) is minimal or non-existent.

3.2.3 Inadequate Mechanisms to Prevent Bio-Piracy or Ensure Benefit-Sharing

The absence of a clear legal framework for access and benefit-sharing leaves TK holders vulnerable to bio-piracy (the unauthorised commercial exploitation of biological resources and associated knowledge).²⁴ Existing laws do not require prior informed consent from communities or mandate equitable sharing of benefits arising from the commercial use of TK.²⁵ Thus, though the 2022 Copyright Act restricts commercial use of folklore, it does not guarantee that proceeds or benefits flow back to the originating communities.²⁶

3.2.4 Absence of Documentation Systems for TK Preservation

Much of Nigeria's TK is transmitted orally, making it difficult to document, protect, or prove ownership in legal disputes.²⁷ While agencies like the Nigerian Natural Medicine Development Agency (NNMDA) have begun digital documentation of medicinal plants, there is no comprehensive, coordinated national registry for TK across all domains.²⁸ The lack of systematic

²³ *ibid*

²⁴ *Ibid.*

²⁵ *ibid*

²⁶ *Ibid.*

²⁷ Richard U. Oyiwona and Zion Machem Lashom, "The Need for Protection of Traditional Knowledge under the Nigerian Intellectual Property Framework" *ibid.*

²⁸ *Ibid.*

documentation increases the risk of loss, misappropriation, and challenges in asserting rights over TK.

3.2.5 Non-Ratification of relevant Instruments

Nigeria has not ratified or domesticated relevant international instruments such as:

1. The WIPO Intergovernmental Committee's Draft Articles on TK and Folklore;
2. The Nagoya Protocol (though Nigeria is a party to the Convention on Biological Diversity);
or
3. ARIPO's Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore.

Without a unified, community-focused framework, indigenous peoples in Nigeria remain legally exposed and underrepresented in matters concerning the protection, use, and commercialisation of their knowledge.

3.3 Case Studies: Examples of TK Misappropriation and of What Nigeria Has Done Right

Generic references to pharmaceutical patenting of “medicinal plants used by local healers” are common in the literature on TK misappropriation, but they rarely name the patent, the plant, or the community involved. Two concrete, documented Nigerian examples make the point more usefully, and, taken together, illustrate both the problem and a workable Nigerian response to it.

Vernonia amygdalina (“bitter leaf,” known as *ewuro* among the Yoruba and *onugbu* among the Igbo) is one of the most widely used medicinal plants in Nigeria, employed across multiple ethnic groups to treat malaria, hypertension, diabetes and a range of other conditions, with its therapeutic properties extensively documented in Nigerian ethnobotanical literature.²⁹ In 2004, US Patent 6,713,098 was granted to Professor Ernest Izevbigie of Jackson State University for phytochemotherapeutic compositions derived from aqueous extracts of *V. amygdalina* leaves,

²⁹ Ehimwenma S Omoregie and others, ‘In vitro and in vivo antiplasmodial activity and cytotoxicity of extracts from *Vernonia amygdalina* Del. Leaves’ (2010) 9(Suppl 2) *Malaria Journal* P30 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2963271/> accessed 14 July 2026; Obi Peter Adigwe, Godspower Onavbavba and Ofure Omoarelojie, ‘Awareness, knowledge and belief regarding bitter leaf use: A cross-sectional study in Nigeria’ (2025) *PLOS ONE* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC12132952/> accessed 14 July 2026.

shown to inhibit the growth of cancer cells including human breast cancer cells.³⁰ Whatever the scientific merit of the underlying research, the patent illustrates the structural problem this paper has been describing throughout: a plant whose medicinal applications were already known and practised within Nigerian communities became the basis of a US patent, with no mechanism under Nigerian law requiring disclosure of the traditional knowledge origin, no prior informed consent from the communities whose knowledge informed the research, and no benefit-sharing arrangement returning any value to Nigeria. This is precisely the gap that a defensive documentation mechanism, is designed to close, not by preventing legitimate pharmaceutical research, but by ensuring that traditional origin is disclosed and communities are brought into the resulting value chain rather than being erased from it.

Nigeria does, however, have a genuine domestic precedent for doing this differently. The Bioresources Development and Conservation Programme (BDCP), a non-governmental organisation founded by Dr Maurice Iwu in 1992, was established specifically to document Nigerian traditional medicinal knowledge while protecting the interests of the traditional health practitioners who hold it. BDCP brokered a formal benefit-sharing agreement between Nigerian traditional health practitioners, Nigerian scientists, and Shaman Pharmaceuticals Inc., a US drug manufacturer, under which the American company's bio-prospecting was tied to compensation flowing back to the Nigerian practitioners and researchers involved. This is a working example, documented by WIPO itself, of exactly the prior-consent-plus-benefit-sharing model this paper argues should be made a matter of statutory obligation rather than one-off institutional goodwill.³¹

The lesson of reading the *V. amygdalina* patent and the BDCP-Shaman agreement together is not that Nigeria lacks the capacity to negotiate these arrangements (BDCP proves it does not), but that

³⁰ US Patent 6,713,098 (Ernest Izevbigie, Jackson State University, filed 2001, granted 2004); see also Medicinal Herb Info, 'Bitter Leaf' <https://medicinalherbinfo.org/000Herbs2016/1herbs/bitter-leaf/> accessed 14 July 2026, citing Izevbigie EB, 'Discovery of water- extractable anti-cancer compounds from *Vernonia amygdalina*' (2003) 228(3) Experimental Biology and Medicine 293.

³¹ World Intellectual Property Organization, 'Traditional Medicine as a Tonic for Development' <https://www.wipo.int/ipadvantage/en/details.jsp?id=3229> accessed 14 July 2026.

Nigeria has never converted that capacity into an enforceable legal default. A sui generis statute would not need to invent this practice from nothing; it would need to take what BDCP achieved through one institution's initiative and make it the ordinary, legally required outcome of any commercial use of Nigerian TK.

Beyond traditional medicine, the *Nsibidi* script used by the Ekpe society in southeastern Nigeria (discussed in section 3.1.3 above) and the continued use of Nigerian folk music and textile patterns in international commercial contexts without attribution follow the same underlying pattern: cultural material that is well documented as originating within a specific Nigerian community, but that current law gives that community no statutory standing to control, license, or draw benefit from.³²

Traditional agricultural practices and crop varieties developed by Nigerian communities have also been used in research and commercialized elsewhere, often without consent or benefit-sharing agreements.³³ These examples highlight the vulnerability of Nigerian TK to exploitation under the current IP framework and underscore the need for a sui generis (unique) legal regime that recognizes communal rights, ensures benefit-sharing, and preserves Nigeria's rich traditional knowledge for future generations, by mandating documentation and community participation.

Nigeria's current IP framework offers only limited, fragmented protection for traditional knowledge. The prioritisation of individual rights, absence of robust anti-bio-piracy measures, lack of benefit-sharing mechanisms, and insufficient documentation systems leave indigenous communities and their knowledge vulnerable to misappropriation and exploitation. There is an

³² C. K. Uwadineke and C. K. Ezeama, "Protecting Traditional Knowledge/Secrets under Intellectual Property Law: A Comparative Analysis of the Adequacy of Protections Using Nigeria as a Case Study" NAU.JCPL Vol. 6(1) 2019, accessed 13 June 2025.

³³ Richard U. Oyiwona and Zion Macheem Lashom, "The Need for Protection of Traditional Knowledge under the Nigerian Intellectual Property Framework" *ibid.*

urgent need for a sui generis regime that centres communal rights, ensures equitable benefit-sharing, and preserves Nigeria’s rich traditional knowledge for future generations.³⁴

Summary Table: Key Gaps in the Nigerian IP Framework for TK

Law/Policy	Current Provision	Gap Identified
Copyright Act	Protects folklore; rights vested in NCC	No direct community rights or benefit-sharing
Trademarks Act	Protects individual/corporate marks	No provision for communal marks or TK-based symbols
Patent Act	Protects individual inventions	Excludes TK; no defensive protection or benefit-sharing
Documentation	Some agency efforts (e.g., NNMDA)	No comprehensive national TK registry

4. The Case for a Sui Generis Regime in Nigeria

A sui generis system is a unique, specialised legal framework designed to address the limitations of conventional intellectual property (IP) regimes in protecting TK and TCEs. The term “sui generis”, means “of its own kind,” reflecting the need for a system that recognises the collective, intergenerational, and context-specific nature of TK and TCEs.³⁵

The limitations of Nigeria’s current intellectual property (IP) framework in protecting traditional knowledge (TK) and indigenous cultural expressions (ICEs) are not merely technical, they reflect a deeper disconnect between formal law and the lived realities of indigenous communities. To bridge this gap, Nigeria must consider adopting a sui generis legal regime tailored to the unique characteristics of TK and aligned with the plural legal traditions of the country. A sui generis

³⁴ Mondaq, “Protecting Indigenous Knowledge And Traditional Medicine Under Intellectual Property Law In Nigeria”, <https://www.mondaq.com/nigeria/copyright/1603052/protecting-indigenous-knowledge-and-traditional-medicine-under-intellectual-property-law-in-nigeria> accessed 15 June, 2025.

³⁵ IIED, Kechua-Aymara Association for Nature and Sustainable Development (ANDES, Peru), Fundacion Dobbo Yala (Panama), University of Panama, Ecoserve (India), Centre for Indigenous Farming Systems (India), Herbal and Folklore Research Centre (India), Centre for Chinese Agricultural Policy (CCAP, China), Southern Environmental and Agricultural Policy Research Institute (ICIPE, Kenya), Kenya Forestry Research Institute. “Sui Generis Systems for the Protection of Traditional Knowledge”, <<https://www.iied.org/sites/default/files/pdfs/migrate/G02378.pdf>> accessed 16 June, 2025.

regime, by definition, would not simply retrofit existing IP laws, but create a bespoke structure grounded in cultural integrity, community participation, and equitable benefit-sharing.

4.1 Why Conventional IP Fails

Traditional knowledge does not sit comfortably inside any of the three main branches of Nigerian IP law. As previously established, traditional knowledge is collectively owned rather than individually authored; evolves incrementally over generations rather than arising from a single identifiable act of creation; is often orally transmitted and may have sacred or spiritual character that was never meant for commercial exploitation in the first place. Conventional IP rights such as copyright, patents, and trademarks on the other hand, operate on principles of individual authorship, originality, and market-oriented exploitation. This makes them structurally incompatible with the communal, spiritual, and timeless nature of TK. This has led scholars like Dutfield³⁶ to argue that fitting TK into existing IP boxes results in either under protection or misappropriation, rather than a genuine fit.

4.2 Core Elements of a Nigerian Sui Generis Framework for Traditional Knowledge Protection

This paper proposes that a context-sensitive Nigerian regime be built around two pillars: a set of legislative priorities that establish the substantive rights, and an institutional framework capable of enforcing them.

Legislative priorities (Recognition of Communal Rights and Custodianship): The starting point must be a statutory amendment recognising that TK belongs to communities, not to individuals or to the state, with custodianship structures built around existing traditional governance (village heads, clan councils, or custodial family lines) rather than around the individual-rights model that

³⁶ Dutfield, G. (2006). *Protecting Traditional Knowledge: Pathways to the Future*. International Centre for Trade and Sustainable Development (ICTSD).

Nigerian IP law currently defaults to.³⁷ This shift would acknowledge TK as a vital cultural, human, and economic right, ensuring that indigenous communities are the primary custodians and beneficiaries of their knowledge.³⁸

That recognition should carry through into two further commitments: communities must have the legal agency to decide how their own knowledge is used, shared, or commercialised, addressing directly the limitation identified throughout section 3 above.³⁹ This approach aligns with the communal nature of TK and addresses the limitations of conventional IP systems; and protection should run perpetually rather than on a fixed IP term such as copyright's seventy years post-mortem auctoris, since TK by its nature does not have a date after which a community's claim to it should lapse.

Alongside communal recognition, the regime needs its own offences and remedies rather than relying on the general law. Unauthorised commercialisation or misappropriation of TK, including unauthorised extraction, patenting, or sale of biological resources and associated knowledge without community consent, should be a defined criminal offence, with remedies extending beyond damages to injunctions, apologies, compensation, and community-prescribed sanctions where appropriate.⁴⁰ None of this is workable without enforcement, so courts need express authority to issue protective orders and impose sanctions on violators, which in practice means specialised judicial capacity rather than treating TK disputes as ordinary civil claims.⁴¹

³⁷ Mondaq, "Protecting Indigenous Knowledge And Traditional Medicine Under Intellectual Property Law In Nigeria", <<https://www.mondaq.com/nigeria/copyright/1603052/protecting-indigenous-knowledge-and-traditional-medicine-under-intellectual-property-law-in-nigeria>> accessed 13 June, 2025

³⁸ Richard U. Oyiwona & Zion Machem Lashom, "The Need for Protection of Traditional Knowledge under the Nigerian Intellectual Property Framework", *Journal of Customary and Religious Law*, Vol. 2(1), February 2025.

³⁹ *ibid.*

⁴⁰ C. K. Uwadineke & C. K. Ezeama, "Protecting Traditional Knowledge/Secrets under Intellectual Property Law: A Comparative Analysis of the Adequacy of protections using Nigeria as a case study" *NAU.JCPL* Vol. 6(1) 2019"

⁴¹ Mondaq, "Protecting Indigenous Knowledge And Traditional Medicine Under Intellectual Property Law In Nigeria", *ibid.*

Finally, no third party should be permitted to access or commercialise TK without the free, prior and informed consent (FPIC) of the originating community, and legislation should mandate that any commercial use carry an equitable benefit-sharing arrangement, whether through royalties, monetary compensation, infrastructure development, or other reciprocal benefits the community itself identifies.⁴² These agreements should be required to be transparent and developed in direct consultation with TK holders, tailored to each community's specific needs rather than following a single national template;⁴³ a genuine one-size-fits-all benefit-sharing formula would simply replicate the same top-down failure as the Copyright Act's treatment of folklore.⁴⁴

Institutional framework. Legislative rights of this kind are only as strong as the body that administers them. This paper proposes a dedicated **National Traditional Knowledge Commission**, coordinating with government agencies, local authorities and customary leaders, to oversee documentation, registration and enforcement.

The Commission would maintain a comprehensive national registry of TK, particularly in areas such as traditional medicine, agriculture, and folklore. Proper documentation is essential for asserting rights, preventing misappropriation, and supporting legal claims. Documentation and registration should be optional rather than compulsory; communities should be able to choose whether to document their knowledge through community protocols or digital repositories, in culturally appropriate formats such as oral histories, local naming conventions, and pictorial representations with protections against unauthorised use. For example, the Traditional Knowledge Digital Library (TKDL) in India provides a working model where indigenous medical knowledge

⁴² Kasim Musa Waziri, Ph.D & Awomolo Omotayo Folasad, "Protection of Traditional Knowledge in Nigeria: Breaking the Barriers", *Journal of Law, Policy and Globalisation* www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.29, 2014 < <https://iiste.org/Journals/index.php/JLPG/article/viewFile/15937/16406> > accessed 12 June, 2025.

⁴³ O. F. Kunle, "Modes of Compensation in Exchange for Indigenous Knowledge: A Case Study of the Federal Capital Territory, Abuja, Nigeria", *Ethnobotanical Leaflets* 13: 1140-47. 2009
<<https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1625&context=ebf> accessed 12 June, 2025.

⁴⁴ *ibid*

was translated into multiple languages and catalogued to prevent bio-piracy by foreign patent offices.⁴⁵

The Commission should have the authority to refer cases to courts, which can issue protective orders to protect TK and adjudicate disputes involving infringement or misappropriation.⁴⁶

Ethical clearance system. A second, narrower institutional need is an ethical clearance system, requiring bio-prospectors and researchers to obtain prior informed consent before accessing or using TK, supervised by an existing regulatory body such as the National Institute for Pharmaceutical Research and Development (NIPRD) rather than a wholly new agency, with built-in mechanisms for monitoring compliance and enforcing penalties. The Institute would ensure that all activities are lawful, ethical, and in line with community expectations. The system should include mechanisms for monitoring compliance, addressing grievances, and enforcing penalties for violations, thereby upholding community rights and promoting trust in research collaborations.

Finally, the framework must **give customary law real legal force** rather than treating it as a cultural footnote to statutory law: traditional dispute-resolution mechanisms, including sanctions such as banishment or ritual restitution, should be formally recognised,⁴⁷ communities should be empowered to regulate access and use of their own knowledge according to their own governance structures,⁴⁸ and the framework should be designed with enough flexibility to accommodate the real diversity of customary law across Nigeria's different ethnic nations rather than imposing a single customary template nationally.⁴⁹ Policies must respect the diversity of Nigeria's customary laws,

⁴⁵ Raghavan, R. (2017). "The Traditional Knowledge Digital Library: An Indian Innovation to Prevent Biopiracy", WIPO Magazine.

⁴⁶ Raghavan, R. (2017). "The Traditional Knowledge Digital Library: An Indian Innovation to Prevent Biopiracy", WIPO Magazine.

⁴⁷ Mondaq, "Protecting Indigenous Knowledge And Traditional Medicine Under Intellectual Property Law In Nigeria", *ibid.*

⁴⁸ *Ibid.*

⁴⁹ Paul Kuruk, "Chapter 13: The customary law option in: Traditional Knowledge, Genetic Resources, Customary Law and Intellectual Property: A Global Primer. https://www.elgaronline.com/display/9781785368479/21_chapter13.xhtml accessed 15 June, 2025.

providing tailored protections that reflect the unique cultural and social contexts of different communities.

4.3 Comparative International Models

Several African and global jurisdictions offer instructive examples:

4.3.1 Pacific Model Law (2002)

The Pacific Regional Framework's Model Law for the Protection of Traditional Knowledge and Expressions of Culture 2002 grants traditional owners exclusive rights over non-customary uses of TK and TCEs regardless of commercial intent, extending even to derivative works such as adaptations of traditional music, where intellectual property in the derivative work vests in its creator subject to benefit-sharing with the originating community.⁵⁰ Protection is not time-bound, reflecting the intergenerational character of TK,⁵¹ and the model recognises moral rights of attribution, protection against false attribution, and prohibition of derogatory treatment of cultural expressions.⁵²

Prior informed consent can be obtained either through direct negotiation with the community or through a Cultural Authority that mediates between users and communities, maintains records of agreements, and advises on terms; either route must result in an equitable benefit-sharing arrangement, with penalties attaching to non-compliance.⁵³ The model is instructive for Nigeria because it shows that communal custodianship and continued commercial or creative use are not mutually exclusive, provided consent and benefit-sharing are built into the law rather than left to goodwill.

⁵⁰ WIPO, "Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture", <https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_4/wipo_grtkf_ic_4_inf_2-annex2.pdf> accessed 16 June, 2025.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

4.3.2 Peru's Law No. 27811 (2002): The Protection of Collective Knowledge of Indigenous Peoples

Peru's Law No. 27811, passed in 2002, is widely recognised as one of the earliest and most robust sui generis systems for protecting collective traditional knowledge. It was enacted in response to increasing cases of bio-piracy involving Peru's vast biodiversity and indigenous medicinal knowledge, such as the use of Maca root, Ayahuasca, and Quinoa.

Peru's law applies to traditional knowledge associated with biological resources, defined broadly enough to cover plants, animals and micro-organisms known and used by indigenous communities, spanning medicinal plant knowledge, traditional agricultural methods, ritual uses of plants and biodiversity-related innovations more generally.

The law established a National Public Register of Traditional Knowledge that is voluntary rather than mandatory, with public and confidential components, so that communities can withhold sacred or sensitive knowledge from disclosure.

Any third party seeking to access or use traditional knowledge, registered or not, must first obtain the free, prior and informed consent of the relevant community, and any resulting contract must include a **benefit-sharing clause**; the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) acts as a watchdog to ensure fair practices and enforcement.

Notably, the law acknowledges collective ownership and is based on the cultural integrity of indigenous peoples. It deliberately avoids IP-centric terms such as "invention" or "author," which helps it sit more comfortably alongside customary and collective conceptions of ownership.

The Peruvian model is widely cited by WIPO and under the Convention on Biological Diversity as best practice for biodiversity-rich developing countries, and it has given indigenous communities real negotiating leverage in research and development contracts, including agreements with pharmaceutical firms exploring rainforest herbs. Peru has also established a dedicated Commission against Bio-piracy that monitors international patent filings for misappropriation of Peruvian TK. For Nigeria, with its own comparably vast ethnic and biodiversity base, the clearest lesson is

structural: a voluntary, tiered registry paired with a single enforcement body modelled on INDECOPI would let Nigeria protect sacred or sensitive knowledge while still giving communities a functioning route to benefit-sharing contracts, and unlike the Peruvian law, a Nigerian version could be drafted broadly enough to reach non-biodiversity knowledge such as weaving, sculpture and architecture.

4.3.3 ARIPO's Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (2010)

The Swakopmund Protocol, adopted on 9 August 2010 under the African Regional Intellectual Property Organization (ARIPO) and signed by several African states including Zimbabwe, Zambia and Namibia, represents one of the most comprehensive African instruments aimed specifically at TK and TCEs. It combines positive protection, through a registration system administered by national competent authorities, with defensive protection that prevents outsiders from acquiring IP rights over already-known traditional knowledge, such as a patent on a herbal remedy already documented as indigenous. TK is defined expansively to cover any knowledge originating from a local or traditional community that results from intellectual activity in a traditional context, spanning agriculture, medicine, biodiversity and spiritual belief. Communities, not the state, are recognised as the primary custodians and owners, use by outsiders requires free, prior and informed consent together with a binding access and benefit-sharing agreement.

The Protocol mandates that national legal systems respect and incorporate customary law, including traditional dispute resolution systems, thus bridging statutory law and indigenous norms.

Nigeria is a member state of ARIPO but has not ratified the Swakopmund Protocol, which is a genuine missed opportunity: ratification would align Nigerian law with continent-wide TK recognition efforts, open access to regional cooperation against bio-piracy, and bring technical support for documentation and registration infrastructure that Nigeria currently lacks on its own.

4.3.4 India's Traditional Knowledge Digital Library (TKDL)

India's TKDL takes a different, purely method: rather than creating new substantive rights, it addresses bio-piracy through proactive documentation and defensive protection approach. It documents traditional knowledge so thoroughly that patent examiners can no longer treat it as novel.

The library holds an estimated 4.2 million traditional medicinal formulations across five languages, made accessible to patent offices worldwide, and by converting undocumented oral knowledge into citable "prior art," it has contributed to the invalidation of over 324 patent claims internationally, most famously the revocation of a US patent on the wound-healing properties of turmeric. Access agreements with patent offices restrict the underlying data to examiners only, which prevents the database itself from becoming a new vector for misappropriation while still letting it do its defensive work. The model demonstrates that even without a dedicated substantive law, documentation infrastructure alone can materially reduce patent exploitation and strengthen a country's negotiating position in benefit-sharing talks, a comparatively low-cost intervention Nigeria could pursue immediately, independent of, and in parallel with, more substantial legislative reform.

4.3.5 South Africa's Protection of Indigenous Knowledge Act (No. 6 of 2019)

The Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019 offers a comprehensive system recognising TK holders, establishing a National Indigenous Knowledge Systems Office (NIKSO), and providing for community benefit-sharing mechanisms.⁵⁴ It represents a comprehensive sui generis legal framework aimed at safeguarding indigenous knowledge (IK) and traditional cultural expressions (TCEs). The Act addresses key issues such as bio-piracy, misappropriation, benefit-sharing, and the recognition of indigenous knowledge practitioners, making it a significant model for countries like Nigeria seeking to develop tailored protection regimes.

⁵⁴ South African Government. Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019.

The Act explicitly recognises indigenous knowledge as property vested in the relevant community, affirming communal rather than individual ownership,⁵⁵ and protection runs in perpetuity provided the eligibility criteria continue to be met. This is an explicit legislative acknowledgement that IK is inter-generational and evolving rather than fixed at a single point of creation.⁵⁶ To qualify, knowledge must have been passed down through generations within an indigenous community, developed within that community, and associated with the community's cultural and social identity, which keeps protection tied to authentic, community-rooted knowledge rather than opening the door to opportunistic claims.⁵⁷

Custodianship vests in a trustee appointed to hold and protect the knowledge on the community's behalf and who remains accountable to that community for how access and use are managed,⁵⁸ and the community holds exclusive rights to any benefits arising from commercial use, including the right to require acknowledgment of the community as source and to limit unauthorised use altogether.⁵⁹

Institutionally, the Act establishes a National Indigenous Knowledge Systems Office (NIKSO) within the Department of Science and Innovation to oversee implementation,⁶⁰ supported by a ministerially appointed Advisory Panel drawing on government, indigenous practitioners, industry and independent experts,⁶¹ and by a Registration Office, run by a Curator, that maintains the register and processes applications.⁶² Registration is available to trustees on application, the register is publicly accessible in general but sensitive material can be shielded by a non-disclosure

⁵⁵ Clause 9, *ibid.*

⁵⁶ Clause 10, *ibid.*

⁵⁷ Clause 11, *ibid.*

⁵⁸ Clause 12, *ibid.*

⁵⁹ Clause 13, *ibid.*

⁶⁰ Clause 4, *ibid.*

⁶¹ Clause 7, *ibid.*

⁶² Clauses 17-19, *ibid.*

agreement, and certificates issued by the Curator serve as prima facie evidence in legal proceedings. This is a genuinely useful evidential shortcut for communities who would otherwise struggle to prove customary ownership in court.⁶³

The Act facilitates and coordinates the commercial use of indigenous knowledge, requiring license agreements between users and community trustees.⁶⁴ Licensing ensures prior informed consent and equitable benefit-sharing directly into any transaction rather than leaving them to later negotiation.⁶⁵ Exceptions exist for certain uses, but users must acknowledge the source community and geographical origin.

The Act further provides for accreditation and certification of indigenous knowledge practitioners, formally recognising their expertise.⁶⁶ This formal recognition supports the legitimacy and protection of traditional knowledge holders.

Taken as a whole, the South African Act is arguably the most complete model available to Nigeria: it combines perpetual protection, community empowerment through trusteeship, criminal sanctions against misappropriation, benefit-sharing with clear mechanisms ensuring that communities receive fair compensation from commercial exploitation, a working registration and evidentiary infrastructure, and formal integration of customary governance, all within a single statute rather than scattered across several. Its clearest lesson for Nigeria is architectural: a single, purpose-built institutional office (NIKSO's Nigerian equivalent, discussed in section 4.2 above) is what turns statutory recognition of communal ownership into something a community can actually use in a dispute, rather than a right that exists only on paper.

4.4 Benefits of a Nigerian Sui Generis Approach

Taken together, these reforms would do more than tidy up a gap in the statute book. A dedicated regime would:

⁶³ Clause 20, *ibid.*

⁶⁴ Clause 25-26, *ibid.*

⁶⁵ Clause 21, *ibid.*

⁶⁶ Clause 22, *ibid.* See Clauses 14-16, *ibid.*

1. Preserve cultural identity and national heritage;
2. Cut Nigeria's exposure to bio-piracy and unrewarded international exploitation;
3. Empower rural and indigenous communities through actual legal agency over their own knowledge rather than leaving them to rely on goodwill, and
4. Bring Nigeria into closer alignment with international commitments it has already made under the CBD, the Nagoya Protocol and UNDRIP but has yet to give proper domestic effect to.

5. Legal and Policy Pathways Toward Reform in Nigeria

The legal protection of traditional knowledge (TK) and indigenous cultural expressions (ICEs) in Nigeria requires a deliberate departure from inherited colonial frameworks and a bold embrace of a culturally grounded, community-focused, and legally enforceable *sui generis* system. While international models like those of Peru and the ARIPO Swakopmund Protocol offer valuable templates, reform in Nigeria must be rooted in our own socio-legal, federal, and pluralistic realities. This section proposes a multi-pronged reform strategy, identifying both legal and policy tools that can be deployed to build a robust framework for the protection of TK and ICEs in Nigeria.

5.1 Legislative Reform: A Standalone Sui Generis Law

The Copyright Act 2022 amendment is not sufficient on its own, so the first and most urgent step is a standalone statute specifically tailored to TK and ICEs, drafted with direct input from indigenous groups rather than for them.⁶⁷ That statute should:

- Recognise community custodianship as the default rule;
- Define its subject matter broadly enough to reach medicinal practices, spiritual beliefs, ecological knowledge, agricultural methods, oral histories, crafts and designs rather than the narrow "folklore" category the Copyright Act currently uses;

⁶⁷ Richard U. Oyiwona, & Zion Macheem Lashom, "The Need for Protection of Traditional Knowledge under the Nigerian Intellectual Property Framework", *Journal of Customary and Religious Law*, Vol. 2(1). <<https://journals.unizik.edu.ng/jocarl/article/download/5406/4484/12287>> Accessed 14 June, 2025

- Build in prior informed consent and equitable benefit-sharing as mandatory rather than aspirational;
- Give customary governance structures formal legal recognition;
- Provide for perpetual or renewable protection rather than a fixed term; and
- Give communities real enforcement rights, including injunctive relief, compensation and reputational remedies such as apologies or public recognition.

This paper proposes that such legislation be titled the *Traditional Knowledge and Indigenous Cultural Expressions (Protection and Promotion) Act*.

5.2 Institutional Strengthening: Establishment of a National TK Protection Authority

Legislation of this kind needs a body to run it. A centralised authority styled here as the National Commission for the Protection of Traditional Knowledge and Cultural Expressions (NCPTKCE), should register TK on a voluntary, opt-in basis, provide technical assistance to communities documenting their own knowledge, vet commercial contracts for compliance with consent and benefit-sharing requirements, run training and public education, and serve as Nigeria's national focal point for engagement with WIPO, the Nagoya Protocol and ARIPO. Crucially this body should be decentralised in its day-to-day operations, working directly with traditional rulers, community elders and local governments rather than centralising every decision in Abuja, since a Lagos-based bureaucracy is poorly placed to adjudicate custodianship disputes in, say, a Tiv or Efik community.

5.3 Community-Based Protocols and Customary Law Integration

A new regime is only as legitimate as its willingness to defer to existing customary authority. Communities should be able to develop their own protocols setting out who may access their knowledge, on what terms, and what counts as misuse; to maintain local registries with support from legal and cultural experts, rather than being required to route everything through the national Commission; and to use community tribunals or councils of elders to resolve TK-related disputes where that is the community's own preferred forum. Building customary law into the regime this

directly, rather than treating it as background colour, is what would let the statute bridge the formal-informal divide that currently leaves communities dependent on courts they neither trust nor easily access.

5.4 Regional and International Harmonisation

Domestic reform alone will not protect Nigerian TK once it crosses a border. Nigeria should ratify and domesticate the ARIPO Swakopmund Protocol as the foundation for regional alignment, domesticate the Nagoya Protocol to secure rights over transboundary use of Nigerian TK, take a proactive rather than reactive role in the WIPO Intergovernmental Committee by proposing African-grounded models of protection, and pursue bilateral IP agreements specifically covering the countries where Nigerian cultural products such as Afrobeats, Adire and Zobo are already heavily commercialised abroad.

5.5 Digital Documentation and Knowledge Databases

Digital repositories can do both defensive and proactive work. Nigeria could establish a Traditional Knowledge Digital Archive, hosted by NOTAP or the proposed TK Commission in partnership with NICO, universities and cultural NGOs, built to support audio-visual, oral and pictorial formats rather than assuming everything can be reduced to text. Communities would need to retain control over what is shared publicly and what stays confidential, and following India's TKDL model directly, the archive should be linkable to patent examination databases, so that examiners encounter Nigerian TK as prior art before a patent is granted rather than after.⁶⁸

5.6 Education, Sensitisation, and Capacity Building

A persistent obstacle running through every proposal above is a knowledge gap that spans policymakers, rural communities and legal practitioners alike. Closing it requires capacity-building workshops for traditional leaders, community youth and local officials; curriculum development

⁶⁸ WIPO, "Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore", <https://www.wipo.int/ip-development/en/agenda/flexibilities/resources/tk_gr_tce_f.html> accessed 14 May, 2025; Mondaq, "Protecting Indigenous Knowledge And Traditional Medicine Under Intellectual Property Law In Nigeria", <<https://www.mondaq.com/nigeria/copyright/1603052/protecting-indigenous-knowledge-and-traditional-medicine-under-intellectual-property-law-in-nigeria>> accessed 14 May, 2025.

within Nigerian law faculties and cultural studies departments, so the next generation of lawyers is not learning TK law as an afterthought; and public media campaigns conducted in local languages rather than only in English, since the communities most affected by misappropriation are often the least likely to encounter an English-only awareness campaign.

5.7 Leveraging State Governments and Traditional Institutions, Cultural Agencies, and CSOs

Given Nigeria's federal structure and the practical influence of traditional institutions at grassroots level, state governments, traditional rulers, cultural agencies and civil society organisations all need a defined role in implementation rather than being left to national government alone. State-level initiatives could pilot community documentation projects, facilitate benefit-sharing contracts for region-specific industries such as herbal medicine in Enugu, Adire textiles in Ogun, or bronze casting in Benin, and partner with NGOs to build community enterprise around TK, including branded geographical- indication goods and crafts.

Legal and policy reform for the protection of TK in Nigeria cannot rely on the transplantation of Western IP models. Rather, it must be deeply rooted in Nigeria's pluralistic legal tradition, cultural diversity, and community-centred worldviews. A sui generis legal regime, supported by strong institutions, community empowerment, and regional cooperation, presents the most sustainable path forward. Nigeria has the resources: intellectual, cultural, and legal, to take a leadership role in Africa and globally in the protection of traditional knowledge. What is now needed is political will and coordinated action.

6. Challenges and Counterarguments

While the case for a sui generis regime in Nigeria is compelling, it is not without its critics and complications. Implementing such a framework poses both practical and philosophical challenges, from definitional ambiguities and enforcement difficulties to fears of over-regulation or cultural commodification. A robust reform agenda must anticipate and address these concerns to ensure a just and sustainable model of traditional knowledge protection. Some of these concerns are:

6.1 Risk of Overregulation and Bureaucratic Bottlenecks

A common concern is that introducing a sui generis regime, especially one involving national registration systems, consent protocols, and community consultations could lead to regulatory overreach. Critics argue that this might stifle creativity, discourage research, or delay commercial access to useful traditional knowledge, particularly in areas like medicine and agriculture. However, this concern can be mitigated by designing a tiered and flexible system: documentation and registration should be voluntary and community-driven rather than mandatory or centrally imposed, and streamlined procedures paired with decentralised TK offices at state or zonal level can prevent the bureaucratic overload critics worry about.

6.2 Ambiguity in Defining Ownership and Authorship (Practical enforcement and ownership conflicts)

One of the most complex aspects of protecting TK lies in identifying rightful owners. Traditional knowledge often spans multiple communities, is regionally shared, or has evolved over centuries without a clear originator, which raises hard practical questions: who actually speaks for the community in a given negotiation, what happens when two ethnic groups claim ownership of the same knowledge, and how should disputes over overlapping custodianship be resolved when both claims are genuine rather than opportunistic?

A sui generis regime must be guided by customary law, oral histories, and inclusive community dialogue, rather than rigid statutory definitions. Establishing community protocols and encouraging collaborative custodianship arrangements can help address multi-stakeholder claims.

6.3 Commodification of Sacred Knowledge

Some scholars and community leaders express concern that protecting TK through a legal regime may lead to its commodification (turning sacred cultural knowledge into products to be bought, sold, or licensed). This risk is particularly relevant in spiritual practices, ceremonial rituals, and sacred symbols.

This concern underscores the importance of differentiated protection. Not all traditional knowledge must be subject to commercial exploitation. The law should allow communities to designate some knowledge as “sacred” or “restricted”, and therefore ineligible for any form of use or disclosure. This principle has been recognised in models like the Peruvian Law No. 27811, which includes both public and confidential knowledge registries.

6.4 Conflicts Between Customary and Formal Legal Systems

Nigeria’s plural legal system (customary, Islamic, and statutory law), can lead to jurisdictional uncertainty. For example, a TK-related dispute might involve traditional leaders, local government, and statutory courts, each interpreting rights and remedies differently.

To address this, the sui generis framework must formally integrate customary law and recognise traditional dispute resolution mechanisms, while allowing appeals or constitutional questions to be referred to civil courts. The Kenyan 2010 Constitution, for instance, provides a model for integrating customary legal systems with statutory law while protecting human rights and procedural fairness.

6.5 Capacity, Funding, and Institutional Limitations

None of this works without trained personnel at national and local level, adequate funding for registries, community outreach and enforcement, and the technological infrastructure to support documentation and digital access. Currently, agencies like NOTAP, NICO, and the Nigerian Copyright Commission are under-resourced and overstretched. Without political will, inter-agency coordination, and sustained investment, the new system could falter, which is why public-private partnerships with NGOs and universities, integration of TK protection into broader development agendas such as cultural tourism, health and education, and international support from WIPO, ARIPO, UNESCO and donor agencies all matter as much as the legislation itself.

6.6 Resistance from Industry and Researchers

Some stakeholders in pharmaceuticals, academia, and creative industries may resist reforms requiring prior informed consent and benefit-sharing, arguing that it could increase transaction

costs, delay innovation, or discourage research. However, this critique presumes a “free access” model that privileges commercial exploitation over community rights. The aim of a sui generis system is not to block research but to ensure ethical engagement, promote inclusive innovation, and strengthen legitimacy. When structured well, these regimes actually foster long-term partnerships between communities and researchers, rather than adversarial relationships.

This paper posits that while legitimate challenges exist in the development and implementation of a sui generis TK protection system in Nigeria, these challenges are not insurmountable. Rather, they highlight the need for contextualised solutions, adaptive policy design, and genuine consultation with indigenous communities. By acknowledging these concerns and addressing them proactively, Nigeria can avoid the pitfalls of past reforms and lay the foundation for a just, inclusive, and future-ready legal framework that safeguards its cultural and intellectual heritage.

7. Conclusion

Nigeria stands at a pivotal moment in its legal and cultural development. As global interest in indigenous knowledge systems intensifies, and as local communities increasingly seek recognition and protection of their cultural patrimony, the inadequacies of Nigeria’s current intellectual property (IP) framework have become starkly apparent. Traditional knowledge (TK) and indigenous cultural expressions (ICEs), vibrant repositories of Nigeria’s identity, innovation, and spirituality, remain insufficiently protected, poorly documented, and vulnerable to appropriation under a legal system that was not designed for them.

This paper has demonstrated that the conventional IP regime, rooted in individualism, fixation, and temporality, is fundamentally incompatible with the collective, intergenerational, and spiritual nature of Nigerian TK. A sui generis regime offers a culturally sensitive and legally robust alternative; one that embraces the specificities of Nigerian traditions, integrates customary law, and complies with evolving international best practices.

Drawing insights from global models such as Peru’s Law No. 27811 and the ARIPO Swakopmund Protocol, and considering Nigeria’s rich plural legal context, the paper proposes a practical, multi-

layered pathway toward reform. The challenges are real, from definitional ambiguities to capacity deficits, but they are not insurmountable. What is needed goes beyond legislation alone: a willingness to treat traditional knowledge not as a resource to be mined, but as a living system of knowledge that deserves dignity, protection, and recognition in its own right.

8. Recommendations

To actualise the goal of protecting traditional knowledge and cultural expressions in Nigeria, this paper makes the following recommendations:

1. Enact a Standalone Sui Generis Law: Nigeria should enact a ‘Traditional Knowledge and Indigenous Cultural Expressions (Protection and Promotion) Act’ that is rights-based, community-led, and built around customary law rather than bolted onto existing IP statutes.
2. Establish a National TK Protection Authority: A decentralised agency should be set up to handle registration, contract review, documentation support, and community engagement.
3. Integrate Customary Law and Community Protocols: Traditional leadership, oral histories, and dispute-resolution processes need formal recognition, so that communities can draft their own usage and access rules rather than having rules imposed on them from outside.
4. Ratify and Domesticating International and Regional Instruments: Nigeria should move promptly to ratify the ARIPO Swakopmund Protocol, domesticate the Nagoya Protocol, and align national policy with the WIPO IGC Draft Articles.
5. Develop a National Digital TK Archive: An opt-in, multimedia documentation system with both public and confidential layers, built in partnership with universities, NICO, and traditional councils, would give Nigeria the same defensive capability India’s TKDL has provided.
6. Mainstream Education and Capacity Building: TK and ICEs should be built into legal, policy, and cultural studies curricula, alongside nationwide public awareness and sensitisation campaigns conducted in local languages rather than English alone.

7. Encourage State-Level Participation and Traditional Institutions: State governments should be empowered to pilot documentation and benefit-sharing projects, and the role of traditional rulers as custodians of knowledge should be formally recognised rather than left implicit.
8. Promote Ethical Industry Engagement: Government should develop TK-specific model contracts and access-and-benefit-sharing templates for researchers, entrepreneurs, and foreign investors, encouraging innovation through ethical collaboration with communities rather than extraction from them.

Protecting Nigeria's traditional knowledge and indigenous cultural expressions is therefore not simply a matter of preserving the past. It is a question of who controls the commercial and cultural value of that heritage going forward, and current law has already answered that question wrongly by defaulting ownership to the state or to no one at all. Reform along the lines set out above would correct that default.