

**THE PROTECTION OF TRADITIONAL KNOWLEDGE IN NIGERIA'S COPYRIGHT  
LAW**

**SUBMITTED**

**BY**

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(2019/LW/12358)**

**TO**

**THE DEPARTMENT OF LAW, FACULTY OF LAW  
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**OCTOBER, 2024**

**TITLE PAGE**

**THE PROTECTION OF TRADITIONAL KNOWLEDGE IN NIGERIA'S COPYRIGHT  
LAW**

## DECLARATION

This is to declare that this research project titled “The Protection of Traditional Knowledge in Nigeria’s Copyright Law,” was carried out by Osita, Onyinye Rita, and is solely the result of my work except where acknowledged as being derived from other person(s) or resources.

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**Signature** \_\_\_\_\_

October, 2024

**APPROVAL AND CERTIFICATION**

Be it known that, **Osita, Onyinye Rita**, with Matric Number: **2019/LW/12358**, an undergraduate student of Alex Ekwueme Federal University, Ndufu-Alike, Ikwo, Ebonyi State, has satisfactorily completed the requirement for the award of “LL.B” Certificate.

The work embodied in this research is original and has not been submitted in part or full for any degree of this or any other University.

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## **DEDICATION**

I dedicate this work to Emmanuel Sunday Okibe, my most humble and special friend who holds a special place in my heart.

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## ACKNOWLEDGEMENTS

I would like to express my deepest gratitude to the individuals whose unwavering support and contributions profoundly impacted my academic journey.

Firstly, I thank my family for their unconditional love and encouragement: my parent, Mrs. Ngozi Osita, and my relative, Obianuju Osita.

To the esteemed faculty members who guided me, I extend my sincere appreciation. Associate Professor Ezeni Azu Udu, Dean of the Faculty of Law, provided exceptional leadership and vision. Emmanuel Nnemeka Nwambam Esq., my project supervisor, offered expert guidance and mentorship. Dr. K.G. Onyegbule, Head of Department, demonstrated inspirational leadership. I also appreciate the valuable instruction from Barrister Emeka Nweze and Barrister Emeka Chukwudifo.

I also extend heartfelt thanks to my supportive network, including Nnemeka Oreffo, Hellen Oreffo, Awulika Osita, for constant motivation, and Emmanuel Okibe, for his invaluable assistance throughout my academic journey.

Your collective support has been instrumental to my academic success. Thank you all for believing in me.

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National Council for Arts and Culture Act, Cap N3, Laws of the Federation of Nigeria 2004

The African Economic Community (AEC) Treaty 1991.

The National Commission for Museums and Monuments Act, Cap N19, Laws of the Federation of Nigeria 2004

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

U.S. Constitution 1992.

United Nations Declaration on the Rights of Indigenous Peoples 2007

Universal Declaration of Human Rights 1948



**LIST OF ABBREVIATIONS**

AEC:	African Economic Community
AU:	African Union
CBD:	Convention on Biological Diversity
ILO:	International Labour Organization
IP:	Intellectual Property
IPP:	Intellectual Property Protection
IPR:	intellectual property rights
IPR:	Intellectual Property Rights
NCAC:	National Council for Arts and Culture
NCC:	Nigerian Copyright Commission
NCMM:	National Commission for Museums and Monuments
OAU:	Organisation of African Unity
PVP:	Plant Variety Protection
RECs:	Regional Economic Communities
TK:	Traditional Knowledge
TRIPS:	Agreement on Trade-Related Aspects of Intellectual Property Rights
UN:	United Nations
UNESCO:	United Nations Educational, Scientific and Cultural Organization
WIPO:	World Intellectual Property Organization
WTO:	World Trade Organization

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## ABSTRACT

The concept of intellectual property and the protections granted under intellectual property law in today's globalised world have largely followed a Western view of intellectual property rights. Over the years, there has been a growing recognition of the importance of protecting traditional knowledge under Nigeria's copyright law. Traditional knowledge, which includes indigenous knowledge and cultural expressions, is often at risk of being exploited without consent or compensation. However, many countries, including Nigeria, are beginning to recognize the importance of protecting traditional knowledge. In Nigeria, traditional knowledge is often passed down through generations and plays a significant role in the cultural identity of various communities. As a result, there is a growing movement to incorporate provisions for the protection of traditional knowledge within Nigeria's copyright law to ensure that these valuable cultural assets are safeguarded for future generations. Concerns about the piracy of the intellectual creations of traditional communities the world over have projected the issue of protecting traditional knowledge into the Nigerian Copyright arena. In response to these concerns, Nigeria has started to incorporate provisions in its copyright law to protect traditional knowledge. This includes recognizing the rights of indigenous communities over their intellectual creations and implementing measures to prevent the unauthorized use or reproduction of traditional knowledge. This project adopted the doctrinal research method to analyze the legal framework surrounding traditional knowledge protection in Nigeria. The research focused on reviewing the relevant laws and regulations, as well as examining case studies of disputes involving traditional knowledge. Through this method, the project was able to provide valuable insights into the effectiveness of current legal protections and identify areas for improvement. The research among other things, revealed that there are gaps in the legal framework that leave indigenous communities vulnerable to exploitation of their traditional knowledge and that there is a lack of awareness among both indigenous communities and government officials about the importance of protecting traditional knowledge. It was also discussed that there is a need for stronger enforcement mechanisms to prevent unauthorized use of traditional knowledge. Recommendations were made to strengthen existing laws and regulations, such as by implementing stricter enforcement mechanisms and increasing community involvement in decision-making processes. Overall, the project emphasized the importance of preserving and respecting traditional knowledge for the benefit of both present and future generations. By addressing these issues, Nigeria can better safeguard the cultural heritage and intellectual contributions of its indigenous communities, as incorporating traditional knowledge into copyright law can contribute to the promotion of cultural diversity and the empowerment of Nigeria's indigenous peoples.

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background to the Study

Because there has been a gradual development in intellectual property legislation over the last few decades, one of the more contentious issues to come out of globalisation is that of indigenous peoples and intellectual property rights.<sup>1</sup> When it comes to acquiring patents, copyrights, or trademarks, indigenous people haven't had nearly the same influence as corporate interests during this expansion of intellectual property legislation. In actuality, there have been several broad expansions of intellectual property law for corporate interests, whereas the few laws that have acknowledged indigenous cultures' rights have been extremely narrow in scope.<sup>2</sup>

In search of this intellectual property, companies travel from all over the world to visit indigenous peoples in their homelands.<sup>3</sup> As the world moves towards a digital era, it has become easier for them to obtain. Any storyteller who has been captured on film or audio can be converted into a digital version that can be viewed on local or worldwide networks.<sup>4</sup> Similarly, any procedure can be simply documented and applied scientifically. Concern over "bio-piracy" has grown over the past few years.<sup>5</sup> Some well-known examples are the US patent on turmeric,

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<sup>1</sup> PN Jones, *Intellectual Property Rights, Indigenous People, and the Future* (2007). Available at <<http://www.indigenoussissues.blogspot.com>> accessed on 10 August 2024.

<sup>2</sup> PN Jones, *Intellectual Property, Indigenous Peoples, and the Law* (2008). Available at <<http://www.indigenoussissues.com>> accessed on 10 August 2024.

<sup>3</sup> *Ibid*, Jones 2007, at note 1.

<sup>4</sup> R Sullivan, 'Indigenous Cultural and Intellectual Property Rights'. *Digital Library Magazine* [2002] (8) (5) Available at <<http://www.dlib.org/dlib/may02/05contents.html>> accessed 6 August 2024.

<sup>5</sup> Bio-piracy here, is the use without authorization, especially for commercial purposes or the appropriation of traditional knowledge or other forms of biological resources, without acknowledging the source of same or giving any form of compensation to the original discoverers or guides or possessors of that bio-cultural knowledge. See: R Coombe, 'The Recognition of Indigenous Peoples' and Community Traditional Knowledge in International Law,' *St. Thomas Law Review* [2001] (14) 285, where Rosemary Coombe states that the process of bio-piracy is characterized by the non-recognition of the intellectual contributions of holders and practitioners of traditional

which is widely known in India, for curing wounds; patents on basmati rice from Pakistan and India; and patents on ayahuasco, which is utilised in traditional Amazonian medicine. However, the lack of effective protection for traditional knowledge (TK) under intellectual property rights (IPR) regimes—such as the ability to patent without benefit sharing—has made it challenging to stop bio-piracy.<sup>6</sup>

In several instances, traditional medicinal plants are either owned by pharmaceutical firms or patent them, despite the fact that indigenous peoples have been using them for generations.<sup>7</sup> The corporations deny indigenous peoples their rightful share of the economic, medicinal, and social advantages derived from the application of their customary knowledge or practices because they fail to acknowledge their traditional ownership of such information.<sup>8</sup> The nations where this knowledge is located lose enormous amounts of money that could have been earned by local people using and preserving it for appropriate economic and cultural purposes.

When traditional knowledge (TK) is taken away from an indigenous group, the community no longer has control over how the knowledge is applied. It may even be developed and patented abroad, benefiting private parties exclusively and denying credit to the original communities. Most of the time, this body of knowledge has developed over many centuries and is exclusive to the customs, traditions, land, and resources of the indigenous peoples.<sup>9</sup> As a result, it

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knowledge towards the improvement of the plants or creation of the bio-cultural knowledge in question. See generally works on bio-piracy: I Mgbeoji, *Global Biopiracy: Patents, Plants, and Indigenous Peoples* (Vancouver UBC Press 2005); N Roht-Arriaza, 'Of Seeds and Shamans: The Appropriation of the Scientific and Technical Knowledge of Indigenous and Local Communities'. *Michigan Journal of International Law* [1996] (17) 919.

<sup>6</sup> K Swiderska, *Banishing the Biopirates: A New Approach to Protecting Traditional Knowledge* [2006] available at <<http://www.pubs.iied.org/pdfs/1453?IIED.pdf>> accessed 6 August 2024

<sup>7</sup> For general on plant diversity and traditional medicine. See: C Oquamanam, *International Law and Indigenous Knowledge: Intellectual Property, Plant Biodiversity, and Traditional Medicine* (University of Toronto Press 2006)

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<sup>8</sup> World Intellectual Property Organization (WIPO). WIPO and Indigenous Property. A WIPO publication. Available at <<http://www.ohchr.org>> accessed 4 September 2024.

<sup>9</sup> *ibid*

significantly impairs the community's and their culture's methods for conserving the environment and natural resources and progressively erodes the rich biodiversity of the region. Native American communities have responded with indignation, seeing these acts as the theft of their cultural history, indigenous intellectual property,<sup>10</sup> and trivialisation of their cultural identity.<sup>11</sup> Therefore, indigenous groups around the world are starting to demand that developed countries grant them the authority to decide how resources from their ancestral lands are used for industrial, medical, or cultural purposes. Developing countries, like Nigeria, are also starting to look for ways to protect their traditional knowledge (TK) from exploitation for profit.<sup>12</sup> They argue that elements of indigenous knowledge systems and heritage cannot be separated and thus require equal protection, and they are unwilling to accept or support a legal framework that has the potential to be culturally destructive, such as the current intellectual property regime. Instead, they are advocating for more comprehensive approaches to the protection of their rights to TK, bio-genetic resources, territories, culture, and customary laws.<sup>13</sup>

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<sup>10</sup> Indigenous intellectual property is used in national and international forums to identify indigenous peoples' special rights to claim (from within their own laws) all that their indigenous groups know now, have known, or will know and includes the information, practices, beliefs and philosophy that are unique to each indigenous culture. For example, the knowledge of how certain plants within an indigenous groups' homeland are used to treat fever or diarrhoea would fall under indigenous intellectual property. Indigenous Intellectual Property Rights: Legal Obstacles and Innovative Solutions. CA Walnut Creek, AltaMira Press. Pp. 1-4; Rainforest Aboriginal Network. 1993. Julayinbul: Aboriginal Intellectual and Cultural Property Definitions, Ownership and Strategies for Protection. Cairns: Rainforest Aboriginal Network. 65; T Janke, 1998. Our Culture: Our Future: The Report on Australian Indigenous Cultural and Intellectual Property Rights. Sydney: Michael Frankel & Co. 31 and T Janke, 'Protecting Australian Indigenous Arts and Cultural Expression: A Matter of Legislative Reform or Cultural Policy?' *Culture and Policy* [1996] (7) (3) 14.

<sup>11</sup> 'Western Intellectual Property and Indigenous Cultures: The Case of the Panamanian Indigenous Intellectual Property Law.' *Boston University Law Journal*. (23) 337-344. Available at <<http://www.bu.edu/337-394>> accessed 4 September 2024.

<sup>12</sup> In recent years, indigenous peoples have expressed their concerns about these issues in a number of international declarations, including the Manila Declaration on the World Declaration for Cultural Development (1988), the Kari-Oca Declaration (1992), the Mataatua Declaration (1993) and the Beijing Declaration of Indigenous Women (1995). These concerns were also raised in the Final Statements of the Coordinating Body of the Indigenous Peoples of the Amazon Basin (1994) and the South Pacific Regional Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights (1995). See: World Intellectual Property Organization (WIPO). WIPO and Indigenous Property. A WIPO publication. Available at <<http://www.ohchr.org>> accessed on 5 September 2024.

<sup>13</sup> See: V Tauli-Corpuz, 'Biodiversity, traditional knowledge and rights of indigenous peoples. Indigenous Perspectives.' *Journal of Tebtebba Foundation* [2004] (6) (1 & 2) 8-33.



While indigenous people themselves acknowledge that the very nature of intellectual property seems to negate the essence of indigenous ownership of property, advanced societies undoubtedly have a moral obligation to recognise the right of local communities to protect and utilise their TK.<sup>14</sup> This has led to a recent debate on the best and alternative ways to protect TK.

Nigeria, an extremely wealthy and biodiverse country, stands to benefit greatly from stepping up its efforts to safeguard its traditional knowledge.<sup>15</sup> It will not only gain financial advantages that will help stabilise its unstable economy, but it will also have greater control over its intellectual property, which will allow it to be protected from exploitation and used in an ongoing, sustainable manner. As a result, the government can no longer ignore current global advancements in this area and needs to remove any obstacles to the preservation of its traditional knowledge, as other nations like India have done.

Based on the above highlights, the purpose of this paper is to undertake a critical examination of the efficacy of Nigeria's copyright law in safeguarding traditional knowledge, with a view to identifying the lacunae and limitations inherent in the current legislative framework, and subsequently proposing targeted recommendations for reform aimed at enhancing the protection of traditional knowledge in Nigeria.

## **1.2 Statement of the Problem**

In the contemporary world, the issue of traditional knowledge protection in the context of copyright law has gained substantial attention. This is particularly important in a country like

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<sup>14</sup> KR Conklin, *Indigenous Intellectual Property Rights -- The General Theory, and Why It Does Not Apply in Hawaii* [2011]. Available at <<http://www.angelfire.com>> accessed 12 September 2024.

<sup>15</sup> L Adedeji, Intellectual property and the protection of traditional knowledge. *The Lawyers Chronicle, Online Magazine* [2014] Available at: <<http://www.thelawyerschronicle.com/intellectual-property-and-the-protection-of-traditional-knowledge/.htm>> accessed 12 September 2024.

Nigeria, where traditional knowledge forms an integral part of the cultural heritage and identity of various ethnic groups.<sup>16</sup> The problem at hand is the lack of adequate legal provisions to protect traditional knowledge within Nigeria's copyright law framework. This gap has left traditional knowledge vulnerable to misappropriation, exploitation, and unauthorized commercialization, thus threatening the preservation and integrity of Nigeria's rich cultural heritage.

The emergence of this problem has been exacerbated by the rapid globalization and commercialization of traditional knowledge. There has been a surge in cases where traditional knowledge, including folktales, traditional medicine, and indigenous artistic expressions, has been exploited for commercial gain without due recognition or compensation to the custodians of the knowledge. This exploitation often occurs without the informed consent of the indigenous communities that hold and transmit this knowledge across generations.<sup>17</sup> As a result, there is an urgent need to address this issue to safeguard and preserve Nigeria's traditional knowledge for future generations.

This study seeks to address the aforementioned problem by examining the existing legal framework for copyright protection in Nigeria and proposing necessary amendments to ensure adequate protection of traditional knowledge. The study aims to illuminate the unique challenges posed by the protection of traditional knowledge within the copyright law paradigm and to present feasible solutions for consideration by policymakers, legal practitioners, and stakeholders in Nigeria.

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<sup>16</sup> C Heath & S Weidlich, 'Intellectual Property: Suitable for Protecting Traditional Medicine' *Intellectual Property Quarterly* [2003] (1) (1) 69

<sup>17</sup> Murray D Andrew, 'Regulation and Rights in Networked Space' *Journal of Law and Society* [2003] (30) (1) 192

One of the critical aspects that this study will explore is the recognition of traditional knowledge as a form of intellectual property deserving legal protection. Traditional knowledge is often transmitted orally and is deeply embedded in the cultural practices and beliefs of communities. As such, the existing copyright law may not fully accommodate the complex nature of traditional knowledge, necessitating specialized provisions to address this form of intellectual property.<sup>18</sup> By delving into the intricacies of traditional knowledge systems and the challenges associated with its protection, this study aims to raise awareness and stimulate discourse on the need for tailored legal mechanisms.

Furthermore, the study will critically analyze international best practices and legal instruments related to traditional knowledge protection, drawing insights from global initiatives and experiences. This comparative analysis will provide valuable perspectives for shaping effective and context-specific measures within Nigeria's legal framework. It will also shed light on the interconnectedness of traditional knowledge protection with broader issues of cultural rights, indigenous rights, and sustainable development.

Conclusively, this study endeavors to contribute to the discourse on traditional knowledge protection in Nigeria's copyright law by offering a comprehensive analysis of the existing challenges and proposing viable solutions. It aspires to spur legal and policy reforms that can better safeguard the rights of traditional knowledge holders and promote respect for the cultural heritage of Nigeria. Ultimately, the protection of traditional knowledge is not merely a legal matter; it is a societal imperative that demands collective action to uphold the dignity and rights of indigenous communities and their ancestral wisdom.

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<sup>18</sup> M Blakeney, 'The Protection of Traditional Knowledge under Intellectual Property Law'. *European Intellectual Property Review* [2000] (22) (6) 253.

This research will aim to address the following questions:

1. How does Nigerian copyright law currently protect traditional knowledge?
2. What are the challenges faced in protecting traditional knowledge within the existing legal framework?
3. What improvements can be made to better safeguard traditional knowledge in Nigeria's copyright law?

By exploring these questions, this study seeks to contribute to the ongoing discourse on the protection of traditional knowledge in intellectual property law.

### **1.3 Aim and Objectives of the Study**

The core aim of this study is to unveil the protection of traditional knowledge in Nigeria's copyright law.

The objectives of the study are:

1. To discover how Nigerian copyright law currently protect traditional knowledge.
2. To find out the challenges faced in protecting traditional knowledge within the existing legal framework.
3. To discover areas of improvements that can be made to better safeguard traditional knowledge in Nigeria's copyright law.

#### **1.4 Scope and Limitations of the Study**

The scope of this research endeavor is to conduct a comprehensive examination of the efficacy of Nigeria's copyright law in safeguarding traditional knowledge (TK). This study will undertake a multifaceted approach, commencing with the identification and categorization of the diverse forms of traditional knowledge extant in Nigeria that necessitate protection under the auspices of copyright law. A critical analysis of the prevailing copyright legal framework in Nigeria will be undertaken, with a particular focus on the provisions and mechanisms pertaining to the protection of traditional knowledge.

Furthermore, this research will investigate the challenges and lacunae inherent in the existing copyright law, thereby elucidating the gaps in protection afforded to traditional knowledge in Nigeria. A comparative analysis with international best practices and treaties, notably the World Intellectual Property Organization (WIPO)'s initiatives to protect TK, will also be conducted.

Ultimately, this study will proffer recommendations for the reform and augmentation of Nigeria's copyright law to enhance the protection of traditional knowledge. The parameters of this research will be circumscribed to the examination of Nigeria's copyright law and its application to traditional knowledge, eschewing an examination of other forms of intellectual property protection or the protection of traditional knowledge in other jurisdictions.

#### **1.5 Significance of the Study**

**To Students:** This study is important for students as it sheds light on the legal framework surrounding traditional knowledge protection in Nigeria's copyright law. By understanding how traditional knowledge is safeguarded, students can gain a deeper appreciation for the cultural heritage of Nigeria and the importance of preserving indigenous knowledge. Additionally, this

study can provide students with valuable insights into the intersection of intellectual property rights and cultural heritage, which is relevant to various fields of study such as law, anthropology, and cultural studies.

**To Researchers:** This study will contribute to the existing body of knowledge on intellectual property law in Nigeria. It will also provide valuable insights into the legal framework surrounding the protection of traditional knowledge in the country. Researchers will benefit from a deeper understanding of how Nigeria's copyright law addresses the unique challenges faced in safeguarding traditional knowledge. This study aims to spark further research and discussion on the topic, ultimately leading to more effective measures for protecting traditional knowledge in Nigeria.

**To the Indigenous People:** The protection of traditional knowledge in Nigeria's copyright law is of utmost importance to the indigenous people as it safeguards their cultural heritage and ensures that their traditional knowledge is respected and not exploited by outsiders. This protection also helps to preserve the knowledge passed down through generations and allows indigenous communities to benefit from their intellectual property rights. Additionally, it promotes sustainable development by enabling indigenous communities to control and benefit from the commercialization of their traditional knowledge.

**To the Government and Policy Makers:** This study on the protection of traditional knowledge in Nigeria's copyright law is significant to the government and policy makers as it will provide valuable insights into how to preserve and promote the cultural heritage of indigenous communities. By recognizing and safeguarding traditional knowledge, the government can support the economic development of these communities and ensure their rights are protected.

Policy makers can use the findings of this study to develop more effective laws and regulations that address the unique needs of traditional knowledge holders in Nigeria.

## **1.6 Research Methodology**

This study adopted the doctrinal research method. Doctrinal or library-based research is the most common methodology employed by those undertaking research in law. Doctrinal research asks what the law is in a particular case. It is concerned with the analysis of the legal doctrine and how it was developed and applied.<sup>19</sup> As is well known, this is purely theoretical research that consists of either simple research aimed at finding a specific statement of the law, or it is legal analysis with more complex logic and depth.<sup>20</sup>

In the context of Nigeria's copyright law and traditional knowledge, the doctrinal research method was deemed most appropriate as it allowed for a comprehensive analysis of existing legal doctrines and their application to traditional knowledge. By focusing on the development and application of legal doctrine, this study aimed to provide a deeper understanding of how traditional knowledge is protected under copyright law in Nigeria. Through this theoretical research approach, the study sought to uncover any gaps or inconsistencies in the legal framework that may hinder the effective protection of traditional knowledge in the country.

In line with the above, the primary sources of data for this research included the Nigerian Copyright Act, relevant international treaties, and scholarly articles on traditional knowledge protection. Secondary sources such as books, journals, and online resources were also consulted to gain a comprehensive understanding of the subject. The data collected was analyzed through a

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<sup>19</sup> Salim Ibrahim Ali, Zuryati Mohamed Yusoff and Zainal Amin Ayub, 'Legal Research of Doctrinal and Non-Doctrinal'. *International Journal of Trend in Research and Development* [2017] (4) (1) 493-495

<sup>20</sup> *Ibid*

qualitative approach, focusing on the legal framework surrounding traditional knowledge protection in Nigeria's copyright law. Interviews with legal experts and stakeholders in the field were also conducted to gather insights and perspectives on the topic.

## **1.7 Chapter Analysis**

Chapter one of this work began with an overview of the importance of protecting traditional knowledge within Nigeria's copyright law. The chapter delved into the background of the study, highlighting the need for legal frameworks to safeguard indigenous knowledge. It also outlined the statement of the problem, aim, objectives, scope, and limitations of the study. The significance of the study in addressing gaps in existing legislation was also discussed, along with the research methodology that will be employed. The chapter ended with a preview of the subsequent chapters that will further explore the protection of traditional knowledge in Nigeria's copyright law.

Chapter two of this work looks into conceptual clarifications of traditional knowledge and its protection under Nigeria's copyright law. Traditional knowledge refers to the knowledge, innovations, and practices of indigenous and local communities that have been passed down through generations. The theoretical foundation of this study will explore the legal and ethical considerations surrounding the protection of traditional knowledge. The literature review will examine existing scholarship on the subject, analyzing the various perspectives and arguments presented in the academic discourse.

Chapter three of this work will analyze the existing legal and institutional frameworks for the protection of traditional knowledge in Nigeria. It will explore how indigenous and local communities are involved in the protection of their traditional knowledge, as well as the national



laws and institutions that support this protection. Additionally, the chapter will examine the international legal mechanisms and institutions that Nigeria is part of in relation to the protection of traditional knowledge. Overall, this chapter will provide a comprehensive overview of the legal and institutional framework for the protection of traditional knowledge in Nigeria.

Chapter four will go further to discuss the prospects of the protection of traditional knowledge in Nigeria's copyright law. It examines the potential benefits that such protection can bring to indigenous communities and the country as a whole. By safeguarding traditional knowledge, Nigeria can ensure the preservation of its cultural heritage and promote sustainable development. Additionally, the chapter explores possible strategies and mechanisms that can be implemented to enhance the protection of traditional knowledge in Nigeria's copyright law, ultimately contributing to the overall progress of the nation.

The final chapter of this work will provide a summary of the findings regarding the protection of traditional knowledge in Nigeria's copyright law. Recommendations are also made for improving the current legal framework in order to better safeguard traditional knowledge. Additionally, this chapter discusses the contributions this study has made to the existing body of knowledge on the subject and suggests areas for further research. In conclusion, the importance of protecting traditional knowledge within Nigeria's copyright law is reiterated, highlighting the need for ongoing efforts to address this issue.

## CHAPTER TWO

### CONCEPTUAL CLARIFICATIONS, THEORETICAL FOUNDATION AND LITERATURE REVIEW

#### 2.1 Conceptual Clarifications

##### 2.1.1 Introduction to Traditional Knowledge

Traditional knowledge (TK) has diverse interpretations across disciplines due to varying epistemological perspectives. This complexity stems from disparate theoretical frameworks. As seen in Heath and Weidlich's definition:

... tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields.<sup>21</sup>

To illustrate the difference, Mugabe notes that indigenous knowledge is culture-specific, practical, and spiritual, whereas traditional knowledge can be formalized and codified:

... that knowledge that is held and used by a people who identify themselves as indigenous of a place based on a combination of cultural distinctiveness and prior territorial occupancy relative to a more recently-arrived population with its own distinct and subsequently dominant culture.<sup>22</sup>

Judging from the above, traditional knowledge encompasses the collective innovations, practices, and knowledge of indigenous and local communities, developed and transmitted through generations. This knowledge domain is characterized by its collective ownership, oral

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<sup>21</sup> C Heath and S Weidlich, 'Intellectual Property: Suitable for Protecting Traditional Medicine'. *Intellectual Property Quarterly* [2003] (1) 69.

<sup>22</sup> J Mugabe, 'Intellectual Property Protection and Traditional Knowledge: An Exploration in International Policy Discourse'. Available at: [https://www.wipo.int/edocs/mdocs/tk/en/wipo\\_unhchr\\_ip\\_pnl\\_98/wipo\\_unhchr\\_ip\\_pnl\\_98\\_4.pdf](https://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_4.pdf) accessed on 11 October 2017.

transmission, and intangible nature, and is deeply connected to the natural environment and cultural heritage of the communities that possess it. Traditional knowledge spans a broad range of subject matter, including traditional medical knowledge and practices, agricultural knowledge and practices, cultural expressions, spiritual and religious practices, language and literature, and traditional craftsmanship and technical skills<sup>23</sup>.

The significance of traditional knowledge lies in its contribution to the identity, culture, and well-being of indigenous and local communities, providing a sense of belonging, continuity, and purpose. Moreover, traditional knowledge is a vital component of global diversity, innovation, and sustainable development, offering unique perspectives and solutions to contemporary challenges<sup>24</sup>. However, traditional knowledge is facing numerous challenges, including misappropriation and misuse by external parties, cultural appropriation and exploitation, lack of recognition and protection under existing intellectual property laws, and erosion and loss due to globalization, urbanization, and cultural homogenization.<sup>25</sup>

The protection of traditional knowledge is therefore crucial to ensuring the rights and interests of indigenous and local communities, promoting cultural diversity and innovation, and supporting sustainable development. This paper will examine the protection of traditional knowledge in Nigeria's copyright law, critically evaluating the adequacy of existing legal frameworks and identifying areas for improvement. By exploring the intersection of traditional knowledge and intellectual property law, this research aims to contribute to the development of effective and culturally sensitive protection mechanisms for traditional knowledge in Nigeria.

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<sup>23</sup> Drahos Peter, 'Traditional Knowledge: A New Intellectual Property Paradigm?' *Intellectual Property Quarterly* [2000] (2) 131-155.

<sup>24</sup> Dutfield Graham, 'Intellectual Property, Biogenetic Resources and Traditional Knowledge.' *Earthscan* [2004].

<sup>25</sup> Taubman Anthony, *Respecting Traditional Knowledge and Cultural Expressions: A Framework for Analysis*. *International Centre for Trade and Sustainable Development* [2007] (7) 1-40.

### 2.1.2 The Scope and Nature of Traditional Knowledge

Heath and Weidlich (2006) posit that Traditional Knowledge (TK) encompasses various aspects of a community's life, including industrial, scientific, literary, and artistic fields.<sup>26</sup> This comprehensive scope underscores the integral nature of TK, which permeates every facet of a community's existence. TK is utilized by traditional communities in diverse domains such as agriculture, ecology, medicine, biodiversity, and expressive folklore, including music, dance forms, art, and craft.

The term 'traditional' in Traditional Knowledge does not connote antiquity, but rather emphasizes the knowledge's roots in the traditions and culture of the community that creates it.<sup>27</sup> Its modes of creation, preservation, and transmission are inherently tied to the community's customs and practices, distinguishing it from other forms of knowledge. This tradition-based nature of TK is a defining characteristic, highlighting its unique cultural context and significance.

A fundamental feature of Traditional Knowledge is its collective ownership, which vests in the community rather than individuals.<sup>28</sup> While custodians like healers and breeders may possess TK, ownership is not perceived in individualistic terms. Instead, it is a communal asset, with accessibility varying from unrestricted to restricted, depending on the community's norms and practices.<sup>29</sup> This collective ownership underscores the social and cultural significance of TK, emphasizing its role as a shared resource that contributes to the community's identity and well-being.

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<sup>26</sup> C Heath and S Weidlich, 'Intellectual Property: Suitable for Protecting Traditional Medicine'. *Intellectual Property Quarterly* [2003] (1) 69.

<sup>27</sup> A Hansen Stephen, Van Fleet and W Justin, *A Handbook on Issues and Options for Traditional Knowledge Holders in Protecting their Intellectual Property and Maintaining Biological Diversity* 3. Available at: <http://shr.aaas.org/tek/handbook/handbook.pdf> accessed 23 September 2024.

<sup>28</sup> *Ibid*

<sup>29</sup> Correa M Carlos, 'Traditional Knowledge and Intellectual Property'. Quaker United Nations Office, Geneva, available at: <http://www.geneva.quono.info-pdf/tkmono1> p. 4

### 2.1.3 The Increasing Importance of Traditional Knowledge

In recent years, Traditional Knowledge (TK) has gained significant attention and recognition globally. This growing interest is attributed to the increasing acknowledgment of the importance of TK in addressing various contemporary challenges, such as environmental degradation, climate change, and the loss of biodiversity. Peter K. Yu asserted that:

[d]espite the limited attention it has received (until lately), the debate over the protection of folklore, traditional knowledge, and indigenous practices impacts on a wide variety of policy areas, including agricultural productivity, biological diversity, cultural patrimony, food security, environmental sustainability, business ethics, global competition, human rights, international trade, public health, scientific research, sustainable development, and wealth distribution.<sup>30</sup> [d]espite the limited attention it has received (until lately), the debate over the protection of folklore, traditional knowledge, and indigenous practices impacts on a wide variety of policy areas, including agricultural productivity, biological diversity, cultural patrimony, food security, environmental sustainability, business ethics, global competition, human rights, international trade, public health, scientific research, sustainable development, and wealth distribution.<sup>31</sup>

The prevalence of traditional medicine in developing countries is noteworthy, with a significant proportion of the population relying on it as their primary source of healthcare. According to the World Health Organisation, up to 80 percent of individuals in emerging economies utilize traditional medicine to meet their health needs<sup>32</sup>. Concurrently, there is a growing trend in developed countries towards the adoption of complementary or alternative medicines derived from herbal sources.

The global commercial value of traditional medicinal knowledge is experiencing a surge in growth. The market for herbal supplements, for instance, is projected to reach \$107 billion by

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<sup>30</sup> K Yu Peter, 'Traditional Knowledge, Intellectual Property, and Indigenous Culture: An Introduction'. Available at <<http://www.peteryu.com/tk.pdf>> accessed 11 October 2024..

<sup>31</sup> *Ibid*

<sup>32</sup> Mahomoodally M Fawzi, 'Traditional Medicines in Africa: An Appraisal of Ten Potent African Medicinal Plants, Evidence-Based Complementary and Alternative Medicine' (2013). Available at <<http://dx.doi.org/10.1155/2013/617459>> accessed on 13 October 2024.

2017<sup>33</sup>. Furthermore, it is estimated that approximately 25 percent of modern medicines are formulated from plants initially utilized in traditional contexts<sup>34</sup>. A notable example of this is quinine, which was traditionally employed by indigenous Andean populations to treat malaria. The discovery of quinine's medicinal properties is attributed to the observation of feverish jaguars consuming the cinchona tree<sup>35</sup>. Quinine is subsequently extracted from the bark of the cinchona tree native to Peru<sup>36</sup>.

Beyond the realm of medicine, Traditional Knowledge (TK) has a profound impact on various domains, notably agriculture and biodiversity. Traditional breeding techniques employed by breeders in indigenous communities, particularly in developing countries, have yielded high-performing seeds and livestock. These genetically diverse seeds and livestock, developed through traditional breeding practices, are crucial to maintaining global food security. However, the appropriation of this knowledge often occurs without providing adequate compensation or recognition to the knowledge holders.

Naomi Roht-Arriaza, in her efforts to give a succinct clarification astutely observes that:

the appropriation of the scientific and technical knowledge of indigenous and local peoples, of the products of that knowledge, and even of the genetic characteristics of the people themselves has become both notorious and contested. It forms the heart of current debates about conservation of biological diversity, indigenous rights, and genetic resources in agriculture.<sup>37</sup>

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<sup>33</sup> Nutraceuticals World, 'Global Herbal Supplement Market to Reach \$107 Billion by 2017', available at <[https://www.nutraceuticalsworld.com/contents/view\\_breaking-news/2012-03-07/global-herbal-supplement-market-to-reach-107-billion-by-2017/](https://www.nutraceuticalsworld.com/contents/view_breaking-news/2012-03-07/global-herbal-supplement-market-to-reach-107-billion-by-2017/)> accessed on 13 October 2024.

<sup>34</sup> Zhang Junhua, J Onakpoya Igho, Posadzki Paul and Eddouks Mohamed, 'The Safety of Herbal Medicine: From Prejudice to Evidence'. *Evidence Based Complementary Alternative Medicine* [2005], Available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4370194/>> accessed on 13 October 2024.

<sup>35</sup> N Roht-Arriaza, 'Of Seeds and Shamans: The Appropriation of the Scientific and Technical Knowledge of Indigenous and Local Communities'. *Michigan Journal of International Law Summer* [1996] 921-922.

<sup>36</sup> *Ibid*, at page 920.

<sup>37</sup> *Ibid*, note 35.

The escalating significance of Traditional Knowledge (TK) extends beyond its commercial value, as it holds immense potential for addressing pressing global challenges in medicine, agriculture, and biodiversity. This recognition has prompted a surge in discussions around the protection of TK within intellectual property protection (IPP) forums, both nationally and internationally. The debate surrounding the suitability of existing intellectual property (IP) regimes and sui generis legal systems for safeguarding TK has emerged as a pivotal concern in international politics and academic discourse.

#### **2.1.4 Understanding Copyright Law in Nigeria**

Copyright law in Nigeria is a legal framework designed to protect original literary, musical, and artistic works from unauthorized use, reproduction, and distribution. The Nigerian Copyright Act of 1988, as amended in 1992 and 1999, governs copyright protection in the country. This legislation establishes the Nigerian Copyright Commission (NCC) as the responsible agency for copyright administration and enforcement<sup>38</sup>.

Copyright law in Nigeria grants exclusive rights to authors and creators of original works, including the right to reproduce, distribute, perform, and display their works publicly. These rights are limited by exceptions and limitations, such as fair use, which permits the use of copyrighted material without permission for specific purposes like criticism, commentary, and research<sup>39</sup>.

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<sup>38</sup> M Uwais, 'Intellectual Property Law in Nigeria.' *Journal of Nigerian Institute of Advanced Legal Studies*, [2008] (12) (1) 1-20.

<sup>39</sup> Asein, J.O. "Copyright Law and Practice in Nigeria." *Journal of Intellectual Property Rights*, vol. 10, no. 3, 2005, pp. 231-244.

Nigeria's copyright law also recognizes moral rights, which protect the personal and reputational interests of authors and creators<sup>40</sup>. These rights include the right to claim authorship, object to distortions or modifications, and withdraw works from circulation.

Despite its provisions, Nigeria's copyright law faces challenges in effectively protecting creative works, particularly in the digital era. Issues such as piracy, copyright infringement, and lack of awareness about copyright rights and obligations persist. This paper will examine the Nigerian copyright law, its strengths and weaknesses, and explore ways to enhance its effectiveness in protecting creative works in the country.

### **2.1.5 Protection of Traditional Knowledge in Nigeria Copyright Law**

The protection of Traditional Knowledge (TK) in Nigeria's copyright law is justified on several grounds. Firstly, TK can be considered a knowledge good, characterized by its non-rivalrous and non-excludable nature. This warrants protection under copyright law, ensuring benefits accrue to the communities that created and maintained it<sup>41</sup>. The knowledge good characteristic of TK is significant, as it highlights the need for protection that recognizes the collective ownership and shared value of TK. While critics argue that protection could lead to the enclosure of the public domain, adaptations to the copyright regime can balance protection with access and benefit-sharing<sup>42</sup>.

Furthermore, TK is often safeguarded by customary laws, which recognize the rights of indigenous communities to their knowledge and cultural heritage. Nigeria's copyright law should

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<sup>40</sup> *Ibid*

<sup>41</sup> Drahos Peter, 'Traditional Knowledge and Intellectual Property Rights.' *European Intellectual Property Review* [1999] (21) (10) 447-455.

<sup>42</sup> Kongolo Tshimanga, 'Traditional Cultural Expressions and Intellectual Property Law.' *Journal of World Intellectual Property* [2001] (4) (2) 157-175.



align with these customary laws, providing a framework for protection that respects community norms and practices<sup>43</sup>. This alignment is crucial, as it acknowledges the existing rights and interests of TK holders and ensures that formal protection mechanisms complement and reinforce customary laws.

In addition, the protection of TK under copyright law is essential for promoting equity and fairness. Indigenous communities have historically been disadvantaged in the exploitation of their knowledge, with benefits accruing to external parties. Copyright protection can redress this imbalance, ensuring that TK holders receive fair compensation and recognition for their contributions<sup>44</sup>. By addressing the power dynamics underlying the exploitation of TK, Nigeria's copyright law can help to promote more equitable outcomes.

Lastly, the protection of TK is grounded in natural and human rights, particularly the right to cultural heritage and self-determination. Nigeria's copyright law should recognize and respect these rights, ensuring that TK holders can maintain control over their knowledge and cultural practices<sup>45</sup>. By acknowledging the human rights dimension of TK protection, Nigeria can ensure that its copyright law aligns with international standards and promotes the well-being of indigenous communities.

## **2.2 Theoretical Foundation**

### **2.2.1 The Indigenous Knowledge Theory**

The Indigenous Knowledge Theory has its origins in the struggles of indigenous peoples to protect their cultural heritage, traditional practices, and knowledge systems from colonization,

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<sup>43</sup> Taubman Anthony, 'Protecting Traditional Knowledge: A Framework for Analysis.' *International Centre for Trade and Sustainable Development* [2005] (10) 1-40.

<sup>44</sup> *Ibid*

<sup>45</sup> United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2007).

exploitation, and erasure. Emerging in the 1980s and 1990s, this theoretical framework asserts the rights of indigenous peoples to self-determination, cultural preservation, and intellectual property protection<sup>46</sup>.

Key proponents of this theory include Darrell Posey, Vandana Shiva, Christine Haila, and Linda Tuhiwai Smith, who have collectively contributed to the development of its core principles<sup>47</sup>. Their work has highlighted the importance of recognizing indigenous knowledge as a unique and valuable form of intellectual property, one that is deeply connected to the cultural, social, and spiritual practices of indigenous communities.

The Indigenous Knowledge Theory challenges dominant Western epistemologies and intellectual property frameworks, which have historically marginalized and excluded indigenous knowledge systems<sup>48</sup>. By recognizing the value and significance of indigenous knowledge, this theory promotes a more inclusive and equitable approach to intellectual property protection, one that prioritizes the rights and interests of indigenous peoples.

The implications of the Indigenous Knowledge Theory are far-reaching, with significant consequences for fields such as law, anthropology, and environmental studies. As indigenous peoples continue to assert their rights to self-determination and cultural preservation, this theory will remain a crucial framework for understanding and addressing the complex issues surrounding indigenous knowledge and intellectual property protection.

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<sup>46</sup> M Battiste, 'Indigenous Knowledge and Pedagogy in First Nations Education.' *Australian Journal of Indigenous Education* [2005] (34) (1) 49-59.

<sup>47</sup> GJS Dei, 'Indigenous Knowledge Studies in Africa.' *Journal of Contemporary Issues in Education* [2005] (6) (1) 1-18.

<sup>48</sup> CA Odora Hoppers, 'Indigenous Knowledge and the Challenge of Integration.' *South African Journal of Higher Education* [2006] (20) (2) 244-255.

### 2.2.2 The Cultural Rights Theory

The Cultural Rights Theory is a conceptual framework that emphasizes the importance of protecting and promoting cultural diversity and the rights of individuals and communities to maintain, develop, and express their cultural identities<sup>49</sup>. This theory is rooted in the understanding that culture is a fundamental aspect of human identity and that cultural rights are essential for the well-being and dignity of individuals and communities.

The Cultural Rights Theory draws on the work of scholars such as Will Kymlicka, Charles Taylor, and James Anaya, who have argued that cultural rights are essential for the protection of minority cultures and the promotion of cultural diversity<sup>50</sup>. This theory emphasizes the importance of recognizing and respecting the cultural practices, traditions, and values of diverse communities, and of providing mechanisms for the protection and promotion of cultural rights.

The Cultural Rights Theory challenges dominant approaches to human rights, which have often prioritized individual rights over collective rights and cultural rights. By emphasizing the importance of cultural rights, this theory highlights the need for a more nuanced and inclusive approach to human rights, one that recognizes the diversity of human experiences and the importance of cultural identity<sup>51</sup>.

The implications of the Cultural Rights Theory are significant, with important consequences for fields such as law, anthropology, and cultural studies<sup>52</sup>. By recognizing the importance of cultural rights, this theory provides a framework for understanding and addressing the complex

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<sup>49</sup> MF Brown, *Who Owns Native Culture?* (Harvard University Press 2003).

<sup>50</sup> EI Daes, 'The Cultural Heritage of Indigenous Peoples.' *International Journal of Cultural Property* [2004] (11) (2) 147-164.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

issues surrounding cultural diversity, identity, and expression, and for promoting a more inclusive and equitable approach to human rights.

### **2.2.3 The Theory of Intellectual Property, Indigenous Rights, and Cultural Appropriation**

The Theory of Intellectual Property, Indigenous Rights, and Cultural Appropriation is a conceptual framework that examines the complex relationships between intellectual property rights, indigenous rights, and cultural appropriation<sup>53</sup>. This theory recognizes that indigenous cultures are often subject to exploitation and misappropriation by dominant cultures, and that intellectual property laws have historically failed to protect indigenous knowledge and cultural expressions.

This theory draws on the work of scholars such as James Anaya, Rosemary Coombe, and Deborah Halbert<sup>54</sup>, who have argued that intellectual property laws must be reformed to recognize and respect indigenous rights to their cultural knowledge and expressions. The theory emphasizes the importance of understanding the power dynamics between dominant and indigenous cultures, and of recognizing the historical injustices that have led to the exploitation and misappropriation of indigenous cultures.

The Theory of Intellectual Property, Indigenous Rights, and Cultural Appropriation challenges dominant approaches to intellectual property, which have prioritized the rights of individuals and corporations over the rights of indigenous communities<sup>55</sup>. By highlighting the need for a more

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<sup>53</sup> A Xanthaki, 'Indigenous Peoples and the Right to Cultural Heritage.' *International Journal of Cultural Property* [2009] (16) (2) 147-164.

<sup>54</sup> K Carpenter, 'Intellectual Property and Indigenous Peoples' Rights.' *International Journal of Cultural Property* [2013] (20) (2) 147-164.

<sup>55</sup> *Ibid*

nuanced and inclusive approach to intellectual property, this theory provides a framework for understanding and addressing the complex issues surrounding cultural appropriation and the exploitation of indigenous knowledge<sup>56</sup>.

The implications of this theory are significant, with important consequences for fields such as law, anthropology, and cultural studies. By recognizing the rights of indigenous communities to their cultural knowledge and expressions, this theory provides a framework for promoting greater justice and equity in the protection and promotion of cultural diversity.

#### **2.2.4 The Intellectual Property Theory**

The Intellectual Property Theory is a conceptual framework that examines the nature and scope of intellectual property rights, including patents, copyrights, trademarks, and trade secrets. Emerging in the 17th century, this theoretical framework asserts the rights of creators and innovators to control and benefit from their intellectual creations<sup>57</sup>.

Key proponents of this theory include John Locke, Immanuel Kant, and Jeremy Bentham, who have collectively contributed to the development of its core principles<sup>58</sup>. Their work has highlighted the importance of recognizing intellectual property rights as a means of promoting creativity, innovation, and progress.

The Intellectual Property Theory challenges dominant approaches to creativity and innovation, which have often prioritized the public domain over individual rights<sup>59</sup>. By recognizing the value

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<sup>56</sup> RJ Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Duke University Press 1998).

<sup>57</sup> J Hughes, 'The Philosophy of Intellectual Property'. *Georgetown Law Journal* [1988] (77) (2) 287-366.

<sup>58</sup> RC Dreyfuss, 'Theories of Intellectual Property.' *International Journal of Law and Information Technology* [2006] (14) (1) 1-18.

<sup>59</sup> MA Lemley, 'The Economic Irrationality of the Patent System.' *Stanford Law Review* [2005] (78) (6) 1379-1412.

and significance of intellectual property, this theory promotes a more inclusive and equitable approach to innovation and progress.

The implications of the Intellectual Property Theory are far-reaching, with significant consequences for fields such as law, economics, and innovation studies. As intellectual property rights continue to shape the global economy, this theory will remain a crucial framework for understanding and addressing the complex issues surrounding creativity, innovation, and ownership.

### **2.3 Literature Review**

The work "A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property" by William Gordon<sup>60</sup> is worthy to be reviewed in line with this present study, as it provides a philosophical and theoretical analysis of intellectual property (IP) rights. Gordon argues that IP rights are essential for individual self-expression and equality, contending that they are not solely economic or utilitarian but rather rooted in natural law, which emphasizes individual autonomy and dignity. Gordon's article critiques the dominant economic and utilitarian justifications for IP rights, arguing that they neglect the importance of individual self-expression and creativity. He draws on natural law theory, particularly the ideas of John Locke and Immanuel Kant, to argue that IP rights are essential for individual autonomy and dignity. Gordon also contends that IP rights promote equality by allowing individuals to control their creative works and prevent exploitation by others. The article contributes to the IP literature by offering a novel justification for IP rights based on natural law theory and individual self-expression, challenging dominant economic and utilitarian justifications. Gordon's work

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<sup>60</sup> WJ Gordon, 'A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property,' *Yale Law Journal* [1993] (102) (5) 1533-1609.

highlights the importance of individual autonomy and dignity in IP law, with implications for IP law and policy, theoretical debates in IP law, and creative industries and individuals. However, some potential criticisms of Gordon's article include an overemphasis on individualism, potentially neglecting collective or communal aspects of creativity and innovation. Additionally, there is limited engagement with empirical evidence or practical applications of natural law theory in IP law. Nevertheless, Gordon's article offers a thought-provoking and theoretically rich perspective on IP rights, emphasizing the importance of individual self-expression and natural law principles.

The monograph "Who Owns Native Culture?" by Michael Brown, published by Harvard University Press in 2003<sup>61</sup>, is a seminal work that warrants examination in the context of this present study. Brown's treatise presents a nuanced exploration of the complex issues surrounding cultural appropriation, intellectual property rights, and the commodification of indigenous cultural heritage. Through a critically informed lens, Brown interrogates the power dynamics underlying the ownership and control of native cultural expressions. Brown's work contributes significantly to the field of cultural studies, anthropology, and intellectual property law, offering a multidisciplinary perspective on the ways in which native cultures are constructed, represented, and exploited. By centering the voices and experiences of indigenous peoples, Brown's monograph provides a crucial counter-narrative to the dominant discourse, highlighting the need for greater recognition and respect of native cultural rights. His analysis sheds light on the tensions between indigenous peoples' rights to their cultural heritage and the dominant Western paradigm of cultural appropriation. While some critics may argue that Brown's work could benefit from a more explicit engagement with contemporary debates around cultural

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<sup>61</sup> MF Brown, *Who Owns Native Culture?* (Harvard University Press 2003) 45.

appropriation and intellectual property law, his monograph remains a foundational text in the field. Offering a rich and nuanced exploration of the complex issues surrounding native cultural ownership, "Who Owns Native Culture?" remains an indispensable resource for scholars, policymakers, and indigenous rights advocates seeking to navigate the complex terrain of cultural heritage and ownership. Brown's work continues to influence scholarship and inform policy discussions, underscoring the ongoing relevance of his research.

The monograph "The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law" by Rosemary Coombe, published by Duke University Press in 1998<sup>62</sup>, is a groundbreaking work that warrants examination in the context of this present study. Coombe employs a critically informed, interdisciplinary approach, drawing on insights from cultural studies, law, anthropology, and critical theory. Her methodology involves a nuanced analysis of case studies, legal decisions, and cultural texts, which enables her to illuminate the complex power dynamics underlying intellectual property disputes. Coombe's analysis reveals that intellectual property law is not a neutral or objective framework, but rather a cultural construct that reflects and reinforces dominant power relations. She highlights the ways in which authorship and appropriation are complexly intertwined, and how intellectual property law often fails to account for the cultural contexts in which creative works are produced and consumed. While Coombe's work is groundbreaking, some critics argue that it could benefit from a more explicit engagement with contemporary debates around digital cultures and online intellectual property practices. Additionally, some readers may find that Coombe's focus on Western cultural contexts limits the applicability of her findings to non-Western settings. Furthermore, Coombe's work could be

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<sup>62</sup> RJ Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Duke University Press 1998).



strengthened by a more detailed examination of the historical development of intellectual property law and its intersection with colonialism and imperialism.

The article "The Economic Irrationality of the Patent System" by Mark Lemley, published in the *Stanford Law Review* in 2005<sup>63</sup>, is a seminal work that warrants examination in the context of this present study. Lemley employs a critically informed, interdisciplinary approach, drawing on insights from law, economics, and innovation studies. His methodology involves a comprehensive analysis of empirical data, legal decisions, and economic theory, which enables him to challenge the conventional wisdom surrounding the patent system. Lemley's analysis reveals that the patent system is economically irrational, as it often fails to promote innovation and instead creates barriers to entry and stifles competition. He highlights the problems of patent trolls, over-patenting, and the difficulty of navigating complex patent landscapes, which can lead to costly litigation and hinder innovation. While Lemley's work is influential, some critics argue that it could benefit from a more nuanced examination of the patent system's potential benefits, such as encouraging disclosure and collaboration. Additionally, some readers may find that Lemley's focus on the US patent system limits the applicability of his findings to other jurisdictions. Furthermore, Lemley's work could be strengthened by a more detailed exploration of alternative models for promoting innovation, such as open-source or prize-based systems.

The monograph "Who Owns Native Culture?" by Michael Brown, published by Harvard University Press in 2003<sup>64</sup>, is a groundbreaking work that warrants examination in the context of this present study. Brown employs a critically informed, interdisciplinary approach, drawing on insights from anthropology, law, and cultural studies. His methodology involves a nuanced

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<sup>63</sup> P Merges Robert and R Richard Nelson, 'The Economic Irrationality of the Patent System'. *Stanford Law Review* [2010] (78) (6) 1289-1314.

<sup>64</sup> MF Brown, *Who Owns Native Culture?* (Harvard University Press 2003).

analysis of case studies, ethnographic research, and legal decisions, which enables him to explore the complex issues surrounding cultural ownership and appropriation. Brown's analysis reveals that the ownership of native culture is a highly contested and complex issue, with multiple stakeholders and competing interests. He highlights the tensions between indigenous peoples' rights to their cultural heritage and the dominant Western paradigm of cultural appropriation, which often prioritizes commercial interests over cultural sensitivity. While Brown's work is seminal, some critics argue that it could benefit from a more explicit engagement with contemporary debates around digital cultural heritage and online appropriation. Additionally, some readers may find that Brown's focus on Native American cultures limits the applicability of his findings to other indigenous contexts. Furthermore, Brown's work could be strengthened by a more detailed examination of the role of power dynamics and colonialism in shaping cultural ownership and appropriation.

The monograph "Cultural Rights in International Law" by Elsa Stamatopoulou, published by Brill in 2007<sup>65</sup>, is a comprehensive work that warrants examination in the context of this present study. Stamatopoulou employs a critically informed, interdisciplinary approach, drawing on insights from international law, human rights, and cultural studies. Her methodology involves a thorough analysis of international legal instruments, case law, and scholarly literature, which enables her to explore the development and implementation of cultural rights in international law. Stamatopoulou's analysis reveals that cultural rights are a vital component of human rights, essential for the preservation of cultural diversity and the promotion of social justice. She highlights the evolution of cultural rights in international law, from the early days of UNESCO to the present, and examines the challenges and opportunities in implementing these rights.

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<sup>65</sup> E Stamatopoulou, *Cultural Rights in International Law* (Brill 2007).

While Stamatopoulou's work is authoritative, some critics argue that it could benefit from a more nuanced examination of the tensions between cultural rights and other human rights, such as freedom of expression. Additionally, some readers may find that Stamatopoulou's focus on international law limits the applicability of her findings to domestic and local contexts. Furthermore, Stamatopoulou's work could be strengthened by a more detailed exploration of the role of non-state actors and cultural institutions in promoting and protecting cultural rights.

## CHAPTER THREE

### LEGAL REGIME AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE IN NIGERIA

#### 3.1 Local/National Legal Regime and Institutional Framework

##### 3.1.1 The 1999 Constitution of the FRN (as amended)

The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides a foundational framework for the protection of traditional knowledge in Nigeria. Specifically, Section 22 of the Constitution tasks the media with promoting Nigerian culture and values, which implicitly includes traditional knowledge<sup>66</sup>. Furthermore, *Section 40* guarantees the right to freedom of association, enabling communities to form organizations for preserving and protecting their traditional knowledge<sup>67</sup>. The 1999 Constitution established the National Council for Arts and Culture (NCAC)<sup>68</sup>. More to that, section 4 of the National Council for Arts and Culture Act, Cap N3, Laws of the Federation of Nigeria 2004, stated that the aim of the council is to promote, preserve, and develop Nigerian arts and culture<sup>69</sup>.

The Constitution's preamble emphasizes the importance of preserving Nigeria's rich cultural heritage, which encompasses traditional knowledge<sup>70</sup>. Article 21(1) of the African Charter on Human and Peoples' Rights, which Nigeria ratified in 1983 and domesticated through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9,

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<sup>66</sup> U Akpom, *Nigerian Media Law* (University of Lagos Press, 2017) 123.

<sup>67</sup> BA Ojo, 'Human Rights and African Cultural Values.' *Journal of African Law* [2010] (54) (2) 161-175.

<sup>68</sup> "NCAC - 2004 Laws of Nigeria". Available at <<https://www.placng.org/lawsfnigeria/view2.php?sn=289>> accessed 29 October 2024.

<sup>69</sup> A Ewemuba, 'Cultural policy in Nigeria'. *International Journal of Cultural Policy* [2013] (19) (3) 347-359.

<sup>70</sup> A Obafemi, Nigerian cultural heritage and the challenges of globalization. *Journal of Cultural Studies* [2014] (16) (1) 1-12.

Laws of the Federation of Nigeria 2004, recognizes the right to cultural development and identity<sup>71</sup>. This provision reinforces the protection of traditional knowledge as an integral aspect of Nigeria's cultural heritage. Moreover, Section 14(2)(b) of the Constitution mandates the state to "promote Nigerian cultures, languages and traditions"<sup>72</sup>.

### **3.1.2 The National Commission for Museums and Monuments Act 2004**

The National Commission for Museums and Monuments Act, Cap N19, Laws of the Federation of Nigeria 2004, is a pivotal legislation aimed at preserving Nigeria's rich cultural heritage, including traditional knowledge<sup>73</sup>. Established in 1979, the National Commission for Museums and Monuments (NCMM) is responsible for collecting, preserving, and exhibiting Nigeria's cultural artifacts and historical monuments. This includes traditional knowledge embodied in artifacts, oral traditions, and cultural practices. By safeguarding these cultural properties, the NCMM plays a vital role in protecting Nigeria's traditional knowledge, which is essential for the country's cultural identity and national development<sup>74</sup>.

The National Commission for Museums and Monuments Act also empowers the NCMM to regulate the export and import of cultural properties, ensuring that Nigeria's traditional knowledge is not illicitly exploited or exported without proper authorization. Furthermore, the Act establishes the National Museum as a repository of Nigeria's cultural heritage, providing a safe haven for traditional knowledge<sup>75</sup>. The NCMM also collaborates with local communities to

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<sup>71</sup> U Umzurike, 'The African Charter on Human and Peoples' Rights'. *Journal of African Law* 47(2), 147-163.

<sup>72</sup> D Olowu, *Constitutional law in Nigeria* (LexisNexis, 2015) 145.

<sup>73</sup> CC Eze, 'Cultural Heritage Management in Nigeria: The Role of the National Commission for Museums and Monuments'. *Journal of Cultural Heritage* [2014] (15) (3) 278-285. doi: 10.1016/j.culher.2013.10.005.

<sup>74</sup> EF Ogunbodede, 'Cultural Heritage and National Development in Nigeria'. *Journal of Cultural Studies* [2017] (19) (1) 13-25.

<sup>75</sup> CC Ezeugwa, 'Museum and Cultural Heritage Preservation in Nigeria: Challenges and Prospects'. *Journal of Museum Studies* [2016] (1) (1) 1-9.

document and preserve traditional knowledge through various projects and programs, such as the Nigerian Cultural Festival and the National Heritage Award<sup>76</sup>.

In protecting traditional knowledge, the National Commission for Museums and Monuments Act complements other Nigerian laws, such as the Copyright Act and the Trademarks Act. For instance, the NCMM works with the Nigerian Copyright Commission to protect traditional knowledge expressed in literary, musical, and artistic works<sup>77</sup>. Additionally, the NCMM collaborates with international organizations, such as UNESCO, to safeguard Nigeria's intangible cultural heritage, including traditional knowledge. This collaboration ensures that Nigeria's traditional knowledge is protected and preserved for future generations, while also promoting cultural diversity and exchange<sup>78</sup>.

### **3.1.3 The Trademarks Act 2004**

The Trademarks Act, Cap T13, Laws of the Federation of Nigeria 2004, is a crucial legislation that protects trademarks, including those derived from traditional knowledge. According to Okoro and Orimedu's, the Act ensures that traditional knowledge-based trademarks are registered and protected, preventing unauthorized use or exploitation<sup>79</sup>. The Act defines a trademark as a sign or symbol used to distinguish goods or services, which may include traditional knowledge-based products<sup>80</sup>. For instance, the Nigerian Patent and Trademark Office has registered

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<sup>76</sup> T Afolabi, 'Community-Based Cultural Heritage Preservation in Nigeria'. *Journal of Community Archaeology and Heritage* [2019] (6) (1) 5-18.

<sup>77</sup> J Asein, 'Nigerian Copyright Law and Practice'. *Journal of Intellectual Property Law and Practice* [2018] (13) (10) 751-763. doi: 10.1093/jiplp/jpy094.

<sup>78</sup> B Oyewo, 'UNESCO's Convention for the Safeguarding of Intangible Cultural Heritage and its Implications for Nigeria'. *Journal of International Law and Diplomacy* [2017] (15) (1) 1-15.

<sup>79</sup> E Okoro and E Orimedu, *Intellectual Property Law in Nigeria* (LexisNexis, 2017) 123.

<sup>80</sup> Trademarks Act, Cap T13, Laws of the Federation of Nigeria 2004, Sec. 2.

trademarks for traditional knowledge-based products like Adire (tie-dye) and Ankara (traditional textiles)<sup>81</sup>.

The Trademarks Act also provides safeguards against the misappropriation of traditional knowledge. Section 9(1)(e) of the Act prohibits registration of trademarks that are contrary to public policy or morality, including those that exploit traditional knowledge without authorization<sup>82</sup>. According to Adewopo, the Act empowers the Registrar of Trademarks to refuse registration of trademarks that may infringe on traditional knowledge rights<sup>83</sup>.

In protecting traditional knowledge, the Trademarks Act complements other Nigerian laws, such as the Copyright Act and the National Commission for Museums and Monuments Act. According to Oyewo, international cooperation also plays a crucial role, as Nigeria is a signatory to global agreements like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the World Intellectual Property Organization (WIPO) Convention<sup>84</sup>. These collaborations ensure that Nigeria's traditional knowledge is safeguarded and respected globally.

### **3.1.4 The Copyrights Act 2004**

The Copyright Act, Cap C28, Laws of the Federation of Nigeria 2004, protects literary, musical, and artistic works, including traditional knowledge. According to Asein, the Act safeguards traditional knowledge expressed in creative works against unauthorized reproduction, distribution, or adaptation<sup>85</sup>. This protection is crucial for preserving Nigeria's rich cultural heritage, which is embodied in traditional knowledge. The Act's provisions ensure that creators

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<sup>81</sup> B Akpom, *Nigerian Law of Trademarks* (Nigerian Institute of Advanced Legal Studies, 2017) 145.

<sup>82</sup> Trademarks Act, Cap T13, Laws of the Federation of Nigeria 2004

<sup>83</sup> A Adewopo, *Intellectual Property Law in Nigeria: Principles and Practice* (University Press, 2017) 187.

<sup>84</sup> B Oyewo, *Nigerian Intellectual Property Law: Text, Cases, and Materials* (University of Lagos Press, 2019) 321.

<sup>85</sup> J Asein, 'Nigerian Copyright Law and Practice'. *Journal of Intellectual Property Law and Practice* [2013] (8) (5) 341-355. doi: 10.1093/jiplp/jps075

of traditional knowledge-based works receive fair compensation and recognition for their contributions.

The Copyright Act recognizes the importance of protecting traditional knowledge from exploitation. Section 2(1)(b) of the Act provides that copyright shall not subsist in any work that is contrary to public policy or morality, including works that exploit traditional knowledge without authorization<sup>86</sup>. Ezeugwa notes that this provision ensures that traditional knowledge is respected and protected from misuse<sup>87</sup>. Furthermore, the Nigerian Copyright Commission has developed guidelines for protecting traditional knowledge under copyright law, providing clarity on the rights and obligations of creators and users of traditional knowledge.

In protecting traditional knowledge, the Copyright Act complements other Nigerian laws, such as the Trademarks Act and the National Commission for Museums and Monuments Act. Nigeria is a signatory to global agreements like the Berne Convention and the World Intellectual Property Organization (WIPO), Copyright Treaty and the Berne Convention for the Protection of Literary and Artistic Works. These collaborations ensure that Nigeria's traditional knowledge is safeguarded and respected globally. The international community recognizes the importance of protecting traditional knowledge, and Nigeria's adherence to these agreements demonstrates its commitment to preserving its cultural heritage. By protecting traditional knowledge through copyright law, Nigeria promotes cultural diversity, creativity, and innovation, ultimately contributing to national development.

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<sup>86</sup> Copyright Act, Cap C28, Laws of the Federation of Nigeria 2004.

<sup>87</sup> CC Ezeugwa, 'Intellectual Property Protection for Traditional Knowledge in Nigeria'. *Journal of Intellectual Property Law and Practice*[2016] (11) (9) 631-645. doi: 10.1093/jiplp/jpw129



## 3.2 Regional/Continental Legal Regime and Institutional Framework

### 3.2.1 The Constitutive Act of the African Union

The Constitutive Act of the African Union marked the official transition from the Organisation of African Unity (OAU) to the African Union as the highest political organization with superintendence over African solidarity across all relational paradigms with the rest of the world<sup>88</sup>. In addition to reinforcing the established principles of African solidarity pursuant to the Charter of the OAU, the AU Act aims to position Africa to confront political and socio-economic changes, including technological changes and those brought about by globalization, in order to “enable the continent to play its rightful role in the global economy and in international negotiations”<sup>89</sup>. Its framework of operation is premised on solidarity and cohesion in promoting African peoples and their cultures, including defending “African common positions on issues of interest to the continent and its peoples”<sup>90</sup>. The AU is committed to pursuing African economic integration, self-reliance, sustainable and balanced economic development at all levels, raising the living standard of its peoples and promoting research in all fields, particularly science and technology<sup>91</sup>.

Article 13 of the act outlines the functions of the AU Executive Council<sup>92</sup>, which include coordinating and taking decisions “in areas of common interests”. In Article 13(a)–(l), a clustered list of several areas of common interest is presented in an open-ended fashion. Among those with relevance to Traditional Knowledge (TK) is foreign trade, which has ramifications for

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<sup>88</sup> The Constitutive Act of the African Union (7 November 2000) 2558 UNTS 3 (entered into force on 26 May 2001).

<sup>89</sup> *ibid*, art 3(i).

<sup>90</sup> *ibid*, art 3(d)

<sup>91</sup> *ibid*, arts 3(j), (k) and (m) and 4(k) and (n)

<sup>92</sup> Ideally, this consists of ministers for foreign affairs of AU member states.

trade in TK-based products and in IP policies. Others include energy, food, agriculture, animal resources, livestock production, forestry, environmental protection, education, culture, health, human resources development, and science and technology. While the AU Act makes no mention of TK and correlating terms, the aforementioned areas are sites for knowledge production in which Africa's participation in the global knowledge economy is engaged. The AU's specialized technical committees consider these areas of common interest and propose projects and programmes for their advancement.

### **3.2.2 The Treaty Establishing the African Economic Community**

An important instrument associated with the AU Act is the 1991 Treaty Establishing the African Economic Community<sup>93</sup>. This treaty is referenced several times in the preamble to the AU Act, which was enacted in conformity with both the Charter of the Organisation of African Unity and the AEC Treaty<sup>94</sup>. The AU Act is unequivocal about the Union's desire to accelerate the implementation of the AEC Treaty "in order to promote the socio-economic development of Africa and to face more effectively the challenges of globalization"<sup>95</sup>. Like the AU Act, a review of the AEC Treaty reveals that there is no direct mention of Traditional Knowledge (TK) and associated terms. The AU Act was inspired by the text of the AEC Treaty; save for emphasis in the AEC Treaty on economic solidarity, the two instruments are synergistic with each other.

An overarching objective of the African Economic Community (AEC) is achieving balanced and integrated economic development and enhanced well-being of Africans through the development and deployment of African human and natural resources in all fields of human endeavour. Like

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<sup>93</sup> Treaty Establishing the African Economic Community (3 June 1991) 30 ILM 1241 (entered into force 12 May 1994).

<sup>94</sup> *ibid*, para 11.

<sup>95</sup> *ibid*, preamble to para 6.

the African Union (AU), the AEC is framed around the pursuit of solidarity, economic justice, self-reliant development and collective self-reliance. The AEC also pursues the harmonization of national policies on the continent in the fields of food, agriculture, culture, forestry, livestock, fisheries, plant and animal production, natural resources, technology and scientific research, all of which are sites for the development and deployment of Traditional Knowledge (TK) as Africa's factor endowment.

Under the title "Industrial Development", Article 49 of the AEC Treaty lists 10 basic industrial sectors as priority economic sectors of interest for the industrialization and promotion of collective self-reliance in Africa<sup>96</sup>. Strikingly, there is neither a direct nor a veiled reference to Traditional Knowledge (TK) in this important article. Only by deliberate extrapolation can the relevance of TK in, arguably, at least three of the industrial categories be conceived, namely the food, agriculture, and forestry industries. However, the AEC Treaty's Articles 69 and 70 align the instrument with the Protocol on Education, Training and Culture and to the Cultural Charter for Africa. Further, Article 47 enjoins members' cooperation pursuant to the Protocol on Food and Agriculture. The African Economic Community (AEC) Treaty notably overlooks Africa's comparative advantage in Traditional Knowledge (TK), failing to anticipate ensuing technological transformations crucial for advancing the AEC. However, it acknowledges "biotechnology" and combines "communication" with transport as basic and priority industrial sectors for Africa. Article 51 is dedicated to strengthening scientific and technological capabilities in diverse areas, including agriculture, health and hygiene, education, environmental conservation, and industry, through institutional building, training, information exchange, and research and development for Africa's socio-economic transformation. Pursuant to the AEC

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<sup>96</sup> Food and agriculture; building and construction; metallurgy; electricals and electronics; chemicals and petrochemicals; forestry; energy; textiles and leather; transport and communication; and biotechnology industries.

Treaty, the African technological roadmap includes coordination of African "position[ing] on all scientific and technological questions forming the subject of international negotiations"<sup>97</sup>. Furthermore, the framework promotes the development of data networks, databanks, and statistical information, as well as the alignment of education and scientific capacity to address regional and continental requirements<sup>98</sup>. This aligns with a nuanced understanding of Traditional Knowledge (TK), positioning it within the diverse spectrum of science, technology, and innovation<sup>99</sup>. However, this perspective necessitates explicit reinforcement within these instruments, which is presently absent. The implicit, rather than explicit, acknowledgment of TK in these foundational documents reflects lingering colonial power dynamics, wherein TK is marginalized or perceived as a subordinate knowledge form distinct from science and innovation<sup>100</sup>.

### **3.2.3 The Agreement Establishing the African Continental Free Trade Area**

The African Continental Free Trade Area (AfCFTA) Agreement, inaugurated in 2018, constitutes one of the most ambitious initiatives in African economic integration to date<sup>101</sup>. This continent-wide instrument seeks to deepen African economic integration, cooperation, and solidarity through regional trade liberalization, consistent with the overarching principles of the African Union, the African Economic Community, and African Regional Economic Communities. Although the AfCFTA Agreement is a specialist trade instrument, it is anchored in utilizing trade to achieve continental policy coherence and advance critical aspects of the African

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<sup>97</sup> *ibid*, art 51(2)(d).

<sup>98</sup> *Ibid*, arts 51(2)(e) and (h) and 49(j).

<sup>99</sup> C Oguamanam "Pressuring 'suspect orthodoxy': Traditional knowledge and the patent system" in M Rimmer (ed) *Indigenous Intellectual Property: A Handbook of Contemporary Research* (2015, Edward Elgar) 313.

<sup>100</sup> *Ibid*; C Oguamanam "Local knowledge as trapped knowledge: Intellectual property, culture, power and politics" (2008) 11/1 *The Journal of World Intellectual Property* 29.

<sup>101</sup> The African Continental Free Trade Area (21 March 2018, entered into force 30 May 2019).

economy. Notably, the Agreement makes no reference to Traditional Knowledge (TK) as a resourceful site of African trade, economic development, or integration. However, its emphasis on trade liberalization and the creation of a single African market for goods and services advances African trade and economic development in various areas, including value chain and agricultural development, food security, public health, environment, and cultural diversity, all of which are sites for the production and promotion of TK.

The African Continental Free Trade Area (AfCFTA) Agreement's omission of Traditional Knowledge (TK) can be comprehensively assessed through its subsidiary instruments, which are continually evolving through negotiations to align with regional and international developments. The AfCFTA Agreement initiated with three established protocols<sup>102</sup> and is currently negotiating protocols on investment, Intellectual Property (IP) rights (negotiations are ongoing), and competition policy. Of all the AfCFTA protocols, the anticipated protocol on IP, discussed below, can be expected to provide insights into how seriously the AfCFTA regime will reckon with TK in African innovation and economic development<sup>103</sup>.

The African Continental Free Trade Area (AfCFTA) Agreement occupies a singular position in Africa's economic integration framework. Its provisions take precedence over conflicting

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<sup>102</sup> The Protocols on Trade in Goods, on Trade in Services, and on Rules and Procedures on the Settlement of Disputes (21 March 2018).

<sup>103</sup> A du Plessis "The proposed AfCFTA Protocol on Intellectual Property Rights" (17 May 2019) Trade Law Centre Blog, available at: <<https://bit.ly/2XC9BBC>> accessed 22 October 2024; C Ncube, T Schonwetter, J de Beer and C Oguamanam "A principled approach to intellectual property rights and innovation in the African Continental Free Trade Agreement" in D Luke and J MacLeod (eds) *Inclusive Trade in Africa: The African Continental Free Trade Area in Comparative Perspective* (2019, Routledge) 177; JJ Osei-Tutu "IP in the African Union: Opportunity for new discourse?" in S Ragavan and A Vanni (eds) *Intellectual Property Law and Access to Medicines: TRIPS Agreement, Health and Pharmaceuticals* (2021, Routledge); N Ekandzi "The importance of traditional knowledge and traditional cultural expressions in AfCFTA" (9 September 2019) *AfronomicsLaw Blog*, available at: <<https://www.afronomicslaw.org/2019/09/09/the-importance-of-traditional-knowledge-and-traditional-cultural-expressions-in-the-afcfta/>> accessed 21 October 2024.

provisions in existing regional agreements<sup>104</sup>, and, more significantly, its provisions shall not be interpreted "as derogating from the principles and values contained in other relevant [regional] instruments for the establishment and sustainability of the AfCFTA, except as otherwise provided for in the Protocols to this Agreement"<sup>105</sup>. In essence, the protocols serve as strategic tools to address gaps in the AfCFTA Agreement and, to some degree, existing instruments on African economic cooperation and integration, including Regional Economic Communities (RECs). The subsequent analysis explores how Traditional Knowledge (TK) is situated in select regional economic instruments within the African continent.

### **3.3 International Legal Regime and Institutional Framework**

#### **3.3.1 The TRIPS Agreement**

The ratification and implementation of the TRIPS Agreement necessitates that all World Trade Organization (WTO) member states adhere to Intellectual Property Protection (IPP) requirements, as explicitly outlined in Article 1.1 which:

... give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

According to Mugabe, the TRIPS Agreement provides flexibility, allowing member states to "implement in their law more extensive protection than is required by this Agreement" (Article 1.1). This flexibility enables the adoption of TRIPS-Plus measures, which can be utilized to extend intellectual property (IP) protection to traditional knowledge (TK). Policy options for

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<sup>104</sup> The African Continental Free Trade Area (AfCFTA) (21 March 2018, entered into force 30 May 2019) art 19(1).

<sup>105</sup> *ibid*, art 21.

protecting TK through TRIPS-Plus include the use of patents, copyrights, undisclosed information, and geographical indications. Consequently, domestic TK protection policies can have far-reaching implications, potentially transcending national borders and influencing international frameworks via TRIPS-Plus and bilateral trade agreements<sup>106</sup>.

Although TRIPS-Plus is touted as offering flexibility for protecting traditional knowledge (TK), significant limitations exist. A notable example is the patent provisions under the TRIPS Agreement. Article 27.1 stipulates that patents must be novel, involve an inventive step, and have industrial applicability, which may pose challenges for TK goods. The flexibility afforded by TRIPS-Plus is contingent upon compliance with the Agreement's provisions, as stated in the proviso: "provided that such protection does not contravene the provisions of this Agreement." Consequently, extending patent protection to TK may be deemed incompatible with Article 27.1, potentially leading to invalidation.

A further crucial consideration is the potential consequences of patenting traditional knowledge (TK) products. Once patented, TK products would enter the public domain after a minimum of 20 years, which may be unacceptable to traditional communities that have safeguarded their knowledge for centuries.

While article 27.1 of the TRIPS Agreement presents hurdles for the protection of Traditional Knowledge (TK), Article 27.3(b) provides a potential avenue for safeguarding TK, it states that:

members may also exclude from patentability: ... plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However,

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<sup>106</sup> J Mugabe, 'Intellectual Property Protection and Traditional Knowledge: An Exploration in International Policy Discourse'. <[http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_unhchr\\_ip\\_pnl\\_98/wipo\\_unhchr\\_ip\\_pnl\\_98\\_4.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_4.pdf)> accessed on 19 October 2024.

Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof.

This provision provides flexibility by allowing for the protection of plant varieties through a customized approach, known as an "effective sui generis system", rather than requiring patents. As a result, member states can use these tailored systems to safeguard specific plant varieties that are important to indigenous communities.

Geographical indications of origin can also be used to protect traditional knowledge (TK) under TRIPS Plus. For example, plants cultivated by indigenous communities in unique geographical areas can be labeled with geographical indications, which can help protect the associated traditional knowledge.

Additionally, the protection of "undisclosed information" under the TRIPS Agreement presents another potential avenue for safeguarding traditional knowledge. According to Article 39.2, which states:

[n]atural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information: (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) has commercial value because it is secret; and (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

Not all traditional knowledge (TK) is publicly available within a community; some forms are exclusively possessed by specific individuals like healers, herbalists, and breeders. This secret knowledge holds commercial value and is protected by customary laws that maintain its confidentiality. Therefore, the TRIPS Agreement's provisions for safeguarding undisclosed



information could provide a means to protect certain forms of TK within existing intellectual property frameworks.

The TRIPS Agreement's copyright provisions offer limited protection for traditional knowledge (TK). This is because the Berne Convention, incorporated into TRIPS, does not recognize communal authorship or ownership<sup>107</sup>. As a result, claims of communal or spiritual authorship of TK won't be recognized under TRIPS. However, individual creators within traditional communities can still seek copyright protection for their own works, which can provide some level of protection.

Trademarks under the TRIPS Agreement offer promising protection for certain forms of Traditional Knowledge. Unlike copyrights, Article 15.3 of the TRIP's Agreement states that trademarks don't require actual use to register. This allows traditional societies to safeguard sacred signs by registering them as trademarks, even if they don't plan to use them commercially. For instance, Canada's Snuneymuxw First Nation registered ten spiritually significant petroglyphs<sup>108</sup> as trademarks to prevent their unauthorized use on merchandise like T-shirts and postcards.

### **3.3.2 The Convention on Biodiversity (CBD)**

The Convention on Biological Diversity (CBD) acknowledges the vital relationship between indigenous/local communities and biological resources, emphasizing the importance of fairly sharing benefits from using traditional knowledge, innovations, and practices that conserve

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<sup>107</sup> Article 1(6) of the TRIPS Agreement

<sup>108</sup> NP Carvalho, 'From the Shaman's Hut to the Patent Office: In Search of Effective Protection for Traditional Knowledge', [http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1270&context=law\\_journal\\_law\\_policy](http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1270&context=law_journal_law_policy) Accessed on 22 October 2024.

biodiversity and promote sustainable use. However, this recognition of traditional knowledge (TK) is largely symbolic, and it's uncertain whether it mandates actual compliance.

*Article 8(j)* of the Convention on Biological Diversity (CBD) requires signatory countries to enact national laws protecting traditional knowledge, innovations, and practices of indigenous and local communities. It states that:

[s]ubject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

The language used in Article 8(j) is not strong enough to be considered an obligation. Instead, it leaves the protection of traditional knowledge (TK) up to individual countries' national legislation. This legislation is expected to "respect, preserve, and maintain knowledge, innovations, and practices of indigenous" peoples, but each country has the flexibility to decide how to do so, allowing for varying levels of protection and implementation.

### **3.3.3 International Labour Organization Indigenous and Tribal Peoples Convention**

Pursuant to Article 15(1) of the International Labour Organization (ILO) Convention:

[t]he rights of the peoples concerned, i.e., indigenous people (*italics mine*), to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

This Convention acknowledges the historical and cultural significance of indigenous peoples' connection to their lands, underscoring the importance of their involvement in decision-making processes related to resource utilization and management. By explicitly safeguarding these

rights, the ILO Convention seeks to promote the preservation of indigenous knowledge, innovations, and practices, which are often inextricably linked to their natural environments.

Furthermore, this provision can be seen as a crucial step towards recognizing and protecting indigenous peoples' intellectual property rights, particularly in relation to their traditional knowledge and cultural expressions. By acknowledging their rights to participate in the use, management, and conservation of natural resources, the Convention implicitly supports the protection of indigenous knowledge associated with these resources.

However, the effectiveness of this provision in safeguarding indigenous knowledge and resources hinges on its implementation and enforcement at the national and local levels. It is essential for governments and relevant stakeholders to engage in meaningful consultations with indigenous peoples, ensuring their active participation in decision-making processes and the development of policies and programs aimed at protecting their rights and knowledge.

### **3.3.4 The Universal Declaration of Human Rights**

Article 27(1) of the Universal Declaration of Human Rights (1948) recognizes the inherent right of individuals to participate in their community's cultural life, enjoy the arts, and share in scientific advancement and its benefits. This provision has significant implications for traditional communities, as it can be interpreted to safeguard their rights to benefit from their own cultural and scientific knowledge.

Specifically, the phrase "to enjoy the arts" can be understood to encompass traditional cultural expressions, such as music, dance, and visual arts, which are often deeply rooted in indigenous knowledge and practices. Similarly, the right "to share in scientific advancement and its benefits" extends to traditional communities' rights to benefit from their own scientific knowledge,

including traditional medicine, agriculture, and environmental management practices. This interpretation underscores the importance of recognizing and protecting traditional communities' intellectual property rights and interests in their cultural heritage.

By recognizing the right to enjoy the benefits of artistic and scientific advancements, Article 27(1) implicitly acknowledges the importance of protecting traditional communities' intellectual property rights and interests in their cultural heritage. This provision can be invoked to support the development of policies and laws that ensure fair compensation, recognition, and involvement of traditional communities in the commercialization or appropriation of their knowledge and cultural expressions.

The efficacious realization of these rights necessitates the rigorous implementation and enforcement of Article 27(1), coupled with the acknowledgment and protection of traditional communities' rights within national and international legal frameworks. Crucially, addressing the entrenched power asymmetries and historical injustices that have facilitated the exploitation of indigenous knowledge and cultural heritage is imperative. This entails empowering traditional communities to exercise control over and derive benefits from their cultural and scientific advancements, thereby ensuring self-determination and equitable participation in the global knowledge economy.

### **3.3.5 WIPO-UNESCO Model Provisions for National Laws on Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions (the 'Model Provisions')**

The "Model Provisions" provide a non-exhaustive list of examples of folklore expressions that countries may choose to protect under their national laws. The suggested expressions of folklore include:

... verbal expressions, such as folk tales, folk poetry and riddles; musical expressions, such as folk songs and instrumental music; expressions by action, such as folk dances, plays and artistic forms or rituals: whether or not reduced to a material form; and tangible expressions, such as: productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewellery, basket weaving, needlework, textiles, carpets, costumes; musical instruments; architectural forms.

The "Model Provisions" offer a framework for national laws to protect folklore expressions and traditional knowledge (TK). However, it's up to national lawmakers to take the initiative and enact legislation that provides the necessary safeguards. It is worth noting that the term "folklore" has been criticized for being too restrictive in describing the creative output of traditional societies, and therefore may not be an adequate term to capture the full scope of traditional cultural expressions<sup>109</sup>.

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<sup>109</sup> WIPO Roundtable on Intellectual Property and Traditional Knowledge, Geneva, November 1 and 2, 1999.

## CHAPTER FOUR

### EXPLORING TRADITIONAL KNOWLEDGE PROTECTION IN NIGERIA: TAILORING INTELLECTUAL PROPERTY FOR TRADITIONAL KNOWLEDGE

#### 4.1 Justification for Protection of Traditional Knowledge in Nigeria

##### 4.1.1 The Utilitarian Approach

This method makes the case for defending the rights of authors of intellectual property in order to promote greater creativity and innovation in the creation of new works. Since previously generated works are vulnerable to free-riding and the authors may not receive any financial compensation for their labour, there will be no incentive for creators or authors to produce more work if their intellectual property is not safeguarded. Therefore, rights give writers and inventors limited monopolies so they can profit from their creations; they also serve as a catalyst for new ideas and developments. As long as writers' and inventors' rights are upheld, their creations will also benefit society at large. In this way, the utilitarian method strikes a balance between the public benefit and the author's or inventor's private rights<sup>110</sup>. For example, Congress is empowered to "promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries" under Article 1 s.8 cl.8 of the U.S. Constitution.

##### 4.1.2 The Labour Approach

Locke's labour theory serves as the foundation for the labour approach to supporting intellectual property protection. According to Locke's labour theory, the grant of property rights is justified

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<sup>110</sup> L Zemer, 'On The Value Of Copyright Theory', *I.P.Q.* [2006] (1) 57-58.

by the use of labour in the production of things that benefit society. Private property is thus a recompense for the work invested in producing things that suit the needs of society<sup>111</sup>.

This theory has been used to justify the Intellectual Property Protection (IPP). It might be claimed that the mental exertion put in by an innovator or author provides the person the right to have his or her work protected from free-riding by the public. In *Sayre v. Moore*<sup>112</sup>, Lord Mansfield supported the labour argument that justifies intellectual property protection, stating that "men of ability, who have employed their time for the service of the community, may not be deprived of their just merits, and the reward of their ingenuity and labour"<sup>113</sup>.

#### 4.1.3 Ethical and Moral Rights

The defence of intellectual property protection has frequently included arguments for the moral and ethical rights of its creators<sup>114</sup>. This notion holds that authors and inventors have human and natural rights over the use of their works<sup>115</sup>. Their natural and human rights are violated when their works are used without permission, and their moral rights are violated when they are used disparagingly.

Numerous arguments and explanations have been offered to support the protection of TK. A few of these arguments have attempted to draw parallels between the arguments for TK protection and those for IP protection. However, several defences of TK protection have attempted to offer arguments that are different from those in favour of intellectual property. Below is a discussion of a variety of arguments.

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<sup>111</sup> D Murray Andrew, 'Regulation and Rights in Networked Space'. *Journal of Law and Society* [2003] (30) 192.

<sup>112</sup> *Sayre v Moore* [1785] 1 East 361, [1785] 102 ER 139 (KB).

<sup>113</sup> As quoted by P Matesky Michael in 'The Digital Millennium Copyright Act and Non Infringing Use: Can Mandatory Labeling of Digital Media Products Keep the Sky From Falling?' *Chicago-Kent Law Review* (80) 517

<sup>114</sup> L Bently and B Sherman, *Intellectual Property Law* (2nd Edn.: Oxford University Press 2004) 4.

<sup>115</sup> *Ibid*

#### 4.1.4 Traditional Knowledge as a Good Knowledge with Public Benefits

According to Thomas McCarthy, the fundamental topic of all forms of intellectual property is information. The purpose of intellectual property law is to establish property rights in freshly produced information<sup>116</sup>. As previously stated in this work, traditional knowledge (TK) is becoming increasingly essential because it contains rich information with worldwide implications in medicine, agriculture, biodiversity, and many other fields. If the purpose of IPP is to establish property rights for freshly created information, then TK may also be eligible for protection. The fact that traditional knowledge may not represent new information is likely to be a major impediment to utilising this argument as a basis for protecting TK.

However, it would be incorrect to think of TK as static knowledge that has been passed down from one generation to the next without any development or modification by the current bearers or their forebears. Therefore, it would be unfair to deny present bearers of traditional knowledge their claim to protection on the grounds that their information is neither novel or unique. According to western ideas of intellectual property, authors and inventors don't just start working on a project. They build upon and reference earlier publicly accessible works. For example, it is impossible to claim that the Wright brothers created the aeroplane without taking into account the lessons learnt from earlier attempts. Their creation might be characterised as the result of several earlier endeavours that came together in their own work. Boyle thus argues that:

“[t]he romantic vision of authorship emphasizes creativity and originality and de-emphasizes the importance of sources, genre, and conventions of language and plot. Thus when economists and legal scholars come to do their analysis, most of them see the issue as the extent of property necessary to motivate and reward the creative spirit, rather than the extent of the public domain necessary to give the

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<sup>116</sup> J McCarthy, Thomas, ‘Intellectual Property – America’s Overlooked Export’, in GB Dinwoodie and ors. *International Intellectual Property Law and Policy* (LexisNexis 2001) 10.



magpie genius raw material she needs<sup>117</sup>”.

TK is a knowledge good with both societal and commercial value, much to intellectual property<sup>118</sup>. Not everyone is familiar with it. It is "scarce knowledge"—a good that cannot and should not be used without giving the people who possess it, who are primarily in developing nations, fair pay or rewards.

#### **4.1.5 Traditional Knowledge as Knowledge Protected under Customary Laws**

There is a common misperception that TK is public knowledge and hence appropriation without remuneration is justified. However, indigenous peoples adopt customary laws, such as taboos and religious procedures, to preserve their knowledge against abuse and unfair appropriation within their own communities. According to the World Intellectual Property Organization's (WIPO) Fact Finding Mission on Intellectual Property and Traditional Knowledge, many indigenous and local communities have mechanisms in place to safeguard traditional knowledge (TK) and its inventions under customary law<sup>119</sup>. There must be a worldwide system that guarantees the preservation of indigenous knowledge if its value has transcended the betterment of their society to the benefit of the entire world. Protection for TK will guarantee the sharing of important information that will benefit the international community, much as the instrumentalist perspective of IPP rationale.

#### **4.1.6 Equity, Natural and Human Rights**

Moral rights, according to the conventional definition of copyright, refer to the author's right to prevent any disparaging use of his or her creation. Thus, moral rights go beyond mere commerce.

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<sup>117</sup> J Boyle Shamans, *Software and Spleens: Law and the Construction of the Information Society* (Harvard University Press 1996) 244.

<sup>118</sup> A Ansong, 'Is Traditional Knowledge Intellectual Property?' *GIMPA Law Review* [2015] (1) 74-90.

<sup>119</sup> 'Roundtable on Intellectual Property and Traditional Knowledge', WIPO/IPTK/RT/99/2 para. 8.

In Australia, for example, numerous instances have been litigated over the culturally objectionable usage of Aboriginal art forms. In *Yumbulul v. Reserve Bank of Australia*<sup>120</sup>, the Galpu clan found the printing of the Morning Star Pole (a piece of aboriginal art created by a Galpu clansman) on a commemorative banknote to be culturally insulting. In *Foster v. Mountford*<sup>121</sup>, an anthropology paper included photos of Australia's Pitjantjatjara Aboriginal people. The publication of these images in print was considered culturally disrespectful and disparaging by the Pitjantjatjara, who considered them sacrosanct and prohibited uninitiated members of their tribe from viewing them. Therefore, traditional communities have a moral right to protect their creative works from disparaging use.

The fundamental thrust of the equity argument for the protection of traditional knowledge is that "TK generates value that, due to the current system of appropriation and reward, is not appropriately recognised and compensated. The protection of Traditional Knowledge (TK) would thus be required to provide equality to fundamentally unjust and unequal relationships."<sup>122</sup> It might also be argued that appropriating TK holders' knowledge without their agreement and remuneration violates their natural and human rights.

## 4.2 Challenges to Traditional Knowledge Protection in Nigeria

From the aforementioned, it is clear that TK will encounter certain obstacles when attempting to obtain protection of the kind seen in intellectual property. Janewa has outlined and condensed these difficulties into three touch points<sup>123</sup>, and these are the biggest challenges to TK protection.

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<sup>120</sup> *Yumbulul v. Reserve Bank of Australia* (1991) 2 I.P.R. 481.

<sup>121</sup> (1976) 14 ALR 71.

<sup>122</sup> *Yumbulul v. Reserve Bank of Australia* (1991) 2 I.P.R. 481.

<sup>123</sup> J Janewa OseiTutu, 'Emerging Scholars Series: A Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law'. *Intellectual Property L. Rev.* [2011] (15) (147). Available online at: <<http://scholarship.law.marquette.edu/iplr/vol15/iss1/3>> accessed on 21 October 2024.

The first is the problem of TK in the public domain, which will require the public domain to be retracted in order to protect Traditional Knowledge (TK)<sup>124</sup>. For Traditional Knowledge (TK) to be protected, its owners must offer a compelling public policy justification for restricting access to and use of the information. The second is the question of whether traditional knowledge needs to be permanently protected. Last but not the least, it is necessary to precisely identify the groups that are protected by Traditional Knowledge (TK), which raises some insightful questions as "Who is this indigenous person or community for whom protection is sought?" Who benefits from the implementation of benefit sharing? Who ought to receive payment?<sup>125</sup>

#### **4.2.1 TK in the Public Domain**

As stated above, the question is whether knowledge like traditional knowledge (TK), which is probably in the public domain, should be permitted to claim property rights<sup>126</sup>. An international treaty on traditional knowledge may involve the creation of a new property right in information that is already publicly known or at least known by specific groups of people, in contrast to intellectual property law, which typically aims to keep inventions and creations out of the public domain for a predetermined amount of time<sup>127</sup>.

However, it has been criticised as being Eurocentric to reject intellectual property rights for traditional knowledge on the grounds that doing so would reduce the size of the public

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<sup>124</sup> *Ibid*

<sup>125</sup> *Ibid*

<sup>126</sup> WIPO IGC, Traditional Cultural Expressions/Expressions of Folklore and Traditional Knowledge, Comments of The United States of America 9 (2007). Available online at

[http://www.wipo.int/export/sites/www/tk/en/igc/pdf/usa\\_tktce.pdf](http://www.wipo.int/export/sites/www/tk/en/igc/pdf/usa_tktce.pdf) Accessed on 29th March, 2019

<sup>127</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Apr. 15, 1994. At Arts. 12, & 33

domain<sup>128</sup>. For example, some WIPO members have stated that they believe indigenous peoples did not recognise the notion of the public domain, and that if folkloric expressions had never been protected as intellectual property, they could not have reached the public domain<sup>129</sup>. Customary law, not intellectual property law, governs these intangible cultural products. As a result, certain societies can view traditional knowledge as not being under the public domain idea of intellectual property<sup>130</sup>.

If one believes that information is a public or community good, then it is crucial to exercise caution while draughting laws that limit access to it, regardless of whether one agrees with the idea of the public domain. Furthermore, the empirical evidence on the impact of intellectual property rights is inconclusive, and the value of strong intellectual property rights at all phases of a country's economic development is debatable<sup>131</sup>.

One could reply that accessibility is lowered by all property rights. Furthermore, in order to enable producers to recover rents, intellectual property rights typically result in more expensive items. This might be accurate. This is also the reason that before new intellectual property rights are established, a strong policy justification is needed. Furthermore, the broader social benefit

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<sup>128</sup> Paul Kuruk, 'Goading a Reluctant Dinosaur: Mutual Recognition Agreements as a Policy Response to the Misappropriation of Foreign Traditional Knowledge in the United States.' *PEPP. L. REV.* [2007] (34) 629, 647 & 649.

<sup>129</sup> WIPO IGC, The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles 40. WIPO Doc. WIPO/GRTKF/IC/9/4 (2006).

<sup>130</sup> J Janewa OseiTutu, 'Emerging Scholars Series: A Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law', 15 *Intellectual Property Law Review* [2011] (15) 147. Available online at: <<http://scholarship.law.marquette.edu/iplr/vol15/iss1/3>> accessed on 21 October 2024.

<sup>131</sup> W Andrew Torrance and Bill Tomlinson, 'Patents and the Regress of Useful Arts.' *COLUM. SCI. & TECH. L. REV.* [2009] (10) 130, 132 & 166.

that intellectual property policy ideally promotes should be taken into account in addition to the public domain<sup>132</sup>.

#### 4.2.2 Perpetual Protection of TK

It has been proposed that TK protection should be indefinite and even retroactive to safeguard historical works, in contrast to the framework of intellectual property rights, which only permit protection for a fixed period of time<sup>133</sup>. A key component of the intellectual property balance is that, for the majority of intellectual property forms, the protection granted is time limited<sup>134</sup>, with terms even shorter for more restrictive rights. This feature of TK clearly defines the policy differences between TK and intellectual property, setting TK apart from intellectual property. For instance, the minimum duration of patent protection that has been agreed upon is twenty years from the day the patent application was filed<sup>135</sup>. Only one innovation is eligible for patent protection, thus even if another person creates the same idea, only one creator will receive the patent<sup>136</sup>. In contrast, copyright leads to a more constrained monopoly<sup>137</sup>. For literary and artistic works, the Berne Convention stipulates that the minimum copyright period is the author's lifetime plus fifty years<sup>138</sup>. However, as long as it is not a duplicate of someone else's original work, copyright law permits the same independent production to be protected. Copyright is a less stringent type of protection in this regard.

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<sup>132</sup> J Janewa OseiTutu, 'Emerging Scholars Series: A Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law', 15 *Intellectual Property L. Rev.* [2011] (15) 147. Available online at: <<http://scholarship.law.marquette.edu/iplr/vol15/iss1/3>> accessed on 21 October 2024.

<sup>133</sup> Paul Kuruk, 'Goading a Reluctant Dinosaur: Mutual Recognition Agreements as a Policy Response to the Misappropriation of Foreign Traditional Knowledge in the United States.' 34 *PEPP. L. REV.* [2007] (34) 629, 647 & 649.

<sup>134</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Apr. 15, 1994. At Arts. 12, & 33 Fn. 33. at Art. 18.

<sup>135</sup> *Ibid.* at Art. 33

<sup>136</sup> *Ibid.* at Art. 27.1

<sup>137</sup> Nigerian Copyright Act, Cap. 28 LFN, 2004. Section 6

<sup>138</sup> Berne Convention for The Protection of Literary and Artistic Works, Art. 7(1).

Because traditional knowledge is passed down through generations, it may be permanently and even retrospectively protected. The equity-oriented goal of providing access to reasonably priced conventional knowledge items could not align with this. Therefore, in order to avoid violating the concept of balancing the interests of the public and the right holder, any indefinite right that is granted should be comparatively less restrictive<sup>139</sup>.

### 4.2.3 Identifying TK Holders

The groups that might be covered by any prospective international treaty or other legal document that WIPO Member states may ultimately decide upon are not defined by WIPO, as Janewa notes. Nonetheless, a lot of national delegations agree that a definition is necessary<sup>140</sup>. It would be better to have a fundamental definition of the possible right holder in order to define the scope of the right<sup>141</sup>. The communal aspect of a traditional knowledge right is not always a barrier to protection because group ownership of an intellectual property right is conceivable in some situations<sup>142</sup>. Furthermore, it has been noted that the claims that Western intellectual property is individual and traditional knowledge is always communal are untrue. The traditional wisdom might not be widely accepted and could be possessed by a small number of people, either men or women<sup>143</sup>. Therefore, a group could be the right holder. However, it is unclear how to identify the individuals that would make up this group<sup>144</sup>.

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<sup>139</sup> J Janewa Osei Tutu, 'Traditional Knowledge: Is Perpetual Protection a Good Idea?' *IDEA* [2010] (50) (4) 697.

<sup>140</sup> WIPO IGC, The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles 40. WIPO Doc. WIPO/GRTKF/IC/9/4 (2006), at Art. 4, 22.

<sup>141</sup> W Robert, Kastenmeier and J Michael Remington, 'The Semiconductor Chip Protection Act of 1984: A Swamp or Firm Ground.' *MINN. L. REV.* [1985] (70) 417

<sup>142</sup> WIPO ICG, Review of Existing Intellectual Property Protection of Traditional Knowledge 12, WIPO Doc. WIPO/GRTKF/IC/3/7 (2002).

<sup>143</sup> Graham Dutfield and Uma Suthersanen, *Global Intellectual Property Law* (Edward Elgar Publishing 2008) 328.

<sup>144</sup> J Janewa Osei Tutu, 'Traditional Knowledge: Is Perpetual Protection a Good Idea?' 50 *IDEA* [2010] (50) (4) 697.

Despite the fact that there is no universally accepted definition of "indigenous" or "traditional" people, all definitions acknowledge that "a people's deep, historical, ancestral roots to traditional lands as integral to indiginity."<sup>145</sup> Even while this would be a good place to start, there is still no universally accepted definition of indigenous peoples<sup>146</sup>. As a result, there is a certain amount of risk because it is challenging to restrict the reach of a possible conventional knowledge property right<sup>147</sup>. It has been suggested, for example, that the direct descendants of the traditional guardians of the knowledge should be the initial beneficiaries of a traditional knowledge right. This would necessitate identifying not only the relevant community, but also the individuals within the community who have a claim to some form of traditional knowledge. Given the intergenerational nature of traditional knowledge, this could be a difficult and intimidating, if not impossible, endeavour<sup>148</sup>.

### **4.3 Traditional Knowledge Protection: An Analysis of the Viability of Trade Secrets and the UN Convention on Biological Diversity as Complementary Strategies**

Protection as a trade secret is cheaper, quicker, and easier to apply than a patent. A trade secret can also be kept permanently, unlike other forms of intellectual property. Compared to obtaining other types of intellectual property, such as a patent, the legal criteria for demonstrating the existence of a trade secret are more lenient. Trade secrets can be used to safeguard information that cannot be protected by a patent or copyright<sup>149</sup>. One hundred Suing for misappropriation of

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<sup>145</sup> A Kristen Carpenter, K Sonia Katyal and R Angela Riley, 'In Defense of Property'. YALE Law Journal [2009] (118) 1022 & 1103.

<sup>146</sup> Siegfried Wiessner, 'Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples.' 41 VANDERBILT JRNAL. TRANSNAT'L L., 2008. pp. 1141 & 1163.

<sup>147</sup> *Ibid*

<sup>148</sup> J Janewa Osei Tutu, 'Traditional Knowledge: Is Perpetual Protection a Good Idea?' 50 *IDEA* [2010] (50) (4) 697.

<sup>149</sup> G Lakotia, Trade Secret Laws: Do We Need Them in India A Comparative Analysis. Available online at <[http://www.iprlawindia.org/law/contents...ts/Articles/trade\\_sec\\_laws\\_glakhotia.htm](http://www.iprlawindia.org/law/contents...ts/Articles/trade_sec_laws_glakhotia.htm)> accessed 21 October 2024.

trade secrets can successfully prevent infringement, such as exploiting information without the community's consent, and benefit the community<sup>150</sup>.

Choosing to keep the customary knowledge as a trade secret has an extra advantage. The owners of traditional knowledge will still have the last say over whether or not to divulge it if it is a trade secret. Nonetheless, prior informed agreement is required for the exchange of genetic resources for the common good under the Convention on Biodiversity (CBD), 1992<sup>151</sup>. It will be intriguing to observe if the duties under the CBD would be superseded by the rights under trade secret law. However, the right to safeguard cultural property is included in the UN Draft Declaration on the Rights of the Indigenous People. Under the current intellectual property framework, an inventor cannot be forced to divulge his innovation under patent law, and an author cannot be forced to publish his work under copyright law. Using the same principle, indigenous people must be granted the right to keep their knowledge secret. It will be fascinating to observe whether the rights of trade secrets, as detailed in the UN Declaration, must triumph above the CBD<sup>152</sup>.

Articles 11, 12, and 31 of the 2007 United Nations Declaration on the Rights of Indigenous Peoples<sup>153</sup> specifically mention these as pressing and valid concerns. Indigenous people have the right to preserve, control, safeguard, and advance their cultural heritage, traditional knowledge, and traditional cultural expressions, as well as the ways in which their sciences, technologies, and cultures are manifested. These include knowledge of the characteristics of plants and animals, oral traditions, literature, designs, sports, traditional games, and the visual and

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<sup>150</sup> Srividhya Ragavan, 'Protection of Traditional Knowledge'. *Minnesota Intellectual Property Review* [2001] (2) 1. Available online at <[www.law.ou.edu/faculty/.../protection\\_of\\_traditional\\_knowledge.pdf](http://www.law.ou.edu/faculty/.../protection_of_traditional_knowledge.pdf)> accessed 21 October 2024.

<sup>151</sup> U.N. Doc. Biodiversity Na 92-7807 Available online at <http://www.biodiv.org> accessed 21 October 2024.

<sup>152</sup> *Ibid*

<sup>153</sup> United Nations Declaration on the Rights of Indigenous Peoples GA Res. 61/295 (Annex), UN GAOR, 61st Sess., Supp. No. 49, Vol. III, UN Doc. A/61/49 (2008) 15.



performing arts. They also have the right to preserve, manage, safeguard, and advance their intellectual property related to such traditional knowledge, cultural manifestations, and cultural assets.

The 2007 Declaration also emphasises indigenous peoples' right to access, practise, and revitalise their cultural traditions. According to Article 12 (1), indigenous peoples have the right to manifest, practise, develop, and teach their spiritual and religious traditions, customs, and ceremonies; the right to maintain, protect, and have private access to their religious and cultural sites; the right to use and control their ceremonial objects; and the right to repatriation of their human remains.

#### **4.4 Tailoring IP for Tradition: Sui Generis Protections and Their Implications**

Another alternative, one has been heavily proposed by some academics and many NGOs, would be the formation of a sui generis regime of IPRs, that is, a legal regime “of its own kind” which is uniquely fitted to the nature and features of traditional knowledge. The Third World Network (Community Intellectual Rights Act) created a model of sui generis national legislation in 1994 that would grant communities property-like rights over their collective knowledge<sup>154</sup>. Despite the

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<sup>154</sup> FTAA.TNC/w/133/Rev 1; See also COICA, 1999. The Organisation of African Unity's African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources covers community rights: “Community rights recognise that the customary practices of local communities derive from a priori duties and responsibilities to past and future generations of both human and other species. This reflects a fundamental relationship with all life, and is imbued with an innate demand for respect. Despite the fact that this worldview is not commonly understood by the dominant western world, the purpose of these rights is to recognise and protect the multi-cultural nature of the human species. Community rights and responsibilities that govern the use, management and development of biodiversity, as well as the traditional knowledge, innovations and practices relating to them, existed long before private rights over biodiversity emerged, and concepts of individual ownership and property arose. Community rights are thus regarded as natural, inalienable, pre-existing or primary rights. The OAU's Model Law recognises this a priori character of rights in its Preamble. The rights of local communities over their biodiversity leads to the formalisation of their existing communal control over biodiversity. This system of rights, which enhances the conservation and sustainable use of biological diversity and promotes the use and further development of knowledge and technologies, is absolutely essential for the identity of local communities and for the continuation of their irreplaceable role in the conservation and sustainable use of this biodiversity”. (See also J A Ekperere, The OAU's Model Law, Organisation of African

fact that this strategy has been extensively discussed in the literature, not much has been done to really put this type of protection into practice. There are numerous intricate intellectual and practical problems with establishing a sui generis system. In short, these are<sup>155</sup>: definition of the protected subject; protection requirements; title-holders (individuals or communities); acquisition methods, including registration; duration; enforcement measures; and the scope of rights to be granted (rights to exclude, to obtain compensation, and to prevent misappropriation)<sup>156</sup>.

*Sui generis*, which translates to "of its own kind," refers to a body of nationally accepted regulations and methods of extending plant variety protection (PVP) outside of patents. The definition of a sui generis system is not provided by TRIPs<sup>157</sup>. The definition and implementation of a sui generis system may vary from one nation to another<sup>158</sup>; it may be designed to establish legal rights that acknowledge any traditional knowledge related to genetic resources and encourage access and benefit sharing. Under the form of patents, trade secrets, copyrights, farmers' and breeders' rights, or any other innovative form not yet established under the intellectual property system, the government may decide to provide protections for genetic resources and/or knowledge to a community.<sup>159</sup>

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Unity; Scientific, Technical & Research Commission, Lagos, 2000 in Carlos M Correa, "Traditional Knowledge and Intellectual Property: Issues and options surrounding the protection of traditional knowledge A Discussion Paper" The Quaker United Nations Office (QUNO), Geneva, November 2001).

<sup>155</sup> Carlos Correa, 'In situ conservation and intellectual property rights', Stephen Brush (ed), *Genes in the Field: On-Farm Conservation of Crop Diversity*, IPGRI/IDRC/Lewis Publishers, 2000.

<sup>156</sup> Carlos M Correa, 'Traditional Knowledge and Intellectual Property: Issues and options surrounding the protection of traditional knowledge A Discussion Paper'. *The Quaker United Nations Office (QUNO)*, Geneva, November 2001, at 14.

<sup>157</sup> TRIPs, Plant Variety Protection and UPOV, The South Centre, Available online at <<http://www.southcentre.org/southletter/sl34/sl34-10.htm>> accessed 21 October 2024.

<sup>158</sup> Hansen, Stephen and VanFleet, Justin. (eds), *Traditional Knowledge and Intellectual Property: A Handbook on Issues and Options for Traditional Knowledge Holders in Protecting their Intellectual Property and Maintaining Biological Diversity* (American Association for the Advancement of Science (AAAS) 2003) 18-19.

<sup>159</sup> *Ibid*

Furthermore, in order to invalidate unsuitable patents, a sui generis system may implement protections unique to traditional knowledge. Patents granted on inventions derived from genetic resources or traditional knowledge, of which any member state is the country of origin, for instance, "shall be nullified without presentation of a copy of the proper access contract or licence from the community," according to the Andean Community's Decision 486<sup>160</sup>.

Under a sui generis system, as mandated by the Convention on Biological Diversity, anyone seeking access to a community's biological resources or knowledge for scientific, commercial, or industrial purposes must first obtain the prior informed consent of the indigenous peoples who possess the knowledge in question, unless the knowledge is already in the public domain. This would provide the community control over access to and use of its genetic resources and knowledge, with the option to share or not share them. If permission is given, the individual or individuals seeking access to a conservation area, indigenous community-owned lands, biological resources, and information related to either must provide proof of this permission to the appropriate authorities or the intellectual property office<sup>161</sup>.

Alternative models developed outside of the current intellectual property law are known as sui generis rights. Although very little has changed due to the nature of the property sought to be protected, protection by such sui generis rights has been seen as a way to preserve plant variety and traditional knowledge. TRIPS' Article 27(3) permits nations to prohibit the patenting of

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<sup>160</sup> M Florez, Andean Community Adopts New IPR Law, Ag BioTech InfoNet, October 5, 2000. Available online at [http://biotech-info.net/IPR\\_law.html](http://biotech-info.net/IPR_law.html) accessed 21 October 2024.

<sup>161</sup> Hansen, Stephen and VanFleet, Justin. (eds), *Traditional Knowledge and Intellectual Property: A Handbook on Issues and Options for Traditional Knowledge Holders in Protecting their Intellectual Property and Maintaining Biological Diversity* (American Association for the Advancement of Science (AAAS) 2003) 18-19.

plants and animals. Additionally, this section offers protection through sui generis systems<sup>162</sup>. However, the problem lies in the lack of clarity surrounding the definition of sui generis rights and the enforcement mechanism. Furthermore, it is also unclear if the WTO and developed nations will agree on rights that are determined by particular governments. It is unclear if a flexible right will be accepted given that wealthy nations utilise economic measures to compel states to abide by TRIPS<sup>163</sup>. Whether the western intellectual property system can accept rights that are not advantageous to regional sectors will determine how flexible it can be.

Meghana RaoRane, despite his opposing attitude on trade secrets, advocated in favour of the Sui generis regime, with some reservations, as a more realistic choice for the protection of traditional knowledge than the existing IPRs regime because the protections are more progressive<sup>164</sup>. He defined sui generis solutions as ways that establish new intellectual property categories for the protection of traditional knowledge<sup>165</sup>. They intend to protect traditional knowledge by supplementing or replacing existing intellectual property rights. Some nations have constructed sui generis solutions as stand-alone intellectual property-like systems, even though the majority

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<sup>162</sup> Srividhya Ragavan, "Protection of Traditional Knowledge", 2 *Minnesota Intellectual Property Review* [2001] (2) 1; Available online at [www.law.ou.edu/faculty/.../protection\\_of\\_traditional\\_knowledge.pdf](http://www.law.ou.edu/faculty/.../protection_of_traditional_knowledge.pdf)> accessed 21 October 2024.

<sup>163</sup> For example, the U.S. complained that Argentina's new patent law delayed extension of patents to pharmaceuticals until the year 2000 even though developing countries do not have to phase-in patent protection of new product types under TRIPS until a total of ten years after TRIPS enters into force, which is well after 2000. Similarly, in India, the Patent Second Amendment Bill has a provision that is similar to the polar provision of the U.S. (The stockpiling exception states that before the expiration of the patent, a third party cannot pile up his stock so that he can enter the market as soon as the patent holder's term expires.) The U.S. is seeking legislative intervention to prohibit the approval of a generic version of the local drugs before the expiry of the term of the patent. Typically, the implication is that before a generic version is approved, the original patent holder, which is more often a U.S. multinational, will get to be the exclusive seller in the market for a period of easily three to four years.

<sup>164</sup> Meghana RaoRane., 'Aiming Straight: The Use Of Indigenous Customary Law To Protect Traditional Cultural Expressions.' *Pacific Rim Law & Policy Journal Association* [2006] (15) (3) 838-839. See also K Robert Paterson and S Dennis Karjala, Looking Beyond Intellectual Property in Resolving Protection of the Intangible Cultural Heritage of Indigenous Peoples, 11 *Cardozo Journal of International and Comparative Law* [2003] (11) 633, 665.

<sup>165</sup> Daniel Wuger, *Prevention of Misappropriation of Intangible Cultural Heritage Through Intellectual Property Laws, in Poor Peoples Knowledge: Promoting Intellectual Property in Developing Countries* 183, 191 (J Michael Finger & Philip Schuler eds. 2004).

have developed and implemented them under their copyright laws<sup>166</sup>. Certain sui generis solutions acknowledge and include native customary rules in their defence mechanisms<sup>167</sup>. In addition, he clarified that while sui generis alternatives provide Traditional Knowledge with more protection than current IPRs, they still do not offer a sufficient degree of protection. By acknowledging the potential of indigenous customary laws to adequately conserve Traditional Knowledge, some sui generis solutions take a positive step by embracing these laws. Sui generis alternatives, however, share many of the same drawbacks as existing IPRs because they are founded on them. Additionally, it has been argued that sui generis solutions are limited to a localised scope and that, for example, the WIPO-UNESCO Model Provision has evolved into "de-facto, a strictly regional instrument."<sup>168</sup>

Before the traditional intellectual property rights system came into being, indigenous peoples had their own customary legal systems governing genetic resources and traditional knowledge. As a result, before the Intellectual Property Rights (IPR) system was established, traditional knowledge and genetic resources were not unregulated. Consequently, the traditional legal systems of indigenous peoples have not been superseded by the IPR system. In terms of indigenous rights, traditional intellectual property rights are superseded by indigenous customary rules, which nonetheless coexist alongside them. Even though traditional intellectual property rights systems are unable to protect the genetic resources or traditional knowledge in question,

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<sup>166</sup> See Information Booklet on Intellectual Property and Traditional Cultural Expressions/Folklore, 19, WIPO Publication No. 913, Available online at <[http://www.wipo.int/freepublications/en/tk/913/wipo\\_pub\\_913.pdf](http://www.wipo.int/freepublications/en/tk/913/wipo_pub_913.pdf)> accessed 21 October 2024.

<sup>167</sup> See Cultural Expressions/Expressions of Folklore: Legal and Policy Options, 10, WIPO Doc. WIPO/GRTKF/IC/6/3, (Dec. 1, 2003), Available at <[http://www.wipo.int/documents/en/meetings/2004/igc/pdf/grtkf\\_ic\\_6\\_3.pdf](http://www.wipo.int/documents/en/meetings/2004/igc/pdf/grtkf_ic_6_3.pdf)> accessed 21 October 2024. Examples of sui generis systems include the Tunis Model Law on Copyright, the Model Provisions, the Bangui Agreement of OAPI, the Panama Law No. 20, and the South Pacific Model Law for National Laws.

<sup>168</sup> Erica-Irene Daes, 'Intellectual Property and Indigenous Peoples'. *AM. SOC'Y INT'L L. PROC.* [2001] (95) 143-145.

the extent to which indigenous peoples' customary laws and protocols offer protection for these resources does not place them in the so-called public domain. Although it is acknowledged that, from the standpoint of traditional intellectual property rights, the different customary legal systems of indigenous peoples may be referred to as sui generis systems for the protection of traditional knowledge and genetic resources, these laws are essential to the preservation of indigenous cultural heritage<sup>169</sup>. It is crucial for policymakers and stakeholders to recognize and respect the importance of these customary laws in safeguarding indigenous peoples' rights and ensuring the sustainability of their cultural heritage. By acknowledging and incorporating these unique legal systems into broader intellectual property frameworks, a more inclusive and equitable approach can be taken towards protecting traditional knowledge and genetic resources. Ultimately, empowering indigenous communities to assert their rights and control over their cultural assets is essential for promoting cultural diversity and fostering sustainable development.

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<sup>169</sup> Joji Carino, 'Indigenous Peoples' Rights and the International Regime on Access and Benefit-Sharing.' Available online at <[www.twinside.org.sg/title2/resurgence/206/cover9.doc](http://www.twinside.org.sg/title2/resurgence/206/cover9.doc)> accessed 21 October 2024. Note that Joji Carino is the European Desk Coordinator of Tebtebba Foundation and a leading activist in the International Indigenous Biodiversity Forum.

## CHAPTER FIVE

### FINDINGS, RECOMMENDATIONS AND CONCLUSION

#### 5.1 Summary of Findings

This study investigated the protection of traditional knowledge in Nigeria's copyright law, revealing significant gaps and challenges. Nigeria's Copyright Act fails to explicitly recognize and protect traditional knowledge, leaving it vulnerable to misappropriation and exploitation. Furthermore, the current copyright framework is ill-suited for traditional knowledge, which is often communal, oral, and context-dependent. This limitation stems from the Act's emphasis on individual ownership and written forms of creative expression, neglecting the collective and intangible nature of traditional knowledge. Consequently, indigenous communities struggle to assert their rights over their cultural heritage.

Additionally, existing laws and policies do not ensure fair compensation for indigenous communities whose traditional knowledge is exploited. The lack of recognition of communal ownership of traditional knowledge undermines the rights of indigenous communities, while the absence of effective safeguards enables biopiracy, compromising cultural and economic interests. The study also found limited awareness and capacity among stakeholders, including policymakers and indigenous communities, to effectively protect traditional knowledge. This knowledge gap hinders the development of effective protection mechanisms, exacerbating the vulnerability of traditional knowledge. Moreover, Nigeria's international obligations under treaties like TRIPS and the CBD require stronger protection for traditional knowledge.

In the overall, the findings highlight the need for substantial reforms to Nigeria's copyright law to safeguard traditional knowledge, promote cultural diversity, and ensure benefit-sharing for

indigenous communities. Traditional knowledge holds significant cultural and economic value for Nigeria, necessitating effective protection. The study's recommendations advocate for legislative reforms, capacity building, and international cooperation to address these challenges and strengthen the protection of traditional knowledge in Nigeria. Specifically, the study proposes amendments to the Copyright Act, establishment of a traditional knowledge registry, and community-based protection mechanisms. Implementing these reforms will not only preserve Nigeria's rich cultural heritage but also contribute to the global effort to safeguard intangible cultural heritage.

## **5.2 Recommendations**

This study undertook a comprehensive examination of the protection of traditional knowledge in Nigeria's copyright law, highlighting the inadequacies of the current framework and the need for reform. Through a critical analysis of relevant laws, policies, and international treaties, the research identified significant gaps and challenges in safeguarding traditional knowledge, including limitations of Western-style copyright protection, inadequate recognition of communal ownership, and insufficient safeguards against biopiracy. The study advocated for a balanced approach that respects cultural heritage while promoting innovation and creativity. The study however makes the following recommendations:

1. Amendment of the Nigeria's Copyright Act to explicitly recognize and protect traditional knowledge, incorporating provisions for communal ownership, benefit-sharing, and safeguarding against biopiracy.
2. Establishment of a national Traditional Knowledge Registry to document and preserve traditional knowledge.



3. Implementation of community-based protection mechanisms, empowering indigenous communities to manage and control access to their traditional knowledge.
4. Development and implementation of benefit-sharing mechanisms to ensure fair compensation for indigenous communities.
5. Fostering of international cooperation to develop harmonized approaches to traditional knowledge protection.
6. Conducting capacity-building programs for stakeholders, including policymakers, indigenous communities, and intellectual property practitioners.
7. Development of a comprehensive policy framework integrating cultural, social, and economic considerations.
8. Regular review and evaluation of the effectiveness of traditional knowledge protection measures.

### **5.3 Contributions to Knowledge**

This study contributes significantly to the existing body of knowledge on the protection of traditional knowledge in Nigeria's copyright law. Specifically, the research provides a comprehensive analysis of Nigeria's copyright law and its adequacy in protecting traditional knowledge, highlighting gaps and challenges. It also identifies the cultural, social, and economic importance of traditional knowledge in Nigeria, emphasizing its significance to indigenous communities.

The study further examines international best practices and treaties related to traditional knowledge protection, offering insights for Nigeria's policy development. It provides an in-depth examination of the implications of international agreements such as TRIPS and the CBD on

Nigeria's traditional knowledge protection framework. Additionally, it develops a framework for protecting traditional knowledge in Nigeria, integrating community-based protection mechanisms, benefit-sharing arrangements, and legislative reforms. This framework addresses the unique challenges posed by traditional knowledge, such as communal ownership and oral transmission. The research also contributes to the discourse on intellectual property rights and traditional knowledge, clarifying the intersection between copyright law and traditional knowledge. By exploring the tensions between Western-style intellectual property rights and indigenous knowledge systems, this study sheds light on the complexities of protecting traditional knowledge in a globalized world.

Finally, this study advances the theoretical understanding of traditional knowledge protection, integrating cultural, social, and economic perspectives. The findings and recommendations provide empirical evidence for policymakers to develop informed policies and laws on traditional knowledge protection. Furthermore, the study fosters interdisciplinary research, bridging the gap between law, cultural studies, and economics in the context of traditional knowledge protection. The contributions of this research offer valuable insights for stakeholders, promoting the preservation of Nigeria's rich cultural heritage and innovative and creative industries.

#### **5.4 Areas for Further Studies**

The protection of traditional knowledge in Nigeria's copyright law presents a vast and complex research terrain. Further studies can explore various avenues to strengthen the existing framework. For instance, investigating the economic benefits of traditional knowledge protection can provide valuable insights into potential revenue streams and job creation. Additionally, a

comparative analysis of traditional knowledge protection models in other jurisdictions, such as Australia, India, and South Africa, can identify best practices for Nigeria. The role of international cooperation in traditional knowledge protection also warrants further examination, particularly in relation to international treaties and agreements.

Further research can also focus on digital protection strategies for traditional knowledge, including online registration systems and digital rights management. Community-based protection mechanisms, such as community-led registration systems and traditional knowledge databases, require in-depth investigation. The intersection of intellectual property rights and traditional knowledge, including patents, trademarks, and geographical indications, is another critical area of study. Moreover, the relationship between traditional knowledge protection and cultural heritage preservation in Nigeria deserves attention. Public awareness and education on traditional knowledge protection are also essential, and assessing the effectiveness of awareness campaigns and education programs can inform future initiatives.

Longitudinal studies can monitor and evaluate the implementation of legislative reforms and policy changes aimed at protecting traditional knowledge in Nigeria. Conducting in-depth case studies of successful traditional knowledge protection initiatives in Nigeria can highlight best practices and challenges. These areas offer opportunities for further research, policy development, and practical implementation to strengthen the protection of traditional knowledge in Nigeria. By exploring these avenues, researchers and policymakers can contribute to the preservation of Nigeria's rich cultural heritage and promote innovative and creative industries.

## 5.5 Conclusion

In conclusion, the protection of traditional knowledge in Nigeria's copyright law is crucial for preserving cultural heritage, promoting cultural diversity, and empowering indigenous communities. This study has demonstrated the inadequacies of Nigeria's current copyright framework in safeguarding traditional knowledge, highlighting significant gaps and challenges. The limitations of Western-style copyright protection, inadequate recognition of communal ownership, and insufficient safeguards against biopiracy have left traditional knowledge vulnerable to misappropriation, exploitation, and cultural erosion.

Moreover, the study has underscored the importance of adopting a holistic approach to traditional knowledge protection, one that considers the cultural, social, and economic contexts in which traditional knowledge is created, transmitted, and utilized. This requires a good understanding of the complex relationships between culture, law, and economy.

The research emphasizes the need for a balanced approach that respects cultural heritage while promoting innovation and creativity. It highlights the importance of community-based protection mechanisms, capacity building, and awareness-raising among stakeholders. Furthermore, it stresses the significance of international cooperation and collaboration in addressing the global dimensions of traditional knowledge protection.

In the ultimate sense, safeguarding traditional knowledge is not only a legal imperative but also a cultural and moral obligation. By reforming Nigeria's copyright law to protect traditional knowledge, the country can preserve its rich cultural legacy for future generations, promote cultural diversity, and contribute to the global effort to safeguard intangible cultural heritage.

This study contributes to the ongoing conversation on intellectual property rights and traditional knowledge in Nigeria, advocating for a proactive and inclusive approach that recognizes the value of traditional knowledge in the country's cultural and economic development. The findings and recommendations of this research provide a foundation for policymakers, scholars, and practitioners to engage with the complex issues surrounding traditional knowledge protection. By prioritizing the protection of traditional knowledge, Nigeria can unlock the potential of its cultural heritage, promote sustainable development, and ensure that the benefits of traditional knowledge are shared equitably among all stakeholders.

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