

HARMONIZING JUSTICE: NAVIGATING FAIR COMPENSATION AND APPROPRIATION IN FOLK MUSIC COLLECTING AND INTELLECTUAL PROPERTY

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Abstract

This article embarks on a nuanced exploration of the intricate dynamics between folk music collecting and intellectual property law, with a particular emphasis on ensuring fair compensation for traditional musicians and communities. by dissecting the legal frameworks governing folk music, including copyright law and traditional knowledge protections, this research illuminates the complexities of appropriation and the imperative of cultural sensitivity. Through a meticulous analysis of case studies and legal precedents, this article proposes strategies for promoting fair compensation and cultural sensitivity, while navigating the role of intellectual property law in this context. Ultimately, this paper contributes to a deeper understanding of the intersections between folk music, intellectual property, and cultural justice, informing policy recommendations and future research directions.

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1.0 Introduction

Folk music, a rich and diverse cultural heritage, has long been a vital part of human expression and identity. The significance of folk music lies not only in its aesthetic value but also in its role as a custodian of cultural traditions and communal histories. However, the collection and commercialization of folk music have raised complex questions regarding fair compensation and cultural sensitivity, particularly in the context of intellectual property law.¹

The intersection of folk music collecting and intellectual property law is a multifaceted issue, necessitating a nuanced understanding of the legal frameworks governing traditional knowledge and cultural expressions. As noted by scholars, the application of copyright law to folk music can be problematic, given the communal nature of traditional music and the often-informal arrangements surrounding its creation and dissemination.² In many African communities, performance poetry and dramatized plays have traditionally been a central part of African cultural life. Some of the folklore, also referred to as Traditional Cultural Expressions (TCEs), developed out of dramatic narration of actual events or fictional events; while others had different functions, including political, educative, spiritual, and entertainment purposes.³ Folklore is often a spin-up tale or relayed stories about the ancestral life and origin of communities, passed down life lessons for younger generations to learn from, or composed plays and songs for festive

¹ WIPO, 'Traditional Knowledge and Folklore', www.wipo.org Accessed 28 August 2025.

² *Bulun Bulun v R & T Textiles Pty Ltd* [1998] FCA 1088 (Australia), where the court considered the application of copyright law to traditional Aboriginal artwork.

³ Yemi Ogunbiyi (ed) *Drama and Theatre in Nigeria: A Critical Sourcebook* [Pitman Press, 1981] 8.

ceremonies. Some folklore depicts the main characters manage their everyday life events, including conflicts or crises and others portray universal truths, unfounded beliefs, and superstitions.⁴ The problem arises when folklore is appropriated and passed off as original work without profits or compensation paid to the originating communities.

This article explores the complex intersection of folk lore music collecting and intellectual property law, with a focus on ensuring fair compensation for traditional musicians and communities. By examining the legal frameworks governing folk music, including copyright law and traditional knowledge protections, this research aims to contribute to a deeper understanding of the ethical and legal dimensions of folk music appropriation and to inform policies that support the rights of traditional musicians and communities. The paper also argues that a balanced approach to intellectual property law and cultural sensitivity is essential for promoting fair compensation and protecting the rights of traditional musicians and communities in the context of folk music collecting.

2.0 Literature Review

The intersection of folk music collecting and intellectual property law has sparked intense debate, particularly regarding fair compensation and appropriation. Authors have extensively discussed this complex issue, highlighting the need for a balanced approach to ensure that original creators receive fair compensation without stifling creativity.⁵ Meki Nzewi's work,⁶ offers rich insights into African musical traditions and creativity. He is a respected voice on African musicology, shedding light on the complexities and beauty of African music. His contributions

⁴ Jennifer HM and Greg U., *Modern Approach to Intellectual Property Laws in Nigeria* [Lagos: Princeton & Associates Publishing Co., 2022] 135.

⁵ Atoyebi OM, 'Navigating the Complex Landscape of Creativity and Compensation' (23 July 2024), www.omaplex.com.ng Accessed 2 September 2025.

⁶ Meki Nzewi, *Musical Practice and Creativity* (2003), <https://africanbookscollective.com> Accessed 11 September 2025.

help us understand the cultural depth and significance of music in African contexts.

Folk music, as a form of traditional cultural expression, poses unique challenges for intellectual property law. The World Intellectual Property Organization (WIPO) has been actively exploring ways to protect traditional cultural expressions (TCEs) and folklore, recognizing the importance of preserving cultural heritage.⁷ Scholars argue that fair compensation for folk music collectors and artists is crucial, and this can be achieved through effective royalty collection and distribution systems.

However, organizations responsible for royalty collection, such as the Copyright Society of Nigeria (COSCON) and the Musical Copyright Society of Nigeria (MCSN), face challenges, including inefficiencies and lack of transparency.⁸ Cultural appropriation in folk music raises concerns about ownership and exploitation, and authors emphasize the need for cultural sensitivity and awareness to ensure that traditional music is used respectfully and with proper attribution.⁹

The Copyright Act of 2022 in Nigeria provides a framework for protecting musical works, including folk music.¹⁰ However, its application to traditional music is complex, and authors suggest that a nuanced approach is necessary to balance protection with cultural preservation.¹¹ The music industry has undergone significant changes

⁷ WIPO, "Intellectual Property and Traditional Cultural Expressions/Folklore" WIPO Publication No. 913 (E).

⁸ Dominik Swiatkowski, 'Folk Music Collectors and Intellectual Property: Ensuring Fair Compensation Without Appropriation', *Journal of Intellectual Property Law and Practice*, Oxford University Press, vol (20) 5, 324-332 www.ideas.respec.org Accessed 10 September 2025.

⁹ *ibid.*

¹⁰ Copyright Act 2022, s 74.

¹¹ Atoyebi (n5).

with the rise of digital streaming platforms, offering new revenue streams for artists. Nonetheless, low per-stream payouts and inefficient royalty collections systems pose challenges for fair compensation. Piracy remains a significant issue, depriving artists of legitimate income and undermining the value of their work. To an appreciable extent, some (if not many) artists, especially emerging ones, lack awareness of their rights and the mechanisms for protecting their work.¹²

To address these challenges, authors recommend a balanced approach to intellectual property law and cultural sensitivity, improving royalty collection and distribution systems, and promoting cultural preservation. By adopting these strategies, it is possible to ensure that traditional musicians and communities receive fair compensation for their work and that their cultural heritage is preserved for future generations.¹³

In conclusion, the literature highlights the complexities of folk music collecting and intellectual property law, emphasizing the need for a balance approach that promotes a fair compensation, cultural sensitivity, and preservation of cultural heritage. By understanding these complexities and adopting effective strategies, it is possible to protect the rights of traditional musicians and communities while promoting creativity and innovation in music.

2.1 The Legal Frameworks Governing Folk Music

The legal framework governing folk music in Nigeria is multifaceted, drawing from various statutes and regulatory bodies that protect intellectual property rights. At the heart of this framework is the

¹² Dominik (n7).

¹³ WIPO (n6).

Copyright Act 2022, which provides for literary, musical, artistic, sound recordings, broadcasts, and audiovisuals.¹⁴

2.1.1 Key Aspects of the Legal Framework and Regulatory Bodies

- i. Copyright Protection:** The Copyright Act 2022 safeguards original musical works, including folk music, granting creators exclusive rights over reproduction, broadcasting, and public performance.¹⁵ The Act addresses digital infringement, providing remedies.¹⁶
- ii. Collective Management Organizations (CMOs):** Bodies like the Copyright Society of Nigeria (COSON) and Musical Copyright Society Nigeria (MCSN) play crucial roles in managing rights, collecting royalties, and licensing music for commercial use.
- iii. Nigerian Copyright Commission:** The NCC oversees copyright protection and regulation in Nigeria, ensuring compliance with the Copyright Act 2022.¹⁷ The NCC monitor and advise Government on Nigeria's position in relation to bilateral and multilateral agreements between Nigeria and any other country.¹⁸
- iv. Intellectual Property Rights:** Nigeria's intellectual property laws, including the Copyright Act, Trademarks Act, and Patent and Designs Act, contribute to protecting creative works.
- v. Constitutional Basis:** Section 39 of the 1999 Constitution of Nigeria guarantees freedom of expression, encompassing artistic and musical creations.

¹⁴ Copyright Act 2022, s 2.

¹⁵ Ibid, s 9.

¹⁶ Ibid, s 36.

¹⁷ Ibid, s 77.

¹⁸ Ibid, s 78(1)(b).

- vi. **National Film and Video Censors Board (NFVCB):** Regulates film and video content.
- vii. **Nigerian Broadcasting Commission:** Oversees broadcasting regulations.
- viii. **Contract Law:** Governs agreements and contracts in the entertainment industry.

2.1.2 Traditional Knowledge Protections and their Relevance to Folk Music

Traditional knowledge protections are crucial for safeguarding folk music, ensuring fair compensation and preventing cultural appropriation. Folk music embodies the collective wisdom, stories, and cultural identities of communities, often transmitted orally across generations,¹⁹ reflecting the rich tapestry of communal heritage.²⁰ This oral tradition underscores the deeply rooted nature of traditional knowledge (TK) in community culture and spirituality, where TK encompasses knowledge, innovations, and practices adapted to local environments.

The significance of TK in folk music lies in its power to preserve history, values, and social norms, sometimes serving as an unofficial code of law within cultures. Through intergenerational transmission, music conveys knowledge, customs, and skills, fortifying community bonds and cultural identity. Folk music manifests in diverse expressions such as working songs, storytelling, and ritualistic performances intricately tied to community practices.²¹ Applying legal frameworks to protect TK and folk music presents complexities. The Nigeria's

¹⁹ PressBooks, 'The Power of Folk Music Contributions', www.ubalt.pressbooks.pub Accessed 11 September 2025.

²⁰ Jesse Wickman, 'The Cultural Significance of Folk Music in Various Societies', www.jessewickman.com Accessed 11 September 2025.

²¹ Suri BG., 'Traditional Knowledge, Definition, Scope and Importance', www.slideshares.net Accessed 11 September 2025.

copyright Act 2022 offers protection for musical works; however, adapting it to encompass traditional music poses challenges due to its communal and oral nature. Internationally, instruments like the Berne Convention²² and efforts by the World Intellectual Property Organization address the protection of traditional cultural expressions (TCEs). The UN Convention on Biological Diversity²³ stresses respect, preservation, and fair benefit-sharing of TK, highlighting the need to balance Western intellectual property concepts with communal ownership paradigms.

Protection mechanisms include Collective Management Organization which manage rights and royalties. Discussions around sui generis systems advocate for specific regimes protecting TCEs as community rights. Obtaining prior informed consent is crucial for accessing and utilizing TK, underscoring the importance of benefit-sharing and cultural sensitivity.²⁴ Ultimately, folk music is a reflection of community heritage and identity. Ensuring fair compensation and respecting communal ownership are pivotal in preventing exploitation and promoting cultural preservation. Scholars like Meki Nzewi have contributed valuable insights on Nigerian folk music, while WIPO discussions and international conventions continue to shape the discourse on traditional knowledge protections, aiming to harmonize justice in the realm of folk music collecting and intellectual property.²⁵

²² Article 15(4).

²³ Article 8(j).

²⁴ Convention on Biodiversity, art 8(J) – Traditional Knowledge, Innovation and Practices.

²⁵ Gujan Arora, 'Preservation or Protection? The Intellectual Property Debate Surrounding Traditional Cultural Expressions', *Harvard International Law Journal*, www.law.harvard.edu Accessed 11 September 2025.

3.0 Appropriation and Fair Compensation in Folk Music

The intersection of appropriation and fair compensation in folk music presents a labyrinthine challenge, entwining cultural expression, intellectual property rights, and communal ownership. Folk music, a vibrant tapestry woven from the threads of collective wisdom and oral traditions, often defies the conventional contours of Western intellectual frameworks. This genre of music is susceptible to misappropriation, raising poignant questions about justice, equity, and respect for cultural origins.²⁶

Cultural borrowing is a double-edged sword; while exchange and inspiration are natural to artistic creation, the incorporation of folk music elements into commercial works serves adequate acknowledgement or compensation ignites fervent debates on cultural appropriation. Unlike the individual authorship paradigm prevalent in Western copyright law, folk music frequently embodies communal creation and ownership, thereby complicating attribution and rights management. Nigerian folk music traditions, such as those of the Igbo or Yoruba people, exemplify the intricate musical heritage vulnerable to such misappropriation. These traditions are not mere relics of the past but living breathing expressions of community identity and creativity.

Nigeria's Copyright Act 2022 provides a statutory framework for protecting musical works, yet applying these provisions to traditional communal music unveils complexities inherent in reconciling communal ownership with individualistic copyright notions.²⁷ On the international stage, instruments like the Berne Convention²⁸ gesture towards the protection of folklore, while the World Intellectual Property Organization (WIPO) engages in discourse on traditional cultural

²⁶ Meki (n6).

²⁷ Copyright Act 2022, s 9.

²⁸ Article 15(4).

expressions (TCEs), underscoring global awareness of these issues. Concepts like prior informed consent and benefit-sharing emerge as crucial mechanisms emphasizing fair compensation and equitable benefit-sharing with communities originating traditional knowledge and music.

However, defining ownership constitutes a significant hurdle; the dichotomy between communal and individual rights poses challenges in identifying the rightful beneficiaries of compensation. Cultural sensitivity stands as a pivotal consideration, necessitating respect for cultural origins and eschewing exploitation. The advent of digital platforms has amplified the global dissemination of music, heightening risks of unauthorized use and accentuating the imperative for effective rights management strategies. Balancing access, creativity, and fairness remains a delicate task. Scholars like Meki Nzewi have bequeathed invaluable insights into African musical traditions through such works as “Musical Practice and Creativity in Africa”, enriching understanding of the cultural depth and significance of African Music. WIPO’s engagement with TCEs reflects global efforts to address protection of traditional cultural expressions. In Nigeria, the Nigerian Copyright Commission oversees copyright regulation navigating the interplay of law, culture, and creativity. Globally, protecting traditional cultural expressions (TCEs) and folk music involves navigating various international instruments and national laws; for instance, instruments like the Convention for the Safeguarding of the Intangible Cultural Heritage underscore cultural preservation importance – though distinct from IP.²⁹

²⁹ UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) www.unesco.org 10 September 2025.

3.1 Nigerian Folk Music Traditions: Case Studies and Examples

Nigerian folk music is a vibrant mosaic reflecting the nation's cultural diversity. The Yoruba people's *juju* music, with its intricate rhythms and instrumentation like the *dundun* talking drum, is a notable tradition. Igbo folk music, encompassing expressions like *ekwe* log drum music, represents vital cultural practices vulnerable to misappropriation absent fair compensation. These traditions are not mere artifacts but living embodiments of community creativity and identity.³⁰

- a) **Yoruba Juju Music:** Elements of this genre have been incorporated into commercial works, sparking debates on acknowledgement and equitable compensation.
- b) **Igbo Folk Music:** Igbo traditions face risks of exploitation without mechanisms ensuring fair benefits.
- c) **Global Examples:** Case involving traditional music used in commercial recordings or films highlight complexities of clearance and compensation.

It is pertinent to state the defining ownership constitutes a hurdle; the dichotomy between communal and individual rights complicates identifying rightful beneficiaries of compensation. Prior informed consent emerges as crucial for accessing traditional knowledge/music. Benefit-sharing mechanisms are pivotal in ensuring fairness for originating communities. Cultural sensitivity remains essential, necessitating balance between access and respect for cultural origins.

3.2 Strategies for Promoting Fair Compensation and Cultural Sensitivity

The intersection of folk music, intellectual property rights, and cultural appropriation presents complex challenges globally, including Nigeria, a country endowed with a rich musical tapestry. Harmonizing justice in

³⁰ Meki (n6).

this context necessitates nuanced strategies for promoting fair compensation and cultural sensitivity, respecting the communal nature of folk music and navigating global intellectual property frameworks.³¹

Thus, the strategies for fair compensation are:

- a) **Prior Informed Consent:** Securing consent from communities originating traditional music is key, ensuring respect for communal rights.³²
- b) **Benefit-Sharing Mechanisms:** Establishing equitable benefit-sharing arrangements can facilitate fair compensation for communities, reflecting principles in international discussions on traditional knowledge.³³
- c) **Collective Management Organizations:** Bodies like the Copyright Society of Nigeria (COSCON) plays roles in managing rights and royalties, potentially aiding fair compensation structures
- d) **Transparent Licensing:** Clear licensing processes respecting cultural origins can mitigate risks of exploitation.³⁴

3.3 Cultural Sensitivity and Respect

- a) **Acknowledging Communities:** Recognizing and crediting source communities fosters respect.³⁵
- b) **Cultural Context Understanding:** Appreciating cultural contexts of folk music aids in navigating appropriation sensitively.
- c) **Community Engagement:** Engaging with communities can enhance mutual understanding and respect for cultural expressions.

³¹ Dominik (n7).

³² WIPO, 'Traditional Cultural Expressions' (2020) www.wipo.org Accessed 17 September 2025.

³³ UN Declaration on Indigenous Peoples 2007, Art 11.

³⁴ Copyright Act 2022, ss 9-13.

³⁵ Meki (n6).

- d) **Avoiding Exploitation:** Ensuring practices don't exploit cultural heritage is crucial for ethical dealing.³⁶

3.4 Key Aspects of IP in Fair Compensation and Cultural Sensitivity

Intellectual property (IP) plays a crucial role in promoting fair compensation and cultural sensitivity, particularly in the context of traditional knowledge and cultural expressions. IP rights provide a framework for protecting creators' and communities' interests, ensuring they receive recognition and economic benefits for their work. Consequently, the key aspects of intellectual property in this regard include:

- a) **Protection of Traditional Knowledge:** IP mechanisms like patents, trademarks, copyrights, and geographical indications can safeguard traditional knowledge and cultural heritage of indigenous communities, preventing exploitation without consent of fair compensation.³⁷
- b) **Fair Compensation:** IP rights enable creators and communities to control how their works are used, distributed, and adapted, facilitating fair compensation through licensing and royalties.³⁸
- c) **Cultural Sensitivity:** Intellectual property frameworks can promote cultural sensitivity by acknowledging communal rights, requiring prior informed consent, and preventing cultural misappropriation.³⁹
- d) **Community Sensitivity:** Effective protection of cultural heritage necessitates engagement with indigenous and local

³⁶ UNESCO Convention (n29).

³⁷ De Penning and De Penning, 'IP and Indigenous Communities: Protecting Traditional Knowledge and Cultural Heritage (26 April 2024), www.depenning.com Accessed 17 September 2025.

³⁸ The Legal School, 'Importance of Intellectual Property Rights: Meaning, Significance and Types', www.thelegalschool Accessed 17 September 2025.

³⁹ De Penning (n37).

communities in identifying, documenting, and managing their cultural expressions.⁴⁰

Based on the above, the tools and mechanisms that intellectual property require are:

- i. **Patents:** Protect inventions and innovations; provisions like section 3(p) of India's Patents Act, 1970, address traditional knowledge protection.
- ii. **Copyrights:** Safeguard literary, artistic, and musical works, including traditional cultural expressions and folklore. Thankfully, this is provided in the Nigerian Copyright Act 2022.
- iii. **Trademarks:** Protect distinctive signs identifying goods/services; useful for traditional products.
- iv. **Geographical Indications (GIs):** Protect products linked to specific regions, preserving cultural identity, e.g. the *Ekpe* in Akwa-Ibom State, the *Eyo* in Lagos State.

Intellectual property thus serves as a crucial tool in navigating issues of fair compensation and cultural sensitivity, requiring nuanced approaches that respect communal rights and cultural contexts.

3.5 Challenges and Considerations in Folk Music and Intellectual Property

Folk music embodies communal identity, encapsulates history, and channels creativity, frequently transmitted orally, thus posing distinctive issues for conventional intellectual property frameworks enshrined in statutes like Nigeria's Copyright Act 2022.⁴¹ However, it is not without its own challenges. These challenges include:

- a. **Defining Communal Rights and Ownership:** Identifying rightful beneficiaries of compensation constitutes a significant hurdle due to the communal nature of folk music. Unlike

⁴⁰ Ibid.

⁴¹ Copyright Act 2022, s 9.

individual authorship, folk music often lacks clear ownership, complicating copyright protection and fair compensation.⁴² Thus, identifying rightful owners of communal works is complex.

- b. **Cultural Appropriation and Misattribution:** Folk music collectors often face accusations of appropriating cultural expressions without proper acknowledgement or compensation. Cases like Alan Lomax's copyrighting of Leadbelly's repertoire and Laura Boulton's recording of Hopi Tribe music highlight these concerns.⁴³ It follows that collectors or corporations may exploit folk music without consent or fair compensation, risking cultural dilution.
- c. **Originality and Copyright Protection:** Determining the originality of folk music arrangements and collections poses challenges. Both UK and US laws require creativity and originality for copyright protection, which may not be met by faithful reproductions.⁴⁴
- d. **Global Dissemination and Digital Platforms:** Digital Platforms amplify reach but heighten risks of unauthorized use and appropriation, underscoring needs for effective rights management and international cooperation.⁴⁵
- e. **Benefit-Sharing and Fair Compensation:** Ensuring fair compensation for folk communities requires robust benefit-sharing mechanisms, which are often lacking. Collective management organizations like Nigeria's Copyright Society of Nigeria (COSON) play roles in managing rights and royalties.⁴⁶

⁴² Dominik (n7),

⁴³ Dominik (n7)

⁴⁴ Copyright, Designs and Patents Act 1988, s 3A (UK); 17 U.S.C § 102 (US).

⁴⁵ WIPO, Traditional Cultural Expressions, 2020 www.wipo.int Accessed 9 October 2025.

⁴⁶ Copyright Act 2022, s 39.

- f. **Lack of Clear Legal Frameworks:** Nigeria's Copyright Act 2022 does not explicitly address TCEs, leading to potential misappropriation.

3.6 Considerations for Fair Compensation and Cultural Sensitivity

1. **Prior Informed Consent:** Securing consent from communities originating traditional music is pivotal, ensuring respect for communal rights.⁴⁷
2. **Acknowledging Source Communities:** Recognizing and crediting source communities fosters respect and mitigates appropriation risks.⁴⁸
3. **Transparent Licensing and Royalties:** Clear licensing processes and fair royalties can facilitate compensation. Collective management organizations and statutory frameworks can aid in managing rights.⁴⁹
4. **International Cooperation and Frameworks:** Global frameworks like WIPO's traditional Cultural Expressions and UNESCO's Intangible Cultural Heritage Convention (2003) provide guidance, though implementation and enforcement vary.⁵⁰
5. **Cultural Context Understanding and Community Engagement:** Appreciating cultural contexts and engaging communities enhance mutual understanding and respect, reducing appropriation risk.⁵¹

⁴⁷ UN Declaration on Indigenous Peoples, 2007, Art 11.

⁴⁸ Meki (n6).

⁴⁹ Copyright Act 2022, ss 9, 39.

⁵⁰ WIPO, 'Traditional Cultural Expressions' (2020); UNESCO Convention for Safeguarding Intangible Cultural Heritage (2003).

⁵¹ Copyright Act 2022, s 1.

3.7 Successful TCE Protection Case Studies in Other Countries

While there aren't extensive case studies specifically on Traditional Cultural Expressions (TCE) protection, here are examples of countries implementing effective measures to safeguard cultural heritage and manage environmental risks associated with industrial activities, which might offer insights:

- a) **Estonia's Digital Governance (X-tee Data Exchange):** Estonia's government uses a decentralized data exchange system (X-tee) to promote transparency, efficiency, and privacy in public services. Though not TCE-specific, it shows how digital infrastructure can protect share cultural data securely. The impact is that 99% of public services are online, saving citizens time and enhancing access.⁵²
- b) **India's Digital Identity (Aadhaar) and Cultural Preservation:** While not directly a TCE case, India's Aadhaar project demonstrates using technology for cultural inclusion and rights management, potentially adaptable for TCE protection. The impact is that over a billion citizens have access to services.⁵³
- c) **Sri Lanka's Access to Genetic Resources and Benefit-Sharing:** Sri Lanka has implemented laws aligning with the Nagoya Protocol, ensuring fair benefit-sharing from genetic sources, a model that could inspire TCE protection frameworks.⁵⁴
- d) **Mongolia's Legal Frameworks for Cultural Heritage:** Mongolia has laws protecting cultural heritage, including

⁵² Reconfiguring the State, www.institute.global Accessed 29 November 2025.

⁵³ *ibid*

⁵⁴ Country Examples, Case Studies, and Good Examples, www.fctc.who.int Accessed 29 November 2025.

intangible cultural expressions, requiring prior consent for commercial use.⁵⁵

- e) **Turkey's Leachate Treatment (Environmental Protection):** Though not TCE-related, Turkey's use of biological treatment and membrane technology for landfill leachate shows effective environmental management, hinting at parallels in safeguarding cultural resources.⁵⁶

These examples highlight the importance of legal frameworks, digital infrastructure, and community engagement in protecting cultural assets. For TCE-specific protection, exploring WIPO's guidelines and countries like Australia's Indigenous Cultural and Intellectual Property (ICIP) principles could provide deeper insight.

4.0 Recommendations

Folk music, a reservoir of communal creativity and cultural identity, often exists in a liminal space in intellectual property (IP) law. Traditional knowledge and expressions, including music, are frequently vulnerable to exploitation without adequate compensation or recognition of their custodians. Nigeria law, like many jurisdictions, grapples with explicitly protecting these intangible cultural assets under the Copyright Act 2022, which lacks specific provisions for traditional cultural expressions. Consequently, this paper proffers the following:

1. **Legislative Reform for TCE Protection:** Amend Nigeria's Copyright Act 2022 to explicitly include Traditional Cultural Expressions (TCEs). Define TCEs to cover folk music, dances, oral traditions, and crafts. Mandate prior informed consent for commercial use and establish a benefit-sharing mechanism. WIPO's draft provisions on TCEs emphasize respecting

⁵⁵ *ibid*

⁵⁶ Irvan Dahlan, 'Leachate Treatment: Case Studies in Selected European and Asian Countries' (January 2020), www.researchgate.net Accessed 29 November 2025.

customary laws of communities.⁵⁷ Nigeria should align with international standards while addressing local nuances.

2. **Establish a Benefit-Sharing Mechanisms:** Create a Cultural Heritage Fund managed by a multi-stakeholder board (government, community representatives, experts). Require users to register TCEs and negotiate royalties for commercial exploitation. Allocate a percentage of royalties to community development projects. For instance, The Nagoya Protocol (2010) promotes fair and equitable benefit-sharing for genetic for genetic sources, adaptable to TCEs⁵⁸.
3. **Promote Ethical Collecting Practices:** Encourage collectors to obtain prior informed consent and provide attribution to communities. Develop guidelines with stakeholders (artists, NGOs, academia) for respectful use of folk music in media, fashion, or products. UNESCO's Convention for Safeguarding Intangible Cultural Heritage stresses community involvement in preserving traditions.
4. **Strengthen Community Engagement and Rights:** Establish community registries to document and assert ownership of TCEs. Foster partnerships for co-creation and fair revenue-sharing. Ensure non-monetary benefits (e.g., capacity-building, cultural promotion). In *Mabo v Queensland*,⁵⁹ the case recognized indigenous rights, inspiring similar approaches.
5. **Judicial and ADR Mechanisms:** Empower courts to recognize TCE rights and enforce fair compensation. Set up specialized IP tribunals for swift dispute resolution. Promote mediation involving cultural experts to resolve disputes amicably.

⁵⁷ WIPO, 'The Protection of Traditional Cultural Expressions: Draft Provision'(Geneva: WIPO, 2021).

⁵⁸ Nagoya Protocol Access and Benefit-sharing (2010), Art. 5.

⁵⁹ *Mabo v Queensland* (No 2) [1992] 175 CLR 1 (Australia).

Campbell v MGN Ltd,⁶⁰ highlights balancing rights and public interests.

6. **International Collaboration and Capacity Building:** Advocate for TCE protections in global treaties (WIPO, UNESCO). Partner with international bodies for technical assistance and funding. Train communities on intellectual property rights (IPRs), negotiation, and digital monetization. As an example, the Beijing Treaty on Audiovisual Performances includes provisions for performers' rights,⁶¹ a model for broader TCE protection.
7. **Address Digital Challenges:** Update the current Nigerian Copyright Act to tackle online piracy and takedown procedures (as in Part VII of the 2022 Act). Collaborate with digital platforms for enforcement.
8. **Awareness Campaigns:** Educate artists, collectors, and the public on TCE rights and ethical practice.

5.0 Conclusion

In conclusion, the quest to harmonize justice in the realm of folk music collecting and intellectual property rights necessitates a delicate balance between safeguarding the creative efforts of collectors and respecting the communal ownership and cultural significance of traditional music. Nigeria's current legal framework, particularly the Copyright Act 2022, provides a foundation for protecting musical works but falls short of explicitly addressing traditional cultural expressions (TCEs), leaving folk music vulnerable to appropriation and inadequate compensation. To navigate this challenge, it is imperative to advocate for legislative reforms that recognize and protect TCEs, ensuring that folk music communities receive fair compensation and attribution for their contributions. Drawing inspiration from international models, such as

⁶⁰ *Campbell v MGN Ltd* (2004) UKHL 22.

⁶¹ Beijing Treaty on Audiovisual Performances (2012), Art. 15.

WIPO draft provisions on TCEs and the Nagoya Protocol on Access and benefit-sharing, Nigeria can establish a robust system for prior informed consent, benefit-sharing, and ethical collecting practices.

Moreover, fostering collaboration between collectors, communities, and regulatory bodies like the Nigerian Copyright Commission (NCC) is crucial. This partnership can facilitate the creation of community registries, transparent royalty mechanisms, and awareness campaigns to educate stakeholders about their rights. Judicial mechanisms should also be empowered to address infringements with specialized tribunals for intellectual property disputes promoting swift redress.

Ultimately, harmonizing justice in this context transcends legal adjustments – it embodies a cultural shift towards valuing communal creativity, promoting equitable exchanges, and preserving Nigeria's rich musical heritage. By aligning with global standards and prioritizing social justice, Nigeria can transform the narrative of folk music appropriation into one of respectful appreciation and mutually beneficial collaboration.