

From Paper to Practice: The Nagoya Protocol and the Unfulfilled Promise of Benefit-Sharing for Holders of Customary Intellectual Property Rights in Cameroon

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Abstract

The protection of customary intellectual property rights, particularly those relating to traditional knowledge and associated practices, has gained increasing attention in global intellectual property discourse. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization was designed to ensure that indigenous peoples and local communities receive equitable benefits from the use of their knowledge. Cameroon ratified the Protocol on the 30th of November 2016 and has since adopted various legal and policy measures, including the Environmental Management Law and regulations on access to genetic resources. Despite these efforts, holders of customary intellectual property rights in Cameroon such as practitioners of traditional medicine, agricultural innovators, and custodians of cultural heritage rarely experience tangible benefits when their knowledge is accessed or commercialised. This article critically examines the disconnect between the legal recognition of these rights and the practical realization of benefit-sharing. It analyses the institutional weaknesses, legal ambiguities, low levels of community awareness, and ineffective contract enforcement that undermine implementation. Drawing on international standards, particularly the Nagoya Protocol, and relevant national legislation, the study argues that Cameroon's current framework is insufficient to safeguard the interests of customary intellectual property right holders. It concludes with recommendations for strengthening institutional capacity, harmonising statutory and customary law, enhancing community awareness, and creating effective enforcement mechanisms to bridge the gap between paper-based recognition and the lived realities of indigenous communities.

Keywords: Nagoya Protocol, Customary Intellectual Property Rights, Benefit-Sharing, Indigenous Communities.

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INTRODUCTION

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS Protocol), adopted in 2010 as a supplementary agreement to the Convention on Biological Diversity (CBD), seeks to guarantee that indigenous peoples and local communities (IPLCs) benefit fairly from the use of their traditional knowledge and associated genetic resources. Central to the Protocol are provisions on Prior Informed Consent (PIC), Mutually Agreed Terms (MAT), and equitable benefit-sharing both monetary (royalties, access fees) and non-monetary (capacity building, technology transfer).

Creators deserve both economic benefits through mechanisms like licensing, royalties, and monetization and moral recognition, which preserves their personal connection to their work, ensures proper attribution, defends against misrepresentation or distortion, and upholds their integrity.^[1] Under article 6bis of the Berne Convention, to which Cameroon is a party, authors retain moral rights specifically, the right of attribution and the right to object to any distortion or mutilation of their work independently of economic rights; similarly, under the Bangui Agreement Annex VII,^[2] administered by OAPI, creators in Cameroon benefit from both economic and moral rights from the moment of creation, even without formal registration, including recognition of

¹ World Intellectual Property Organization, (2004), WIPO Intellectual Property Handbook: Policy, Law and Use, 2nd ed., Geneva: WIPO, p.13.

² On literary and artistic property.

authorship and protection against derogatory treatment of their work.

Customary intellectual creations provide important inputs for various industries, including pharmaceuticals, cosmetics, music, and agriculture. [3] This is evident in the recent rise of traditional music within the Cameroonian music industry. Traditional music in Cameroon is highly diverse, reflecting the country's numerous ethnic groups and cultural practices. Rooted in ancestral traditions, each region has developed its own musical styles that embody the unique history and identity of its people. From the vibrant rhythms of forest-region drums to the melancholic melodies of highland harps and the polyphonic songs of coastal populations, traditional Cameroonian music offers a rich sonic landscape. Although specific statistics are limited, it is widely recognized that numerous genres, instruments, and performance styles remain deeply embedded in Cameroonian culture.

Cameroon signed the Nagoya Protocol on 20 September 2011 and ratified it on 6 October 2014, thereby committing to domesticate its obligations through national laws and policies. These obligations have been partially reflected in legislation such as Law No. 96/12 of 5 August 1996 on Environmental Management, Law No 2021/ 014 Of 16 July 2021 to Govern Access to Genetic Resources, their Derivatives, Traditional Knowledge Associated with Genetic Resources and the fair and Equitable Sharing of the Benefits arising from their Utilization and Decree No 2023/07526 /Pm Of 06 Oct 2023 to lay down the conditions of implementation of Law N°. 2021/014 Of 9 July 2021 Governing Access to Genetic Resources, their derivatives, associated traditional knowledge and the fair and equitable sharing of benefits arising from their use.

The 2021 law on genetic resources, their derivatives, traditional knowledge associated with genetic resources often acknowledges innovation in these sectors. [4] However, it tends to overlook the incremental and community-based contributions of

traditional knowledge holders who are frequently among the world's most marginalized populations. Modern technologies have enabled the large-scale commercial exploitation of art, crafts, and knowledge from traditional societies, often without corresponding legal protection. [5]

Cameroon is a multicultural and legally pluralistic country, characterized by a complex interplay between statutory law, customary law, and religious norms. While formal Intellectual Property (IP) protection is governed by national law [6] and the *Organisation Africaine de la Propriété Intellectuelle* (OAPI) regime, [7] a significant amount of intellectual creation, particularly in rural and indigenous communities, is guided by customary practices. Traditional songs, crafts, designs, folklore, medicinal knowledge, and agricultural techniques are often collectively owned and transmitted orally. These forms of creativity are rarely protected under conventional IP regimes, which prioritize individual authorship, novelty, and formal registration.

As Tasiki Desvarieux Ntobengwia articulates, creative and innovative works flourish in Cameroon's vibrant traditional context, yet their protection remains a significant legal challenge. [8] Cameroon's IP law, though evolving, continues to struggle with ensuring effective safeguards for the rights of creators and innovators. Consequently, the interface between customary law and statutory IP law has become an important area of legal inquiry—particularly in identifying appropriate protection mechanisms to prevent the misuse and misappropriation of traditional knowledge.

This gap raises both legal and practical concerns. Are customary intellectual creations adequately protected under the existing IP legal framework? What legal mechanisms could be adopted or adapted to provide effective protection? The main issue lies in the fact that, although Cameroonian IP law formally recognizes customary intellectual creations like folklore; [9] traditional knowledge, [10] it does not

³ Kerry ten Kate & Sarah A. Laird, (2004), *Bioprospecting Agreements and Benefit Sharing with Local Communities*, in *poor people's knowledge: promoting intellectual property in developing countries*, J. Michael Finger & Philip Schuler eds., p.133.

⁴ Article 3(d).

⁵ Kuruk, Paul, (1999), "Protecting Folklore Under Modern Intellectual Property Regimes: A Reappraisal of the Tensions Between Individual and Communal Rights in Africa and the United States." *American University Law Review*, volume 48, no.4 p.769.

⁶ Cameroon's copyright law is governed by Law No. 2000/011 of December 19, 2000, on Copyright and Neighboring Rights.

⁷ The recent amendments to the Bangui Agreement, which unified industrial property among its 17 member

states, were finalized in Bamako, Mali, on December 14, 2015. The amendments, ratified by Decree No. 2019/584 of 31 October 2019, aimed to adapt the legal framework to the economic and social development needs of the member states.

⁸ Tasiki D. N., (2025), "Protecting Creative and Innovative Works in Cameroon: An Analysis of Intellectual Property Law and Its Growing Prominence", *Journals of Law of Torts and Consumer Protection Law*, Vol. 8 No. 1.

⁹ Article 2(9) (10) of the 2000 copyrights and neighboring rights.

¹⁰ Article 3(d) of the 2021 for genetic resources, their derivatives, traditional knowledge associated with genetic resources.

provide sufficient protection for creative expressions and knowledge systems that are governed by customary law. [11] These creations are sometime treated as if they form part of the public domain. [12]

Up to this point, the discussion may appear to suggest that intellectual property law plays only a marginal role in supporting Indigenous innovation systems. However, this is not the position taken in this work. On the contrary, we acknowledge that IP law when appropriately adapted and applied can serve as a meaningful tool to empower and protect Indigenous knowledge and innovation. As Tony Taubman observes, the benefits of using conventional IP mechanisms to safeguard Indigenous knowledge should not be underestimated [13] Ultimately, the effectiveness of IP for Indigenous communities is highly context-dependent.

As illustrated effectively by Riley [14] while international and national regimes have extended some protections to indigenous peoples, in many respects the results have not corresponded to their needs. Although there has been some participation by indigenous peoples in the development of these laws, the result has, nevertheless, largely been the creation of top-down, international norms that have yet to take shape and that are rarely sufficiently multi-faceted to encompass the differences among indigenous groups. Despite the cultural and economic significance of these customary intellectual creations, they are vulnerable to misappropriation, exploitation, and extinction due to the lack of appropriate legal frameworks. It is thus important to examine the major forms of customary intellectual creations (I), the Current IP Legislation in Protecting Customary Intellectual creations in Cameroon (II), Jurisprudential and Doctrinal Approaches to the Dilemma of Protecting Customary Intellectual creations

in Cameroon (III) and the way forward for enhancing Customary Intellectual creations in Cameroon (IV).

I: Major Forms of Customary Intellectual Creations recognized under Cameroonian law

In Cameroon, customary law plays a vital role in regulating social, economic, and cultural life especially in rural communities. Although it is mostly unwritten and varies across ethnic groups, customary law does provide various forms of intellectual creations, which are often governed by collective ownership, oral transmission, and community-based enforcement rather than individual rights or formal registration. Below are the major forms:

Traditional Knowledge (TK) as one of the major forms of IP in community practice is recognized under Cameroonian law.[15] This is considered as long-standing knowledge held by communities about nature, agriculture, health, and ecosystems.[16] Traditional knowledge is the information base which is possessed by communities over generations.[17] It is dynamic in nature, constantly evolving and transmitted through social processes rather than formal documentation.[18] In Cameroon, this includes: Herbal medicine and healing practices. For example, use of medicinal plants by traditional healers in the North West, Centre, and South regions. Traditional knowledge is also derived from agricultural knowledge, such as crop rotation, irrigation, and seed selection techniques and animal husbandry practices, including indigenous veterinary methods. The Bangui Agreements, particularly following their revision in 2015, incorporate provisions that acknowledge the importance of traditional knowledge, although primarily through the lens of intellectual property rights, such as patents. However, the framework is still largely structured around Western conceptions of innovation,

¹¹ Information gotten from some Fons in the North West region of the country on the absence customary IP protocols to ensure benefit sharing.

¹² For details concerning the public domain, Dashaco John Tambutoh (2017), the Public domain under the 2000 Copyright Law In Cameroon, REGARDS SUR LA PROPRIETE INTELLECTUEL EN AFRIQUE; Melenges en l'honneur de l'action du Dr.Paulin EDU EDOU pour l'OAPI, Juriscope Collection, Droit de l'OAPI, Presse Universitaire De Poitiers, Universite De Poitiers, pp.213-234.

¹³ Taubman A., (2005), "Saving the Village: Conserving Jurisprudential Diversity in the International Protection of Traditional Knowledge", K E Maskus and J H Reichman (eds), International Public Goods and Transfer of Technology Under a Globalized Intellectual Property Regime, Cambridge University Press, p.534.

¹⁴ Angela Riley (2005), "Straight Stealing: Towards an Indigenous System of Cultural Property Protection", WLR, volume 69, p.86. Intergovernmental Committee on Intellectual Property and Genetic Resources,

Traditional Knowledge and Folklore Report of Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions WIPO/GRTKF/IC/28/INF/9 (29 January 2014).

¹⁵ Law No 2021/ 014 Of 16 July 2021 to Govern Access to Genetic Resources, their Derivatives, Traditional Knowledge Associated with Genetic Resources and the fair and Equitable Sharing of the Benefits arising from their Utilization.

¹⁶ World Intellectual Property Organization. (2022), What is Traditional Knowledge? This definition aligns with how WIPO (World Intellectual Property Organization) frames TK in international IP discussions.

¹⁷ Dashaco John Tambutoh (2015), the draft Annex XII of the Bangui agreement on the protection of traditional knowledge: a move towardss international protection? ANNALES de la Faculte des Science Juridique et Politique, Universite de Dschang, Tome 17, pp.75-94.

¹⁸ Singh, S., & Gupta, S. (2001), Indigenous knowledge and intellectual property rights, *Journal of Intellectual Property Rights*, volume 6, issue 1, pp.17-25.

which often conflict with the collective, intergenerational nature of traditional knowledge. Under the Annex I of the Bangui Agreements, Patent protection is granted for inventions that are novel, involve an inventive step, and are industrially applicable.¹⁹ Traditional knowledge, by contrast, is often communal, non-novel (in the legal sense), and passed down orally, making it difficult to qualify under these criteria. This creates a fundamental tension: while communities may hold sophisticated knowledge of medicinal plants or ecological practices, this knowledge may be excluded from patent protection if it is considered part of the public domain which facilitates use by third parties without authorisation.

Traditional Cultural Expressions (TCEs) or Expressions of Folklore is another aspect of IP. This includes Proverbs, myths, legends, and oral histories, Epics and chants used in initiation rites, festivals, or royal courts and Moral tales that preserve community values and history which are owned collectively and guarded by elders or traditional institutions. [²⁰] These are artistic and cultural works passed down through generations: this is done through Traditional music, instruments (like, drums), rhythms, and dances. This equally includes Artistic designs, body paintings, sculptures, and wood carvings, Ritual costumes and masks, especially in secret societies or royal ceremonies which are protected through community customs, often forbidden from reproduction without permission.

Traditional Technical Know-How and Handicrafts forms IP. This includes Pottery, blacksmithing, weaving, and carving passed through family guilds or clans, Local architectural techniques, including use of natural materials (for example bamboo, raffia) which are transmitted through apprenticeships under customary rules. [²¹]

Sacred Symbols, Totems, and Cultural Signs are another major form of customary intellectual creations. This includes Totemic animals, plants, or symbols used by clans or tribes, Royal insignia, regalia, or chieftom seals that symbolize authority and Clan markings and sacred motifs (sometimes used in traditional tattoos or shields). [²²] The use of these symbols is often restricted by tradition, and misuse may lead to cultural sanctions.

Traditional medicine considered as a long-standing healthcare system utilizing natural ingredients and practices, faces challenges and opportunities related to intellectual property (IP). While IP rights can protect traditional knowledge from misappropriation and enable communities to benefit from their knowledge, it can also be difficult to adapt existing IP regimes to the unique context of traditional medicine. [²³]

Despite the existence of these intellectual creations, they are not adequately protected under Cameroon's statutory IP laws or OAPI's Bangui Agreement. Most of these creations do not meet the formal requirements of originality, novelty, or registration. Furthermore, the lack of a sui generis law for Traditional Knowledge or Folklore in Cameroon leaves many communities exposed to misappropriation.

II: Legal Limitations of Current IP Legislation in Protecting Customary Intellectual Creations in Cameroon

Although 2021 Law and the 2023 implementing decree requires communities to develop Community Biocultural Protocols (CBPs) to regulate access to traditional knowledge, [²⁴] which will permit the use of the IPRs and ensure benefits, it fails to provide sufficient support, such as training, funding, or procedural assistance to help communities draft and enforce these protocols. As a result, many indigenous and local groups

¹⁹ Article, 3, 4 and 5 annex I of the 2015 Bangui Agreement.

²⁰ This type of customary intellectual creation is recognized in article 5 of the 2000 Copyright Law.

²¹ World Intellectual Property Organization (2022), Protect and promote your culture: A practical guide to intellectual property for Indigenous peoples and local communities. WIPO.

https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1051.pdf. Accessed on the 4th of August 2024.

United Nations Educational, Scientific and Cultural Organization (UNESCO) (2017), Traditional craftsmanship. Retrieved from

<https://ich.unesco.org/en/traditional-craftsmanship-00057>. Accessed on the 4th of August 2024. These sources recognize traditional craftsmanship and technical know-how as vital elements of intangible cultural heritage, often protected under customary systems and increasingly discussed under intellectual property frameworks.

²² World Intellectual Property Organization (2022), Protect and promote your culture: A practical guide to intellectual property for Indigenous peoples and local communities. WIPO..

https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1051.pdf. Accessed on the 5th of August 2024.

African Union (2018), Model Law on the Protection of Cultural Expressions and Traditional Knowledge. African Union Commission, Department of Social Affairs. These references provide both a global IP perspective (WIPO) and a continental/regional African legal approach (African Union) to the protection of cultural and customary symbols.

²³ Dashaco John Tambutoh (2000), The Intellectual Property Law Aspects of the 1992 Convention on Biological Diversity-The Case of Traditional Medicine, RASJ, volume 2, N^o 1.

²⁴ Article 10 of the 2023 Implementing Decree.

struggle to create formal documentation or navigate the bureaucratic requirements needed to assert their rights effectively. This gap is echoed in broader literature: while CBPs are designed to strengthen community governance and clarify rights and responsibilities, they typically demand substantial legal empowerment and facilitation from external actors especially for communities with limited capacity to manage such complex processes themselves.^[25] This procedure lacks concrete state-led programs for documentation, preservation, or awareness-raising. Consequently, much traditional knowledge remains unrecorded and poorly protected. Recent government efforts are limited and fragmented for instance, a pilot inventory of intangible heritage launched in the Centre Region in July 2024 received just under US \$100,000 to support community inventories, awareness campaigns, and stakeholder training, but such efforts are not yet systematic or nationwide.^[26] Similarly, Cameroon's participation in UNESCO's Heritage Emergency Fund has focused on saving physical heritage at risk, such as community museums and built heritage in conflict zones, but intangible traditions and customary knowledge continue to lack formal safeguarding.^[27] These limitations reduce the benefits which the indigenous people would have benefited from their intellectual creations.

The State as per the 2021 law is supposed to take measures to ensure protection of the communities' intellectual property rights relating to associated traditional knowledge, through the use of existing intellectual property systems, adapted intellectual property rights and autonomous sui generis new systems to enhance benefit sharing.^[28] These measures concern a legislation on unfair competition, use of contracts and licenses, record books, inventories and databases, customary and indigenous laws and protocols, cultural heritage conservation laws and programmes, general tort law, ^[29] personality rights, unjust enrichment and confidential information. In this regard, The Bangui Agreement, which governs Patents (Annex I), Literary and Artistic property (Annex VII), Unfair Competition (Annex VIII), and Plant Variety Protection (Annex X) under the OAPI system, remains ill-suited for protecting collective and intangible traditional knowledge lacking

clear, individual inventorship. While Annex VII does nominally include traditional cultural expressions, the reliance on copyright norms and the absence of a sui generis regime tailored to communal heritage renders customary creations largely unprotected. A structured legal framework specific to collective traditions is essential for meaningful protection. This structured legislation will provide the conditions and the subject matter of protection customary intellectual property which usually fall short under the orthodox IP systems such as patents as to novelty, inventive step and industrial applicability and copyrights for fixation and individual ownership. Afronomicslaw (2019) documents that over 35 biopiracy cases have been reported across Africa, illustrating the widespread misappropriation of knowledge with no benefits accruing to communities.^[30]

For example, Folklore belongs originally to the national cultural heritage. [31]The 2000 Copyright law authorises the representation which can be direct or indirect fixation of folklore for private purposes under certain conditions. [32]This is subject to prior authorization from the service in charge of culture, in return for payment of royalty whose amount is fixed by statutory instrument following the conditions applicable in each of the categories of creation considered. [33]This disconnect creates a dilemma between respecting traditional communal ownership and enforcing modern IP rights, which are predominantly individualistic and procedural. Exclusion of Folklore and Traditional Knowledge from Patentability is another legal issue. Annex I of the Bangui Agreement defines patentable inventions as those that are New, Involve an inventive step and industrially applicable.[34] Traditional medicinal practices and techniques, although effective, often fail the "novelty" and "inventive step" criteria due to their ancient and communal origins. Such exclusion makes it difficult for communities to patent or protect traditional technologies or herbal remedies.

Cameroon's legal system is characterized by a legal pluralism where state law tends to override customary law. Traditional authorities and communal knowledge systems often lack enforceable status within

²⁵ Odayar, S. (2024), Biocultural Community Protocols: A powerful tool to affirm and protect Indigenous Peoples' rights. Natural Justice. Retrieved from internationalrivers.org
internationalrivers.org accessed on the 10th of august 2024.

²⁶ https://www.stopblablacam.com/society/0307-12592-cameroon-inventories-cultural-heritage-in-centre-region?utm_source=chatgpt.com. Accessed on the 11th of august 2025.

²⁷ https://www.unesco.org/en/articles/unescos-heritage-emergency-fund-helps-build-peace-and-community-resilience-cameroon?utm_source=chatgpt.com. Accessed on the 11th of august 2025.

²⁸ Article 19(1).

²⁹ *Ibid*, article 43 -58.

³⁰ Afronomicslaw. (2019, April 19). Traditional Knowledge Protection: An African Perspective. Retrieved from <https://www.afronomicslaw.org/2019/04/19/traditional-knowledge-protection-an-african-perspective/>. Accessed on the 12th of august 2025.

³¹ Article, 5(1) of the 2000 Copyright Law.

³² *Ibid*, article, 5(2).

³³ *Ibid*, article, 5(3).

³⁴ Article 3,4 and 5 of annex I of the Bangui agreement.

formal courts. This misalignment undermines indigenous communities' ability to enforce customary protocols which is mandatory in laying down conditions for accessing and using their traditional knowledge, serving as basis for negotiating mutually agreed terms [35] or rights over their traditional knowledge. Cameroon's legal system is formally pluralistic, encompassing customary, civil, and common law traditions; however, in reality, state law frequently overrides customary law, and customary courts are relegated to marginal roles. Their jurisdiction is limited, and their decisions are often invalidated under repugnancy standards [36] such as contravening public policy, natural justice, or good conscience which severely hampers indigenous and local communities from enforcing customary protocols, including those related to traditional knowledge.[37]

Despite increasing recognition of the rights of indigenous peoples in the international sphere, exemplified in treaties such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), [38] the protection of indigenous peoples' intellectual property through international law is far from adequate. [39] A significant concern of indigenous peoples, given this lacuna, is the misappropriation of traditional knowledge through the IP regime. However, the cultural richness and diversity of Cameroon's customary intellectual creations, existing IP laws both national and regional fail to adequately recognize or protect these forms of knowledge and expression.

According to Cameroon's Law No. 2021/014, the State is mandated to implement measures that protect the intellectual property rights of communities

concerning associated traditional knowledge.[40] This protection is to be achieved through the adaptation of existing intellectual property systems, the establishment of new sui generis systems tailored to the needs of these communities, and the provision of support to facilitate their participation in intellectual property processes.[41] This support is however limited to advisory support [42] without taking into consideration financial assistance.

Article 6 of Law No. 2021/014 affirms that associated traditional knowledge belongs to the indigenous and local communities that developed, preserved, and transmitted it across generations, or to individuals they designate. While the law recognizes community ownership, Cameroon's legal environment privileges statutory law over customary systems. Traditional norms guiding knowledge transmission often go unrecognized in courts and administrative processes. In practice, modern legal institutions frequently marginalize customary authority, undermining its effectiveness. [43] Although Article 6 establishes formal ownership, the law does not mandate mechanisms for example, documentation support or legal training to help communities assert, register, or legally defend their knowledge. [44] Without institutional capacity-building, the rights granted remain largely aspirational. [45]

Another aspect is a weak Legal Standing for Customary Norms in Statutory IP Disputes. In disputes over cultural misappropriation, courts apply statutory law, not customary principles. Customary law, although recognized under Article 68 of the 2008 Constitution of Cameroon, [46] lacks formal codification in the IP

³⁵ Article 20 of the 2021 Law.

³⁶ Nto Bengwia, T. D., & Tangwa, M. G. (2020), The domination of the repugnancy and incompatibility tests on customary law in Anglophone Cameroon, *Journal of Constitutional Law and Jurisprudence*, volume 3, issue 2, p.32.

³⁷ Kiye, M. E. (2021), customary law in Anglophone Cameroon and the repugnancy doctrine: An insufficient complement to human rights, *A Journal of African Studies*, volume 42, number 2, pp. 1–2.

³⁸ Declaration on the Rights of Indigenous Peoples GA Res 61/295, A/RES/61/295 (2007) [UNDRIP].

³⁹ Maui Solomon (2017), "An Indigenous Perspective on the WIPO IGC" in Daniel F Robinson, Ahmed Abdel-Latif

and Pedro Roffe (eds) *Protecting Traditional Knowledge. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (Routledge, Abingdon (UK), 219 at 220.

⁴⁰ Article 19(1) of the 2021 law.

⁴¹ *Ibid*, article 23.

⁴² Article 49 of the 2023 Implementing Decree.

⁴³ Ngambouk Vitalis Pemunta and Ngwa Donald Anye (2019), *Modern State Law: Regulating Tradition or*

Protecting the Environment in the Mankon Kingdom of Northwest Cameroon?, IntechOpen. doi: 10.5772/intechopen.85125.

⁴⁴ Ministry of Environment, Protection of Nature and Sustainable Development (MINEPDED). (2023), *Guidelines on equitable sharing of benefits for conservation, sustainable use and restoration of biodiversity in Cameroon [Guidelines Benefit-Sharing for Conservation and Sustainable Use]*. Retrieved from <https://www.scribd.com/document/716703034/Guidelines-Benefit-sharing-for-conservation-and-sustainable-use-Cameroon-2023-ENG>. Accessed on the 10th of august 2025.

⁴⁵ Donald Nounamo Kemogne et al.,(2023), *Libres propos sur la loi camerounaise n° 2021/014 du 9 juillet 2021 régissant l'accès aux ressources génétiques, à leurs dérivés, aux connaissances traditionnelles associées et le partage juste et équitable des avantages issus de leur utilisation*, Afrilex – Droit éthique publique. Retrieved from the Afrilex website.

⁴⁶ Law N° 2008/001 of 14 April 2008 to amend and supplement some provisions of law N° 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972.

context. This creates a legal void where customary IP cannot be effectively defended or enforced in the courts.

III: Jurisprudential and Doctrinal Approaches to the Dilemma of Protecting Customary Intellectual Creations in Cameroon

The conflict between customary intellectual creativity and modern statutory IP regimes has given rise to important legal, philosophical, and doctrinal debates. This section critically examines the jurisprudential theories, legal doctrines, and judicial responses that have influenced the protection of customary IP in Cameroon.

A: Theoretical Foundations

Natural Law Theory is one of the predominant factors that influence the protection of customary IP in Cameroon. This is based on the premise that rights are derived from nature or divine order, and should exist independent of codified laws. [47] Under this view, customary IP rights exist inherently due to the moral and cultural significance of traditional knowledge and expressions, even if they are not recognized by written law. The law ought to acknowledge community-based ownership of IP as a natural right, not contingent upon formalities like registration. This theory supports the argument that indigenous communities have natural ownership over their creations.

Legal Positivism is another theory. This theory is premised that, Law consists only of rules enacted by legitimate authorities; customary claims without codified recognition are not law. [48] Courts and institutions often favour OAPI and national IP law, giving little or no recognition to customary rights unless explicitly codified. Positivist reasoning explains why courts may dismiss claims based on oral tradition, communal ownership, or unwritten customary practices. This theory justifies the exclusion of customary IP due to the absence of enabling laws.

Legal Pluralism seeks to merge different theories together. This theory opines that multiple legal systems (statutory and customary) can coexist within one state. Cameroon is inherently pluralistic (civil, common law, customary) [49] and this theory calls for harmonization between formal IP law and traditional customary norms. This theory encourages reform and integration, proposing that customary IP rules be

incorporated into statutory systems through legal recognition or sui generis frameworks. It equally offers a flexible and inclusive approach suitable for a pluralistic state like Cameroon.

Moreover, the Third World Approaches to International Law International law and IP regimes are Western-centric and often marginalize indigenous legal systems. OAPI and TRIPS were not developed with African customary realities in mind. Cameroon's adoption of international IP norms may result in the erasure or exploitation of traditional knowledge, highlighting the need for context-sensitive reforms. This theory criticizes the colonial legacy of IP law and advocates decolonizing IP protection mechanisms.

B: Jurisprudential Foundations

Jurisprudence in Cameroon and OAPI Space are limited. Limited case law exists in Cameroon directly addressing the conflict between statutory IP and customary IP. Courts have not yet developed a robust doctrine for protecting traditional knowledge or folklore. In a few scattered cases on cultural misappropriation (for example, artists using tribal motifs without consent), Cameroonian courts have often dismissed claims due to lack of formal registration or ownership proof. [50]

This judicial silence or dismissal reflects the dominance of statutory law over customary reasoning in the IP domain. Absence of binding judicial precedent reinforces the marginalization of customary IP rights.

C: Possible Harmonization Doctrines

Doctrine of Equitable Recognition Suggests that courts may use equity to recognize customary IP rights even where formal legal provisions are lacking. [51] Equitable recognition may apply in cases of traditional knowledge and genetic resources, where indigenous communities' contributions are not legally protected by patents but are acknowledged and should be equitably recognized, for instance under the Nagoya Protocol. The idea is that even if customary intellectual property is not formally registered, it deserves legal protection through mechanisms like benefit-sharing. This would allow protection based on moral ownership, historical continuity, and cultural integrity. [52]

⁴⁷ Aquinas, *Summa Theologica*, (1265–1274), Finnis, (1980), Natural law theory holds that rights and moral principles are inherent in human nature or divine order, existing independently of human-made laws

⁴⁸ Hart, H. L. A. (1961), *The Concept of Law*, Oxford University Press, p.103.

⁴⁹ Article 68 of the 2008 revised Constitution.

⁵⁰ This disconnect is also reflected in broader systemic indicators. According to the International Property Rights Index, Cameroon's Intellectual Property Rights sub-score remained at 4.552 in both 2023 and 2024,

placing it 92nd globally and 13th in Africa, signaling stagnation in effective statutory IP protection frameworks

⁵¹ Torsen, M., & Anderson, J. (2010), *Intellectual property and the safeguarding of traditional cultures: Legal issues and practical options for museums, libraries and archives*, p.42. UNESCO/WIPO.

⁵² *Milpurrruru v Indofurn Pty Ltd* (1995) 30 IPR 209, at 221–222 (Australian Federal Court).

Doctrine of Cultural Integrity [⁵³] recognizes that cultural groups have a collective right to control and benefit from their cultural expressions and knowledge. [⁵⁴] This can be used to justify injunctive relief or damages in cases of cultural appropriation, even without statutory registration.

Doctrine of Custom as a Source of Law can be adopted. Under Cameroon's Constitution and Evidence Ordinance, custom is recognized as a source of law provided it is not repugnant to equity and public policy. This doctrine could be expanded to recognize customary IP in legal proceedings where evidence of consistent community practice is provided. The normative force of customary law may be felt within a community in particular, but may also create a legal or moral expectation that it will be recognized beyond the original community. The full effect of customary law may only be understood with reference to the social and community context: as one commentator observes, "to understand why customary law rights such as those in folklore are binding, it is necessary to examine more closely the nature and significance of the social and political structure in tribal societies." [⁵⁵]

Comparatively, South Africa has passed the Protection, Promotion, Development and Management of Indigenous Knowledge Act (2019) which recognizes communal ownership and oral transmission. Kenya again, recognizes Traditional Cultural Expressions in its 2001 IP Act and offers a TK registry.

The jurisprudential and theoretical approaches to customary IP in Cameroon highlight a deep disconnect between formal law and lived reality. While legal positivism and international harmonization have dominated IP law, approaches grounded in legal pluralism, equity, and cultural rights provide a compelling basis for legal reform.

IV: Conclusion and Recommendations to Benefit-Sharing for Holders of Customary Intellectual Property Rights in Cameroon

The ratification of the Nagoya Protocol by Cameroon in 2014 marked a significant commitment to protecting the rights of holders of customary intellectual property and ensuring fair and equitable benefit-sharing for the use of genetic resources and associated traditional knowledge. Subsequent domestic legal developments, notably Law No. 2021/014 of 9 July 2021 on Genetic Resources and its 2023 Implementing Decree, have laid

a framework intended to operationalize these commitments.

However, as this study has demonstrated, the legal recognition of these rights has not translated into tangible benefits for most traditional knowledge holders. Weak institutional capacity, legal ambiguities between statutory and customary law, low community awareness, and ineffective enforcement mechanisms continue to undermine benefit-sharing in practice. In many cases, communities remain unaware of their rights, lack the means to negotiate fair agreements, and have little recourse when terms are violated. This disconnect between recognition on paper and real-world benefits reflects both structural and procedural shortcomings in Cameroon's ABS system.

Bridging this gap requires not only stronger legal provisions but also robust institutional arrangements, enhanced community empowerment, and effective monitoring and enforcement. The following recommendations, grounded in the provisions of the 2021 law and the 2023 decree, aim to strengthen Cameroon's ABS framework and ensure that the country's indigenous and local communities genuinely benefit from the use of their knowledge and resources.

It is important to Clarify and Operationalize APA Procedures. [⁵⁶] The 2023 Decree should elaborate clear, step-by-step procedures for securing Prior Informed Consent (PIC) and negotiating Mutually Agreed Terms (MAT) before access to genetic resources or traditional knowledge is granted. This should include timelines for processing applications, standardized documentation, and clear definitions of each stakeholder's role. Operational clarity will reduce disputes and enable communities to make informed decisions.

There is a high need to Strengthen Institutional Capacity. [⁵⁷] The National ABS Authority, the ABS Committee, and the National ABS Correspondent should receive adequate staffing, training, and financial resources to fulfill their mandates. The 2023 Decree should formalize collaboration between national institutions, local governments, and customary authorities to ensure effective oversight, particularly in remote rural areas where most traditional knowledge holders reside.

The Enhancement of Transparency and Community Empowerment cannot be overstated. The

⁵³ UN Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007), Particularly Articles 8, 11, 12, 31.

⁵⁴ Inter-American Court of Human Rights (IACtHR) jurisprudence, which affirms cultural rights as part of indigenous peoples' rights.

⁵⁵ Kuruk P, (2002), African Customary Law and the Protection of Folklore, Copyright Bulletin, XXXVI, No. 2.

⁵⁶ Articles 9, 10 and 11 of the 2021 Law and articles 10 and 11 of the 2023 Decree.

⁵⁷ Articles 38 to 41 of the 2021 Law and articles 37 and 47 of the 2023 Decree.

national inventory of genetic resources and the register of ABS agreements should be publicly accessible and regularly updated. Communities should be encouraged to develop biocultural protocols outlining their cultural norms, consent processes, and benefit-sharing expectations. These protocols would serve as binding references in national ABS procedures, ensuring community perspectives are respected.

Promoting Capacity Building and Benefit Diversification as provided in articles 28 to 36 of the 2023 implementing decree. Benefit-sharing should include both monetary and non-monetary returns, such as technology transfer, research collaboration, training, and conservation projects. The 2023 Decree could make such benefits a mandatory part of all ABS agreements. Additionally, awareness-raising, legal aid, and negotiation training should be prioritized to empower communities in protecting their rights.

Ensure Effective Monitoring, Enforcement, and Sanctions. Inspection powers must be reinforced through regular audits, random checks, and clear reporting mechanisms. Violations such as unauthorized access to

genetic resources or failure to honor benefit-sharing agreements should attract consistent sanctions, and such penalties should be publicized to deter misconduct.

Facilitate Sustainable Financing as per article 42 of the 2021 law. Revenue generated from ABS fees and royalties should be managed through transparent, community-driven mechanisms, such as dedicated benefit-sharing funds co-managed by state officials and community representatives. These funds should be directed toward priorities identified by the communities, including cultural preservation, education, and sustainable livelihoods.

By implementing these measures, Cameroon can move beyond symbolic recognition of customary intellectual property rights and establish a functioning ABS system that genuinely uplifts indigenous and local communities. Such reforms will not only align domestic practice with the objectives of the Nagoya Protocol but also contribute to the preservation of biodiversity and cultural heritage in a way that is equitable, sustainable, and just.