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NEW RULES VISITING THE OLD PRACTICE: A CASE FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE IN NIGERIA

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Abstract

Nigeria, endowed with rich cultural and biological diversity, is a repository of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). This intangible heritage, encompassing traditional medicine, sustainable agriculture, folklore, and artistic designs, is at the heart of the identity, livelihood, and sustainable development of its numerous indigenous and local communities. But this old and valuable tradition is also casually laid open to biopiracy and misappropriation, a weakness created and sustained by a national intellectual property (IP) system that is not just outdated but institutionally ill-suited to the nature of TK. This article argues that the current IP regime in Nigeria, based on Western notions of individual ownership and novelty, not only fails to safeguard TK but also promotes its exploitation. Using doctrinal research methodology, the paper critically examines the shortcomings of the Nigerian Copyright Act, the Patents and Designs Act, and the Trademarks Act in this regard. It then turns to the "new rules" essential global instruments, such as the Nagoya Protocol on Access and Benefit-Sharing and the landmark 2024 WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge. These instruments echo a global tilt towards a community-based, rights-based framework for the protection of TK. Drawing lessons from those models and successful sui generis experiences elsewhere in developing countries, the article recommends that Nigeria needs to embrace holistic sui generis legal and institutional reform rather than fragmented reform. Such a regime, the article argues, is not merely a requirement of legal propriety but also imperative for the protection of cultural identity, guarantee of social justice, and unlocking of the sustainable development potential of Nigeria's living heritage.

Keywords: Traditional Knowledge, Intellectual Property, Nigeria, Sui generis, Biopiracy, Legal Framework for Traditional Knowledge.

1. Introduction

Nigeria's vast cultural and biological diversity is reflected in its over 250 ethnic groups, each with its own customs, traditions, and way of life.[270] This has fostered a rich and dynamic Traditional Knowledge (TK) pool, a living, dynamic repository of knowledge and cultural expressions that is inherent to the identity, spiritual well-being, and physical survival of its local communities.[271] This "old practice," however, remains in a state of significant legal vulnerability. It precariously lies vulnerable to biopiracy, unauthorized commercialization, and misappropriation, largely because the national intellectual property law regime does not essentially favour its nature.[272] The Nigerian IP regime inherited from colonialism is based on Western concepts of individual authorship, novelty, and temporary monopoly, principles which are foreign to the communal, intergenerational, and dynamic nature of TK.[273]

This dissonance presents a jarring value and vulnerability paradox. The same qualities that render Nigerian TK so valuable, its intimate relationship to the country's biodiversity, its established usefulness in activities such as traditional medicine and sustainable agriculture, and its communal nature, are precisely the qualities that render it vulnerable and unprotected in a legal system that does not acknowledge its special kind of intellectual innovation.[274] The legal vacuum does not constitute a neutral space; instead, it constitutes a de facto "public domain" where knowledge can be used without authorization or compensation, to be patented or copyrighted elsewhere and thus transformed into a private monopoly.[275]

The underlying argument of this article is that Nigeria must act with haste to shed its ill-fitting legal attire and design a tailor-made, or *sui generis*, regime for TK protection. The impetus for such reform has never been more compelling. Increasingly recent acceptance of "new rules" globally, most recently the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge

[270] U. Ikenna, and C. I. Obianyo. "Traditional Knowledge, Traditional Cultural Expression and Intellectual Property in Nigeria." *De Juriscope Law Journal* 1.2 (2021).
[271] O. C.Agbeniaru, T. O. Makinde, and A. V. Adeniran. "Documentation of Nigerian Indigenous Knowledge System: The Role of the Library." (2022).
[272] N. Tasie. "Legal Appraisal of Traditional Knowledge as Aspects of Intellectual Property Regime in Nigeria" Rivers State University Journal of Public Law 1. (2023)
[273] O.C. Agbeniaru, T.O. Makinde, and A. V.Adeniran. "Documentation of Nigerian Indigenous Knowledge System, Op.cit
[274] Ibid.
[275] K.C Uwadineke , and E. C. Kene. "Protecting Traditional Knowledge/Secrets Under Intellectual Property Law: A Comparative Analysis of the Adequacy of Protections Using Nigeria as a Case Study." *The Nnamdi Azikiwe University Journal of Commercial and Property Law* 6.1 (2020).

in May 2024,[276] is a landmark change in global policy.[277] The treaty, together with the Nagoya Protocol on Access and Benefit-Sharing,[278] offers strong and timely political and legal rationale for harmonisation of Nigeria's national law with an evolving global consensus that is rights-based and community-led.

This article adopts a doctrinal research approach, making critical legal analysis of primary materials such as Nigerian legislation and international treaties, and secondary materials such as scholarly writings and WIPO policy documents.[279] It starts by explaining the nature, scope, and immense importance of TK in the Nigerian situation. It moves to a critical deconstruction of the current Nigerian IP regime, explaining the deficiencies of the Nigerian Copyright Act, 2022, the Patents and Designs Act,[280] and the Trademarks Act.[281] The article then explores the main international and regional instruments that hold an alternative for the way forward. Lastly, based on these analyses and other emerging economies' experiences, it prescribes the essential features of an effective *sui generis* system for Nigeria.

1.2 The Nature and Scope of Traditional Knowledge in Nigeria

To understand the need for a new legal regime, one must first appreciate the dynamism and richness of the subject matter it is seeking to protect. Nigerian Traditional Knowledge is not a stagnant pool of historical relics but a living and dynamic system of practice and innovation that is part and parcel of the nation's identity and people's survival.[282]

1.3 Defining Traditional Knowledge

[276] WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, adopted in Geneva on May 24, 2024.
[277] WIPO. "Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions" (*Traditional-knowledge*) <https://www.wipo.int/en/web/traditional-knowledge>
[278] The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.
[279] E. Nneka. 'Protection of traditional knowledge and its relevance to national economic growth and development in Nigeria'. *The Nigerian Juridical Review* 17 (2022): 88-108.
[280] Patents And Designs Act CAP. P2 L.F.N. 2004
[281] Trade Marks Act CAP. T13 L.F.N. 2004
[282] O. C. Agbeniaru, T. O. Makinde, and Ademola Victor Adeniran. "Documentation of Nigerian Indigenous Knowledge System: The Role of the Library." (2022).

No definition can encompass the richness of Nigeria's traditional knowledge and expression.[283] However, the World Intellectual Property Organization's definition offers a solid foundation: TK is a "living body of knowledge, practices, skills, and innovations, developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity".[284] Within this general category, it is useful to make a distinction. On the one hand, there is TK in the narrow sense (*stricto sensu*), i.e., technical knowledge, and more specifically that which is the result of intellectual effort in a traditional setting. These entail know-how, practices, and skills in fields of medicine, agriculture, ecology, and science.[285] On the other hand, there are Traditional Cultural Expressions (TCEs) or expressions of folklore, which are the material and immaterial means through which traditional culture is manifested, communicated, or expressed. These are embodied in music, dance, stories, symbols, designs, and art forms.[286] Although this distinction is handy for purposes of analysis, we should be aware that in the eyes of most Nigerian societies, it is an artificial distinction.

TK and TCEs are usually "inextricably interwoven,"[287] being an integral and inseparable part of their cultural identity and worldview.[288] A traditional remedy, for example, may not only include technical knowledge on the properties of plants (TK *stricto sensu*) but also the particular chants or rituals for preparation and administration (TCEs). The legal system that is effective needs to defer to this holistic character.

1.4 The Cultural and Economic Significance of TK in Nigeria

The worth of TK in Nigeria cannot be measured, traversing all spheres of life and being both a cultural touchstone and socio-economic propeller.

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[283] I.U Ikenna, and C. I. Obianyo. "Traditional Knowledge, Traditional Cultural Expression and Intellectual Property in Nigeria." *De Juriscope Law Journal* 1.2 (2021).

[284] The Giurgis Laboratory. "Traditional Knowledge | BBNJ Treaty" <https://bbnj-mgr.fas.harvard.edu/traditional-knowledge>

[285] I.U.Ikenna, and C. I. Obianyo. "Traditional Knowledge, Traditional Cultural Expression and Intellectual Property in Nigeria." *De Juriscope Law Journal* 1.2 (2021).

[286] WIPO. "Background Brief, Traditional knowledge and intellectual property" https://www.wipo.int/export/sites/www/pressroom/en/documents/background_brief_tk.pdf

[287] Le Gall, S. "An Introduction to Core Concepts and Objectives: What are Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions and Why Should They Receive Legal Protection?." *Seminar on Intellectual Property and Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions, WIPO, Bangkok, Thailand, Ginebra, Suiza: WIPO*. 2009.

[288] Materials R, "Culture and Sustainability in Nigeria" (*Raw Materials 360*, November 4, 2024) <https://360.rmrdc.gov.ng/culture-and-sustainability-in-nigeria/>

Compared to the cultural value, to Nigeria's multicultural ethnic groups, TK constitutes the foundation of cultural identity.[289] It is the keeper of a community's social norms, values, and history, passed from generation to generation. This manifests in several areas:

1.4.1 Traditional Medicine: Traditional systems of healing are the main source of health care for an estimated 80% of Nigeria's population.[290] Traditional systems of healing are not merely inventories of herbal remedies but complex practices with diagnosis, treatment, and prevention, and are usually incorporated into religious beliefs.[291] Examples are numerous, ranging from the Yoruba *Agbo* combination of leaves such as pawpaw and guava to cure fever, to the Isoko *Ologbo* to cure stomach ailments.[292]

1.4.2 Sustainable Agriculture: Nigerian farmers have been practicing sustainable agriculture for centuries, which guarantees food and environmental sustainability. Some examples are practices such as crop rotation, mixed cropping, organic manure through the use of animal dung, and natural pest control, such as dusting crops with Iroko wood ash to avoid insect attack.[293]

1.4.3 Folklore and Arts: Proverbs, legends, and folktales that are transmitted orally, as well as music and dance, are important in education, entertainment, and maintenance of communal history.[294] Likewise, artistic TCEs such as the Yoruba *Adire* (indigo resist-dyed cloth) and *Aso-Oke* (handwoven cloth) are not only objects of beauty; they are strong statements of the way of seeing and being of a people.[295] Conversely, regarding economic importance, protection of TK is essentially a development matter. Properly tapped and protected, TK has the potential to empower local and national economies significantly. There are two aspects to this economic necessity. Firstly, it entails enabling communities to use their knowledge for wealth creation and sustainable livelihoods, such as through

[289] I.U Ikenna, and C.I. Obianyo. "Traditional Knowledge, Traditional Cultural Expression and Intellectual Property in Nigeria." *De Juriscope Law Journal* 1.2 (2021).
[290] Moran Katy. "Lessons from Bioprospecting in India and Nigeria" (*Cultural Survival*, April 2, 2010) <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/lessons-bioprospecting-india-and-nigeria>
[291] O.C. Agbeniaru, T.O.Makinde, and A. V. Adeniran. "Documentation of Nigerian Indigenous Knowledge System: The Role of the Library." (2022).
[292] U.U Margaret. "Availability and use of indigenous knowledge amongst rural women in Nigeria." *Chinese Librarianship: An International Electronic Journal* 38 (2014): 60-67.
[293] Materials R, "Culture and Sustainability in Nigeria" (*Raw Materials 360*, November 4, 2024) <https://360.rmrdc.gov.ng/culture-and-sustainability-in-nigeria/>
[294] O. C.Agbeniaru, T. O. Makinde, and A.V. Adeniran. "Documentation of Nigerian Indigenous Knowledge System: The Role of the Library." (2022).
[295] N. B.Odofin. "Ethnographic Relevance of Nigeria's Indigenous Knowledge" (*The Guardian Nigeria News - Nigeria and World News*, April 15, 2023) <https://guardian.ng/sunday-magazine/ethnographic-relevance-of-nigerias-indigenous-knowledge/>

commercialization of traditional medicines or crops on their own terms.[296] Second, and more importantly, it involves plugging the massive economic drain that results from biopiracy.

This occurs when foreign businesses or researchers adopt TK and associated genetic material, patent it in other countries, accrue commercial benefits without the source being acknowledged and sharing profits with Nigerian communities who were the initial custodians.[297] *Vernonia Amygdalina* (bitter leaf), a herb used largely by Nigerian traditional medicine due to its anti-diabetic and anti-cancer properties, is a clear example. US patents were issued on extracts and applications of this plant, appropriating knowledge that had been present in Nigerian communities for centuries, and none of the benefit flowed to them.[298] This represents a huge loss of economic value to the nation.

Finally, the debate on TK protection in Nigeria needs to be situated not just as a purely technical IP issue, but as a part of the country's broader sustainable development agenda. The knowledge systems that regulate traditional agriculture are directly connected with food security and environmental sustainability. The extensive pharmacopoeia of traditional medicine holds the key to public health. Safeguarding these systems by a strong legal regime is not a reactive measure of harm prevention; it is an affirmative policy decision to create a stronger, more equal, and more sustainable tomorrow. By generating economic incentives for societies to preserve their biodiversity and maintain their sustainable practices, an appropriate TK protection regime aligns IP law with national development objectives, turning cultural heritage into a foundation of national advancement.[299]

1.5 The Inadequacy of Nigeria's Current Intellectual Property Regime

Despite the invaluable nature of Traditional Knowledge, Nigeria's current intellectual property law is woefully inadequate for its protection. The country's legal regime, including the Nigerian Copyright Act, 2022 Patents and Designs Act,[300] and Trademarks Act,[301] draws upon a Western juridical tradition and is based on principles that are inherently incompatible with the collective, intergenerational, and

[296] K.M. Waziri, & A.O. Folasade. (2014). Protection of traditional knowledge in Nigeria: Breaking the barriers. *JL Pol'y & Globalization*, *29*, 176.
[297] Ibid.
[298] E.E. Kevin. "Patently Waiting for Sui Generis Rights: Systemic Biopiracy and Nigerian Traditional Knowledge in Vernonia Amygdalina." *Available at SSRN 2285684* (2013).
[299]R.U Oyiwona, and Z.M. Lashom. "The Need for Protection of Traditional Knowledge under the Nigerian Intellectual Property Framework." *Journal of Customary and Religious Law* 2.1 (2025): 16-22.
[300] Patents And Designs Act CAP. P2 L.F.N. 2004
[301] Trade Marks Act CAP. T13 L.F.N. 2004

dynamic character of Traditional Knowledge. These laws do not simply decline to protect TK; they set up a regime of structural inequality that devalues collective knowledge and exposes it to authorized misappropriation.[302]

1.5.1 The Nigerian Copyright Act and the Misguided "Folklore" Model

The Nigerian Copyright Act,2022, attempts to safeguard some cultural content covered by the term "folklore."[303] Section 75 of the Nigerian Copyright Act, 2022 provides protection for expressions of folklore against unauthorized reproduction, public communication, adaptation, and other transformations when carried out for commercial purposes or outside of their traditional context.[304] In its wording, it provides as follows:

> Any person who, without the consent of the Commission, uses an expression of folklore in a manner not permitted by section 73 of this Act, is in breach of statutory duty and is liable to the Commission in damages, injunctions and any other remedies as the court may deem fit to award in the circumstances.

While it may seem progressive, this system is inherently flawed by three essential lacunae. First, the model is paternalistic and state-centric. The authority to license the use of folklore is not placed in the originating communities but in a government institution, the Nigerian Copyright Commission (NCC).[305] This is a disabling methodology that empowers the very custodians of the culture it claims to safeguard, substituting bureaucracy for community autonomy. There is not much evidence to suggest that the NCC has been capable of using such authority in a manner beneficial to local communities or has instituted a clear mechanism for collecting and redistributing royalties accrued from authorized uses.

In the second place, the scope of protection is dangerously narrow. The Act's definition of "folklore" is restricted to artistic and literary expressions such as folk songs, plays, dances, and works of art.[306] This excludes the vast and economically significant area of TK *stricto sensu*, the technical, scientific, agricultural, and medicinal knowledge that is an essential component of Nigeria's cultural heritage. A

[302] N. N.Tasie. "Legal Appraisal of Traditional Knowledge as Aspects of Intellectual Property Regime in Nigeria" Rivers State University Journal of Public Law 1. (2023)
[303] Part IX, Expressions of Folklore, Copyright Act, 2022
[304] Section 75, Copyright Act, 2022
[305] Ibid, Copyright Act, 2022
[306] Section 74(4), Copyright Act, 2022

traditional agricultural practice or a medicinal plant remedy, therefore, receives no protection whatsoever under the Nigerian Copyright Act.,2022.

Third, the entire copyright system is premised on "originality" and individual authorship.[307] TK, as communally held and handed down through generations, does not fit this model. It is generally impossible to identify a single "author" or moment of "creation," and thus application of copyright principles is both difficult and inappropriate.[308]

1.5.2 The Patents and Designs Act as a Framework Designed to Exclude TK

The Nigerian Patents and Designs Act[309] is even less appropriate for the protection of TK. In fact, its basic requirements for patentability effectively operate as obstacles to the exclusion of TK from protection. In order to be patentable, an invention must be novel, result from an inventive activity (be non-obvious), and be capable of industrial application.[310]

TK falls short nearly across the board. By definition, it belongs to the "traditional" category and has been applied in a community, so it is already within the "state of the art" and consequently does not fulfill the condition of novelty. Additionally, since traditional knowledge tends to pertain to the application of natural resources and underlying principles, it is generally deemed to be a "discovery" and not an "invention." The Act expressly foresees that "principles and discoveries of a scientific nature are not inventions" and are consequently not patentable.[311]

The situation of *Vernonia Amygdalina*, or bitter leaf, is a clear example of how this system, rather than safeguarding traditional knowledge, ends up being an instrument for its unauthorised utilisation.[312] Traditional knowledge of the anti-cancer and anti-diabetic attributes of bitter leaf has previously been conserved and utilized by various groups in Nigeria.[313] In the United States, however, patents were granted to individuals who "extracted" active ingredients or "engineered" methods of extraction that effectively copied long-standing traditional practices.[314] The patent regime regarded the underlying

[307] A.K.Ibrahim, and I. A. Yusuf. "Originality in Copyright and the Debate on Protection of Traditional Knowledge: A View on Nigerian Law." *KIU Journal of Social Sciences* 3.1 (2017): 293-301.
[308] Ibid.
[309] Patents And Designs Act CAP. P2 L.F.N. 2004
[310] Section 1, ssPatents And Designs Act CAP. P2 L.F.N. 2004
[311] Patents And Designs Act CAP. P2 L.F.N. 2004
[312] E.E Kevin. "Patently Waiting for Sui Generis Rights: Systemic Biopiracy and Nigerian Traditional Knowledge in Vernonia Amygdalina." *Available at SSRN 2285684* (2013).
[313] Ibid.
[314] Ibid.

traditional knowledge as freely available, unowned "prior art," while the slight, technical changes were granted a 20-year sole monopoly.[315] This is a systemic failure in which the law is being used to enable the flow of value from Nigerian communities to foreign patent holders without any benefit-sharing mechanism.

1.5.3 The Trademarks Act's Indirect and Insufficient Protection

The Trademarks Act does not provide any express protection for traditional symbols, names, or designs.[316] The sole avenue of relief is the common law tort of "passing off," which is not a statutory right but a cause of action for misrepresentation.[317] For a community to succeed in a passing-off action, it would have to prove that its traditional symbol has acquired sufficient goodwill and reputation, and that a third party's use is confusing the public into believing their product originates from or is endorsed by the community.[318] In *I.T. (Nig.) Ltd. v. B.A.T. (Nig.) Ltd,*[319] the Court ruling on the ingredients of tort of passing off held as follows:

> The essential elements of the tort of passing off which must be proved by the plaintiff to sustain his claim are:
>
> -that he has acquired a reputation in respect of the trademark. In other words, the mark has become distinctive of his product and his customers and public have come to a) associate the mark with their business.
>
> -that the defendant had engaged in acts which are capable of misleading the plaintiff's customers or members of the public into believing that the defendant's business and (b) that of the plaintiff are connected.
>
> -the plaintiffs also need to prove likelihood of deceit. In other words, the plaintiff ought to prove that the defendant's conduct was calculated to deceive but not necessarily that there must be evidence of actual deceit before the requirement can be met.

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[315] Ibid.
[316] L.A Ayoyemi. "Two strings on a bow: Scope of registrable trademarks from the era of traditional knowledge to digital technology in Nigeria (pre and post 1965)." *Nigerian Intellectual Property Law*. Routledge, 2022. 91-103.
[317] O.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-REALLY-UNPROTECTABLE_.pdf
[318] Ibid
[319] *I.T. (Nig.) Ltd. v. B.A.T. (Nig.) Ltd* (2009) 6 NWLR (Pt. 1138) 577

This is a very high, complex, and expensive legal hurdle for most communities to overcome. Furthermore, the Act itself is outdated and has not developed in tandem with modern trademark law, being unable to account for even unorthodox marks, let alone those having profound cultural significance.[320]

1.5.4 Overarching Systemic Shortcomings

Apart from the general weaknesses of every law, the entire Nigerian IP regime is plagued with systemic problems that would frustrate protection even when the laws are properly drafted. These feature perennially ineffective enforcement mechanisms, inadequate funding and training for regulatory agencies, entrenched corruption, sluggish and ineffectual judicial procedures, and a general absence of public and institutional appreciation of the value of IP rights, much less the intricacies of TK.[321] The result is that Nigerian TK remains in a position of acute vulnerability.

The combined impact is a legal framework that perpetuates deep systemic imbalance. The system sets up a paradigm where knowledge defined as Western-style individualism and formal written documentation is the privileged "property," while indigenous knowledge that is communally owned, oral, and dynamic is placed in a legal vacuum, treated only as a resource to be exploited by others. This is not a lacuna in the law; it is a systemic bias that can be addressed only by a paradigmatic change.

1.6 The "New Rules": Lessons from International and Regional Frameworks

While Nigeria's domestic laws remain archaic, international law has progressed. International law has now decisively shifted away from purely commercial, state-centred models of IP and toward a rights-based, community-focused approach to TK protection. These "new rules" provide Nigeria with both the legal justification and the practical template for comprehensive reform.

1.6.1 The WIPO Treaty on IP, Genetic Resources and Associated TK (May 2024)

[320] L.A. Ayoyemi. "Two strings on a bow: Scope of registrable trademarks from the era of traditional knowledge to digital technology in Nigeria (pre and post 1965)." *Nigerian Intellectual Property Law*. Routledge, 2022. 91-103.
[321] M.M Nwaogazie , "Issues and Challenges Faced in Intellectual Property Rights in Nigeria" (*IP Bulletin*, May 23, 2022) <https://ipbulletin.in/intellectual-property-rights-in-nigeria/>

The adoption of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge in May 2024 is a milestone,[322] following more than twenty years of serious negotiations at the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).[323] Nigeria, being an active member of WIPO and the IGC, is directly affected by this new instrument.[324]

The treaty's central provision is the imposition of a compulsory disclosure obligation on patent applicants.[325] In case the claimed invention has a genetic resource basis, disclosure of the origin country is required by the applicant. If it is founded on traditional knowledge relating to genetic resources, the applicant is required to reveal the Indigenous People or local community from which the knowledge was obtained.[326] This straightforward yet effective mechanism brings transparency and traceability into the patent system. It does this in a manner that directly confronts the type of biopiracy exemplified in the *Vernonia Amygdalina* case by placing the onus of disclosure on the patent applicant and establishing an open record that can be utilized to police compliance with access and benefit-sharing requirements. The agreement establishes a new international legal regime that requires member states to incorporate this protection within their national patent legislation.

1.6.2 The Nagoya Protocol on Access and Benefit-Sharing

Nigeria has ratified the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization of 2010.[327] The legally binding treaty demands that the participating nations implement a national Access and Benefit-Sharing (ABS) system. The Protocol is founded on three pillars:

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[322] WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, adopted at the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources, Geneva, May 24, 2024.

[323] WIPO. "Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions" (*Traditional-knowledge*) <https://www.wipo.int/en/web/traditional-knowledge>

[324] WIPO. "WIPO Nigeria Office Roundtable Discussion Propels Discourse among Experts, IP Offices and Other Stakeholders on the WIPO Treaty on Genetic Resources and Associated Traditional Knowledge" (*Office-nigeria*) <https://www.wipo.int/en/web/office-nigeria/w/news/2024/wipo-nigeria-office-roundtable-2024>

[325] Article 1, WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf

[326] WIPO. "Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources" (December 20, 2023) <https://www.wipo.int/diplomatic-conferences/en/genetic-resources/>

[327] Alex Abutu. "Nigeria: How Country Can Benefit from Nagoya Protocol" (*allAfrica.com*, February 23, 2012) <https://allafrica.com/stories/201202230399.html>

8. **Prior Informed Consent (PIC):** The use of genetic resources and associated traditional knowledge belonging to indigenous and local communities is permissible only with their free, prior, and informed consent.[328]

9. **Mutually Agreed Terms (MAT):** The access and use terms and conditions, including any benefit-sharing agreements, need to be negotiated and legalized through a contract or agreement.[329]

10. **Fair and Equitable Sharing of Benefits:** The benefits arising from the use of these resources and information, whether financial (e.g., royalties) or non-financial (e.g., technology transfer, collaborative research), need to be equitably distributed among the communities from whence they originate.[330]

Even after being a signatory to the Protocol for more than a decade, Nigeria has not, in effect, domesticated its provisions and developed an operational national ABS framework.[331] This gap in implementation renders its communities and resources vulnerable, and it is not in compliance with its international legal obligations. The PIC, MAT, and benefit-sharing principles should be the foundation of any new TK protection regime in Nigeria.

1.6.3 The ARIPO Swakopmund Protocol: A Blueprint for a *Sui Generis* System

Although Nigeria is not part of the African Regional Intellectual Property Organization (ARIPO), the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (2010)[332] presents a useful and appropriate model for a *sui generis* system of law.[333] The Protocol is particularly important in that it provides an Africa-specific framework crafted with a specific intent to respond to the peculiar nature of traditional knowledge (TK) in Africa.

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[328] Article 6, Paragraph 2 & Article 12, Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, adopted in Nagoya, Japan, on 29 October 2010, entered into force 12 October 2014, 3008 U.N.T.S. 3

[329] Article 6, Paragraph 3(a), Article 5 & Article 8, Ibid.

[330] Article 5, Ibid.

[331] Alex Abutu. "Nigeria: How Country Can Benefit from Nagoya Protocol" (*allAfrica.com*, February 23, 2012) <https://allafrica.com/stories/201202230399.html>

[332] Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, adopted by the Diplomatic Conference of the African Regional Intellectual Property Organization (ARIPO) at Swakopmund, Namibia, on August 9, 2010.

[333] C. Jovine. "The Swakopmund Protocol for the protection of expressions of folklore: a review of implementation in Rwanda and Tanzania." *Journal of Intellectual Property Law and Practice* 17.10 (2022): 834-843.

Its key provisions provide a good model. It expressly states local and indigenous communities as the beneficiaries and owners of their TK and folklore.[334] It provides for both positive protection (granting communities exclusive rights to approve or reject use) and defensive protection (protection against third parties acquiring abusive IP rights).[335] The Protocol protects against misappropriation and abuse beyond the traditional context and is expressly designed to be read in light of customary rules and practices.[336] The Swakopmund Protocol demonstrates that an integrated, functional *sui generis* system is not just a theoretical abstract notion but a real phenomenon that can be modified to fit Nigeria's legal and cultural context.

Together, when analysed, these regional and international frameworks exhibit a clear and rational evolutionary trend in juristic thinking. The international community has taken a major leap toward the recognition of inherent community rights towards their common knowledge. This convergence thus offers Nigeria a strong mandate and a clear set of guiding principles to inform its national reforms from a place of legal deficiency to that of established international best practice.

1.7 A Case for a *Sui Generis* Framework for Nigeria

The foregoing analysis gives rise to one inevitable conclusion: piecemeal revision of Nigeria's current intellectual property legislation is not the answer. The underlying premises of the Nigerian Copyright Act, 2022, and Patent Acts are so essentially incompatible with the character of TK that amendment would be tantamount to stitching a patch onto a garment that was never tailored to wear it.[337] The sole rational, effective, and equitable way forward is the enactment of a specialized *sui generis* legal regime, one "of its kind," crafted specifically to the particular nature of traditional knowledge and the needs of its custodians.[338]The successful implementation of the proposed framework will depend largely on strong political will, the provision of adequate financial and human resources, effective

[334] ARIPO. "Explanatory Guide to the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore" https://www.aripo.org/storage/resources-protocols/1674640204_php3Quduj.pdf
[335] Ibid.
[336] C. Jovine. "The Swakopmund Protocol for the protection of expressions of folklore: a review of implementation in Rwanda and Tanzania." *Journal of Intellectual Property Law and Practice* 17.10 (2022): 834-843.
[337] Wayo, Francis. "Development Of a Legal Framework for the Protection of Traditional Knowledge and Traditional Cultural Expressions as a Catalyst for Sustainable National Development." (2024)
[338] Nwachukwu, Nkeiruka Tasie. "Legal Appraisal of Traditional Knowledge as Aspects of Intellectual Property Regime in Nigeria" RSU Journal of Public Law 1, (2023)

community participation ,and robust institutional capacity. Without these critical elements, the framework may face significant challenges in achieving its intended objectives.

1.8 The Rationale: Why Incremental Reform is Insufficient

Attempting to fit the square peg of communal, intergenerational TK into the round hole of individualistic, novelty-based IP law is an impossible task. As illustrated, doing so either leaves the most valuable form of TK unprotected (as under the Copyright Act,2022) or creates perverse incentives for misappropriation (as under the Patent Act). A *sui generis* approach is necessary because it allows for the creation of a new legal regime that starts from the foundation of a different premise: that TK is a valid and protectable intellectual creation in and of itself, with characteristics of ownership, transmission, and duration specific to it.

1.9 Learning from Others: Models from the Global South

Nigeria would not be pursuing this path alone. Most developing nations, endowed with diverse ecosystems and cultural heritage, have found it necessary to and have establish *sui generis* regimes. The experiences gained from these experiments provide important lessons:

d) **India:** The establishment of the Traditional Knowledge Digital Library (TKDL) is an innovative attempt at defensive protection. Through the documentation of traditional medicinal knowledge in a database searchable by foreign patent offices, India has been able to effectively pre-empt the misguided grant of patents over knowledge already in the public domain, a direct reaction to cases like the turmeric patent controversy.[339]

e) **Kenya:** The Traditional Knowledge and Cultural Expressions Act of 2016 provides a model legislative text.[340] It establishes community rights, stipulates access and benefit-sharing procedures, and mandates the creation of a national repository of TK, granting both positive and defensive protection.[341]

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[339] WIPO. "Background Brief, Traditional knowledge and intellectual property" https://www.wipo.int/export/sites/www/pressroom/en/documents/background_brief_tk.pdf

[340] The Protection of Traditional Knowledge and Traditional Cultural Expressions Act, 2016 (Act No. 33 of 2016).

[341] U. Nwankwo. C. Kenny "Their Knowledge, Their Rights: Using Traditional Knowledge and Intellectual Property to Protect Communities" (*Center for Global Development, March 01, 2021*) <https://www.cgdev.org/blog/their-knowledge-their-rights-using-traditional-knowledge-and-intellectual-property>

f) **Brazil and Peru:** Both of these nations have also enacted specific legislation to regulate access to genetic resources and associated TK, establishing legal structures for benefit sharing and prior consultation of communities and thereby providing further models for national implementation of international obligations.[342]

These instances indicate that *sui generis* protection is an effective and practical policy option for countries wishing to preserve their cultural heritage and advance equitable development.

1.10 Conclusion

This article posits that the era of piecemeal changes and narrow reform is gone. The global legal framework has shifted dramatically. The "new rules" in the Nagoya Protocol and, more importantly, the landmark 2024 WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge have generated an unmistakable international momentum in the direction of a new rights-based paradigm, community-centred, and founded on the principles of consent and fairness. These instruments give Nigeria a definitive set of international commitments along with the political and legal push necessary to embark on radical transformation.

The path forward is summarized in the realization of a *sui generis* system that is elaborate. By creating a custom-made legal and institutional framework, Nigeria can move beyond the colonial-era paradigms that mark its current intellectual property laws. Such a new system, guided by the successful models of India, Kenya, and the Africa-centred Swakopmund Protocol, would in effect recognize communities as the rightful custodians of their cultural heritage. It would grant them the authority to provide consent, negotiate conditions, and benefit equitably from the advantages that result from their knowledge. It would also create systems for proactive safeguarding of their rights as well as defensive protection from biopiracy.

This campaign for reform is more than a mere modernization of the law. It is a recognition of the value of indigenous creativity, a resolve to achieve social justice for marginalized communities, and a strategic step aimed at enabling Nigeria to tap its distinctive cultural resources towards a sustainable future of prosperity. The establishment of a new legal regime for the preservation of traditional

[342] Ibid.

knowledge is important in securing the safeguarding of culture and is an essential step towards a more balanced and authentic way of national progress.