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The Position of Intellectual Property Laws in Upholding Traditional

By

MAGIMA BUHEMBO MABULA

ST. AUGUSTINE UNIVERSITY OF TANZANIA

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Corresponding author

**MAGIMA BUHEMBO
MABULA**

Abstract

Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) are fundamental elements of the cultural identity and heritage of indigenous and local communities in Mainland Tanzania. These forms of knowledge, rooted in long-standing traditions and passed down through generations, include oral literature, music, rituals, traditional medicine, crafts, and ecological knowledge. However, the increasing commercialization of culture, globalization, and lack of adequate legal safeguards have exposed these intangible assets to misappropriation and exploitation without the consent or benefit of the originating communities. This article examines the position of Intellectual Property (IP) laws in Tanzania concerning the recognition, protection, and promotion of TK and TCEs. It evaluates current legislative and institutional frameworks, including the Copyright and Neighboring Rights Act, the Patent Act and The National Arts of Council Act with relevant cultural policies. The analysis highlights major legal and practical challenges such as the intellectual Property systems and indigenous knowledge systems, lack of community control, weak enforcement, and absence of benefit sharing mechanisms. Drawing from international best practices and regional protocols like the Swakopmund Protocol, the article proposes the development of a sui generis legal regime in Tanzania that aligns with the socio-cultural realities of communities while ensuring equitable access, benefit sharing, and sustainable cultural preservation.

Knowledge (TK) and Traditional Cultural Expressions(TCEs) in Mainland Tanzania.

1. INTRODUCTION

In the context of indigenous and local communities, Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) represent more than just cultural practices they are living systems that embody a community's values, beliefs, environment, and identity. In Mainland Tanzania, such knowledge is expressed in myriad forms including but not limited to folklore, oral narratives, spiritual rituals, agricultural practices, medicinal systems, music, dance, and artisanal crafts. These cultural expressions and traditional knowledge systems have historically been transmitted orally or through communal practices and are deeply embedded in the customs, spirituality, and ecological interactions of communities.

Despite their importance, Traditional Knowledge TK and Traditional Cultural Expressions TCEs remain largely unprotected under conventional Intellectual Property (IP) regimes. Traditional

knowledge often lacks the characteristics required by modern Intellectual Property laws, such as originality, novelty, and individual authorship. Moreover, Traditional Knowledge TK and Traditional Cultural Expressions TCEs are usually held collectively, are intergenerational, and serve non-commercial functions that do not easily align with the market based logic of Intellectual Property protection. In Mainland Tanzania, the current legal instruments while offering some protection to expressions of folklore fall short of providing comprehensive legal safeguards for the full spectrum of Traditional Knowledge TK and Traditional Cultural Expressions TCEs. This legal gap has resulted in widespread cases of cultural misappropriation, where outsiders use, profit from, or distort indigenous knowledge and expressions without obtaining prior consent or sharing benefits with the rightful communities, an example is drawn from the Tanzania knowledge in the Maasai Tire Sandals which have been used and intellectual property protected by the shoe Company in Switzerland, trading all



over the world. The company even trades by the name MBT (Maasai Barefoot technology).¹ This article therefore, seeks to explore the position and adequacy of Tanzania's intellectual property laws in upholding the rights of communities over their Traditional Knowledge and Traditional Cultural Expressions TCEs. It critically assesses the strengths and limitations of existing statutes and policies, identifies enforcement and institutional challenges, and examines international and regional legal instruments that could serve as models. Ultimately, the paper advocates for the establishment of a sui generis legal framework tailored to the unique features of Traditional Knowledge TK and Traditional Cultural Expressions TCEs, with an emphasis on community participation, customary law recognition, prior informed consent, and fair and equitable benefit sharing.

1.1 DISCRPTION OF THE KEY TERMS USED ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS

1.1.1. Intellectual Property Laws (IP Laws)

Intellectual Property Laws refer to legal frameworks that protect creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images used in commerce. These laws are divided into categories like copyright, patents, trademarks, and industrial designs, and they grant exclusive rights to creators or owners to control and benefit from the use of their creations.²

In the context of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs), Intellectual Property laws are intended to provide protection against unauthorized use, misappropriation, or exploitation. However, conventional IP systems often fail to adequately protect Traditional Knowledge TK and Cultural Expressions TCEs, which are typically communally owned, orally transmitted, and passed down through generations.³

1.1.2. Traditional Knowledge (TK)

Traditional Knowledge refers to the knowledge, innovations, and practices of indigenous and local communities developed from experience gained over centuries and adapted to the local culture and environment. It includes know-how in areas such as agriculture, medicine, biodiversity conservation, and environmental management. TK is often transmitted orally and collectively owned, making it difficult to protect under standard IP systems.⁴

In Tanzania, traditional knowledge plays a critical role in healthcare, cultural identity, and sustainable resource management. Despite this, the existing Intellectual Property laws do not fully recognize the communal nature or customary ownership of Traditional Knowledge, leading to vulnerabilities such as bio-piracy and misappropriation.⁵

1.1.3. Cultural Expressions / Traditional Cultural Expressions (TCEs)

Cultural Expressions (also called Traditional Cultural Expressions or Expressions of Folklore) are the tangible and intangible forms in which traditional culture is expressed. These include music, dance, storytelling, art, crafts, rituals, and symbols that are integral to the identity and heritage of a community.⁶ Traditional and Cultural Expressions TCEs in Tanzania are rich and diverse but often lack legal protection under existing copyright and related rights systems, which prioritize individual authorship and fixed formats. Communities may therefore lose control over their cultural heritage, especially when these expressions are commercially exploited without consent or benefit-sharing.⁷

1.2. THE LEGAL FRAMEWORK GOVERNING INTELLECTUAL PROPERTY LAWS ON UPHOLDING TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS IN MAINLAND TANZANIA AND IT'S CHALLENGES.

1.2.1. The Constitution of the United Republic of Tanzania of 1977

The background of Tanzania's 1977 Constitution is rooted in its colonial history and the need for a unified, independent nation, leading to Article 24, which affirms the right to own property, the Constitution gives the protection of owned property. Where it provides "every person is entitled to own property and has a right to the protection of his property held in accordance with the law."⁸ This has been the foundation of other institutions in Tanzania like police force with the duty to protect citizens and their properties, Also the parliament to enact legislations that ensures the protection of property in Tanzania. Therefore, Tanzania's Constitution provides general culture and property clauses but no explicit, enforceable community rights in Traditional Knowledge (TK) and Cultural Expressions (CEs). The key cultural clause provided under Article 9(h) is non-justiciable, property is framed

¹ See <https://www.backnaction.co.uk/mbt/>; - info; signature-accessed in September 2025

² World Intellectual Property Organization (WIPO). (n.d.). What is Intellectual Property? Retrieved from <https://www.wipo.int/about-ip/en/> accessed on 23 September 2025

³ Mwenegoha, G. (2022). Intellectual Property Protection of Traditional Knowledge and Cultural Expressions in Mainland Tanzania. Eastern Africa Law Review, Vol. 49.

⁴ WIPO (n.d.). Traditional Knowledge. Retrieved from <https://www.wipo.int/tk/en/> accessed on 23 September 2025

⁵ Baraka, R. & Athanas, S. (2022). Protection of Traditional Knowledge and Traditional Cultural Expressions in Mainland Tanzania. Eastern Africa Law Review, Vol. 50.

⁶ WIPO. (n.d.). Traditional Cultural Expressions. Retrieved from <https://www.wipo.int/tk/en/folklore>

⁷ UNESCO. (2005). Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Retrieved from <https://en.unesco.org/creativity/convention>

⁸ The Constitution of the United Republic of Tanzania of 1977 as amended in 2005

individually provided under Article 24, and free expression under Article 18 of the same Constitution collide with cultural control. This constitutional architecture contributes to the absence of judicial remedies to the communities and leaves protection to ordinary, state managed statutes that do not vest rights in custodians.

1.2.2. The Copyright and Neighboring Rights Act

The background of Copyright and Neighboring Rights Act (1999) in Tanzania is rooted in replacing the outdated Copyright Ordinance (which applied the UK Copyright Act 1911) and the Copyright Act of 1966. The new Act was established in 1999 to create legislation better suited to Tanzania's needs, aiming to promote creative works, safeguard traditional culture and folklore, and protect the economic and moral rights of authors, performers, producers of sound and audiovisual works, and broadcasting organizations. Under this Act, specifically section 3, 5, 24, 25 and 29 where by section 3(1)(d) provides that; the Act shall apply to works of architecture erected in the United Republic of Tanzania and other "artistic works" incorporated in a building or other structure located in the United Republic of Tanzania, and also section 5(2) lists the literary and artistic works to include works of drawing, painting, architecture, sculpture, engravings, lithography and tapestry under paragraph (g), where also paragraph (i) of this section includes works of applied art, whether handicraft or produced on an industrial scale. Section 24 provides for the Protected expression of folklore, where it provides that This Act protects expression of folklore such as - (a) folk tales, folk poetry, riddles; (b) folk songs and instrumental folk music; (c) folk dances, plays and artistic forms of rituals; (d) production of folk art, in particular drawings, painting, carvings, sculpture, pottery, terracotta, mosaic, wood work, metal ware, jewelers, baskets, costumes; and (e) traditional musical instruments.⁹

Furthermore, the Copyright and Neighboring Rights Act is facing challenges towards the protection of Traditional knowledge and cultural Expressions in Mainland Tanzania, this includes; the Act defines expressions of folklore broadly to include oral traditions, music, dances, rituals, and folk art such as carvings and traditional instruments, provided under Section 27.¹⁰ While this recognizes the cultural wealth of communities, authorization for their use is only required when the exploitation is "with gainful intent and outside the traditional or customary context" this is provided under Section 28. This narrow trigger excludes many modern exploitations, such as "non-profit" digital dissemination or cultural performances framed as education, which may still cause misappropriation without compensation or consent. The Act also Centralizes control within state organs. Section 32 designates the National Arts Council of Tanzania (BASATA) as the "competent authority" to issue authorizations, with the Minister serving as "supervisory authority." Furthermore, fees collected for authorizations are channeled into a general fund Section 31(2), the section provides "for the purpose of promoting or safeguarding national culture"

with no legal requirement that they are distributed to the specific source communities. This state centric model effectively sidelines custodial communities, denying them agency over their heritage.

Finally, the Act focuses narrowly on expressions of folklore (songs, dances, artifacts) but does not extend protection to the underlying knowledge systems (ritual protocols, ecological practices, medicinal know-how). As a result, vast areas of traditional knowledge remain legally unprotected, falling outside the copyright framework. This confirms observations by Dagne¹¹ that most African copyright style folklore regimes "protect the symbol, but not the system," leaving communities exposed to exploitation without legal recourse. In sum, while the Copyright and Neighboring Rights Act represents a formal recognition of folklore, its weaknesses narrow triggers for authorization, broad exceptions, attribution only duties, state control over authorizations and fees, and omission of non-expressive knowledge render it largely ineffective for the practical protection of Traditional Knowledge and Cultural Expression.

1.2.3. The patent Act

The Patent Act in Tanzania has its roots in colonial legislation from 1922, evolving into the current Patents (Registration) Act. Through subsequent colonial ordinances and a major 1987 Act that was later amended. The legal framework was established to promote innovation and technology acquisition but has struggled to keep pace with international developments like the WTO's TRIPS Agreement. Its purpose is to foster inventiveness and facilitate technology transfer through the grant and regulation of patents, utility certificates, and innovation certificates, as seen in the core objectives of the Patents Office. However, the Act is facing challenges including Firstly, the novelty requirement under Section 8(1) stipulates that a patentable invention must be new, involve an inventive step, and be industrially applicable. This provision effectively excludes Traditional Knowledge which by its very nature is ancestral and collectively preserved rather than novel.

This act is therefore, associated with several challenges as follows; it is premised on an individual ownership model, Section 12(1) provides that the right to a patent vests in the inventor or his legal successor. This is incompatible with the communal custodianship characteristic of Traditional Knowledge and Cultural Expressions, this is because of the fact that this knowledge are owned collectively by clans and transmitted through generations, not attributable to a single "inventor." The law therefore lacks mechanisms for recognizing collective ownership.

Second, the novelty requirement under Section 8(1) stipulates that a patentable invention must be new, involve an inventive step, and be industrially applicable. This provision effectively excludes Traditional Knowledge which by its very nature is ancestral and collectively preserved rather than novel.

¹¹ DAGNE, Teshome. (2015). Intellectual property and traditional knowledge in the global economy: The case of traditional medicine. Abingdon, Oxford ; New York, Routledge -Cavendish at page 137

⁹ Act No 7 of 1999

¹⁰ Ibid



Finally, the Act's focus on private, individualistic ownership and specific timeframes does not align with the collective and often perpetual nature of Traditional Knowledge, leading to a lack of protection for Traditional Knowledge under this framework.

1.2.4. National Arts Council Act

The background of the National Arts Council Act is tied to Tanzania, where the Baraza la Sanaa la Taifa (BASATA) was established under the National Arts Council Act.¹² Its purpose is to revive, promote, and develop the arts in Tanzania by nurturing an active and conscious artistic community and facilitating the creation and consumption of high-quality art. The Act aims to foster authentic Tanzanian art traditions, professionalism, and creativity.

The relevant provision under this Act is Section 2 which gives interpretation of "artistic work" to mean a work, irrespective of its artistic quality, of any of the following

Descriptions —

- (a) art and crafts, which include—
 - (i) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints; (ii) maps, plans and diagrams; (iii) works of sculpture; (iv) photographs not comprised in a cinematograph film; (v) works of architecture in the form of buildings or models; (vi) works of artistic craftsmanship, and also includes pictorial woven tissues and articles of applied handicraft and industrial art;
- (b) music which may be vocal, instrumental, recorded or written composition and which includes, jazz bands, taarab music, choir, orchestral brass music, folk music, musical repertoire, dancing, opera or playwriting;
- (c) theatre and drama, which consists of stage craft and design, costume design, make up, ornamentations and accessories, dance and choreography, audiovisual effects, circus, mime and acrobatic performances;

It's challenges including the following;

First, the Act is primarily oriented towards promotion rather than protection. Section 3(1) outlines BASATA's functions as the promotion, development, and preservation of the arts. This language positions the Council as a cultural promoter but not as a custodian of intellectual property rights. As a result Traditional Knowledge and Cultural Expressions may be celebrated and promoted but remain unprotected from misappropriation.

Secondly, the Act entrenches a state-centric custodianship model. Under Section 4(1)(a) and (b), BASATA is empowered to regulate and coordinate artistic activities across Tanzania. This top down control leaves little room for community custodianship, effectively transferring authority from indigenous communities to a government agency. This also undermines their ability to exercise direct legal ownership of their cultural heritage.

Thirdly, the Act gives Baraza la Sanaa la Taifa (BASATA) power to issue permits and authorisations under Section 4(1)(d) but without mandating benefit-sharing mechanisms. Communities

whose cultural expressions are utilised in commercial contexts do not receive guaranteed compensation. For instance, if the traditional dances and Songs are performed or recorded for profit, BASATA may authorise the activity, but the law does not require that proceeds be channelled back to the community. Moreover, the Act lacks meaningful enforcement provisions against misappropriation. While Section 8 of the National Arts of Council Act empowers BASATA to make regulations, these are limited to administrative matters such as registration, permits, and compliance. There are no statutory offences or sanctions for the unauthorised exploitation of cultural expressions. In practice, this leaves communities vulnerable when outsiders exploit their traditions for commercial gain without consent.

Finally, the Act provides only a narrow scope of protection by focusing primarily on performing and creative arts. Broader domains of Traditional Knowledge, such as traditional medicine, agricultural systems, and sacred rituals, are excluded. This narrow framing means that key elements of indigenous heritage remain outside the Act's reach. Section 5 on the composition of the Council further illustrates the weakness of the framework. Membership is determined through ministerial appointments, with no guaranteed representation for indigenous communities. This exclusion limits the ability of community groups to participate in decision making processes concerning their own cultural heritage.

2.1. Compliance of Tanzania law/legal framework to international legal standards on the protection of Traditional knowledge and cultural Expressions.

The effectiveness of Tanzania's domestic framework for the protection of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) must be assessed through its obligations under international and regional instruments. This section analyses Tanzania's compliance with these standards, highlighting areas of convergence and gaps that is not covered by the Tanzania legal system.

2.1.2 The United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention for the Safeguarding of Intangible Cultural Heritage, 2003

Tanzania ratified this convention in 2010, which requires State Parties to safeguard intangible heritage through identification, preservation, and community participation, specifically Article 2(1), 11(a) and (b), 12, 13(d) (ii), 15, 16 and 17. Whereby 2(1) defines Intangible Cultural Heritage to include oral traditions and expressions, including language as a vehicle of the intangible cultural heritage, traditional craftsmanship, and knowledge concerning nature and the universe. This covers Traditional Knowledge and Cultural Expressions. Also Article 11(a) and (b) requires each State to take the necessary measures to ensure safeguarding of Intangible Cultural Heritage and to identify/define such heritage with the participation of communities, groups and, where appropriate, individuals. Article 12 Obliges a national inventory of Intangible Cultural Heritage, elements with regular

¹² Cap 217 R.E 2019



updating an essential mechanism for recognizing traditional knowledge (TK) and their custodians.

Article 13(d)(ii), Also Calls for appropriate legal, technical, administrative and financial measures aimed at safeguarding the intangible cultural heritage, which includes enacting specific legislation to protect traditional knowledge and cultural Expressions. Article 15 Mandates the widest possible participation of communities, groups and, where appropriate, individuals in management and decision making. Article 16 and 17 Provide for listing of elements in need of urgent Safeguarding relevant for endangered Traditional Knowledge and Cultural Expressions.

Domestically, the National Arts Council Act, administered through Baraza la Sanaa la Taifa (BASATA) which translates in English "National Arts Council" serves as the implementing body. While BASATA undertakes promotion and registration of cultural activities, the system remains heavily state driven, with little recognition of community custodianship or enforceable benefit sharing mechanisms. This reflects a focus on cultural promotion rather than rights based protection, which is inconsistent with UNESCO's participatory model.

2.1.2 World Intellectual Property Organization (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

At the international level, WIPO encourages states to develop sui generis legal systems for Traditional Knowledge and Cultural Expressions (CEs) recognising community ownership, perpetual protection, and the prevention of misappropriation. Tanzania has participated in WIPO-IGC discussions, but domestically there is no sui generis Traditional Knowledge and Cultural Expressions law. Instead, protection is fragmented across the Copyright and Neighbouring Rights Act (1999), the Patents Act, and the Traditional Medicine Act. None of these frameworks fully reflect WIPO's guidance on perpetual protection, Prior informed Consent (PIC), or collective ownership.

2.1.3 Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (2010)

The Swakopmund Protocol, adopted under African Regional Intellectual Property Organization (ARIPO), establishes a regional sui generis framework with explicit provisions on perpetual protection, community ownership, and benefit-sharing. Although Tanzania is a member of African Regional Intellectual Property Organisation (ARIPO), it has not ratified the Protocol. This omission denies local communities, the benefit of harmonised protection and remedies available within the region. It also signals reluctance to move beyond conventional intellectual property

2.1.4 International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

Article 15(1)(a) of the ICESCR recognises the right of all peoples to take part in cultural life. Tanzania is a party to the Covenant, but the domestic constitutional framework limits implementation. Article 9(h) mentions the safeguarding of national culture as a directive principle of state policy. However, this clause is non-

justiciable and therefore cannot be directly enforced in courts. Similarly, constitutional provisions on property rights are individualised Article 24 and do not extend to communal custodianship of TK and TCEs. This undermines compliance with ICESCR's obligations on cultural rights.

3.1.1 Conclusion and recommendation

3.1.2 Conclusion

The analysis shows that Mainland Tanzania's existing legal framework though acknowledging elements of Traditional Knowledge and Cultural Expressions are fragmented or scattered and weak in practice. Hence, the protection of Traditional knowledge and cultural Expressions remains state centred, lacks clear benefit sharing mechanisms, and fails to recognise the communal and perpetual nature of heritage. Furthermore, International obligations and customary norms are only partially reflected in domestic law, leaving enforcement gaps and limited remedies for custodial communities.

4.1 Recommendations

4.1.1 To the Government

- **Develop and Operationalize a National Policy on Traditional Knowledge and Cultural Expressions**

The Government of Tanzania should formulate and operationalize a comprehensive national policy specifically addressing the protection, promotion, and preservation of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). The existing legal framework, such as the Copyright and Neighbouring Rights Act (1999) and the Patents (Registration) Act (1987), does not adequately cover community based, collectively owned, orally transmitted knowledge systems. A national policy would provide a holistic framework guiding government agencies, local authorities, and cultural institutions in harmonizing efforts and allocating resources to safeguard cultural heritage, particularly from misappropriation and commercial exploitation. A policy based approach is essential in operationalizing state obligations under Article 27 of the Universal Declaration of Human Rights and Article 15 of the International Covenant on Economic, Social and Cultural Rights, which affirm the right of communities to benefit from the protection of cultural heritage. Such a policy would also align Tanzania with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention for the Safeguarding of the Intangible Cultural Heritage (2003), to which Tanzania is a party.

- **Create a National Inventory or Database of Traditional Knowledge and Cultural Expressions**

The government should prevent unauthorized use and facilitate legal recognition, by funding and technically support the development of a national database or inventory of traditional knowledge and expressions. The process must be grounded in community consultation and consent, ensuring that documentation respects secrecy, sacredness, and cultural ownership. Documentation is a widely recognized protective mechanism under the United Nations Educational, Scientific and Cultural

Organization (UNESCO's) Convention on Intangible Cultural Heritage (2003) and WIPO's best practices for defensive protection of Traditional Knowledge / Cultural Expressions (TCEs). However, documentation must not compromise the cultural integrity of communities. Therefore, the database must incorporate customary laws and confidentiality instruments to avoid turning sacred knowledge into publicly exploitable data.

- **Conduct Public Awareness and Education Campaigns**

The Government, through its relevant ministries, should conduct nation or public education campaigns on Intellectual Property rights and the importance of protecting Traditional Knowledge (TK) and Cultural Expressions (CEs). The campaigns should target rural communities, traditional leaders, youth, and local government actors, using accessible media and local languages. Legal empowerment through education is a key component of sustainable cultural governance. As observed in the African Union's Model Law on the Protection of the Rights of Local Communities, education enhances the capacity of communities to assert their rights and engage with legal systems. This recommendation also supports Goal 4 of the United Nation Sustainable Development Goals (Quality Education), particularly in the context of lifelong learning and cultural literacy.

- **Build Capacity of Local Government Authorities and Cultural Officers**

Local government authorities should be trained in the legal and administrative procedures relevant to Traditional Knowledge and Cultural Expressions (CE) Protection. This includes recognizing cultural expressions, recording them appropriately, and supporting enforcement or mediation in case of disputes. Effective decentralization depends on the capacity of local actors. According to the African Charter on Cultural Renaissance (2006), local governments play a vital role in safeguarding community heritage. Building their capacity ensures legal reforms are translated into meaningful protection on the ground, especially in culturally rich regions.

- **Establish a National Fund to Support Protection and Promotion of Traditional Knowledge and Cultural Expressions**

The Government should set up a special fund to provide financial and technical assistance to communities and institutions engaged in the preservation or commercialization of traditional knowledge and cultural expressions, especially where such efforts have economic, environmental, or educational value. Create a dedicated fund to support communities in preserving, promoting, and innovating with their traditional knowledge and cultural Expressions. The fund should offer grants and technical assistance for community led initiatives, especially those involving youth and women.

4.3 To the Parliament

- **Enact a Sui Generis Law for the Protection of Traditional Knowledge and Cultural Expressions.**

The Parliament should initiate and pass a dedicated, sui generis legal framework that specifically governs the protection,

ownership, use, and benefit sharing related to Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). This law should be community centered, recognizing collective rights and customary laws. The Current Intellectual Property laws like the Copyright and Neighbouring Rights, Patents (Registration) Act are insufficient for the nature of TK/TCEs, which are often orally transmitted, collectively owned, and culturally sacred. The Parliament has the constitutional mandate to legislate in this area under Article 63 of the Constitution of the United Republic of Tanzania (1977).

- **Harmonize Existing Intellectual Property Laws with International and Regional Instruments**

The Parliament should review and amend existing Intellectual Property laws (such as the Copyright and Neighbouring Rights Act, the Patents Act, and the Swakopmund Protocol and related provisions) to reflect obligations under, The Nagoya Protocol (2010), United Nation Educational Scientific and Cultural Organization (UNESCO) Conventions, and World Intellectual Property Organization guidelines on Traditional Knowledge and Cultural Expressions (CEs). Harmonization promotes legal certainty, improves compliance with international obligations, and facilitates cross border enforcement, especially when Tanzania's cultural heritage is used abroad without consent.

- **Strengthen Legal Recognition of Customary Law in Intellectual Property Legislation**

Parliament should ensure that the sui generis law or relevant amendments incorporate customary law and traditional governance systems as valid sources of authority in determining rights over Traditional Knowledge and Traditional Cultural Expressions (TCEs). This recognizes the legitimacy of community based knowledge systems, particularly among groups, whose cultural practices are governed by oral and customary norms. Legal pluralism enhances justice for indigenous communities and aligns with Article 13 of the African Charter on Human and Peoples' Rights.

- **Establish Parliamentary Oversight Mechanisms for Traditional Knowledge and Cultural Expressions (CEs) Protection**

The Parliament should establish a special committee or sub committee under an existing standing committee for example, Legal Affairs or Culture to provide legislative oversight over government policies and funding related to Traditional Knowledge and Cultural Expressions (CEs). Oversight ensures that executive actions are aligned with legal standards, funding is used effectively, and community interests are not sidelined. This is part of Parliament's role in maintaining checks and balances as provided under Articles 62 to 64 of the Constitution of United Republic of Tanzania of 1977.

- **Facilitate Inclusive Law Making Through Public Hearings and Community Consultations**

The Parliament should institutionalize public participation mechanisms, especially in rural and indigenous areas, during the drafting and review of TK/TCE-related laws. Public participation

is a fundamental democratic principle. It ensures the legitimacy of laws, incorporates indigenous perspectives, and strengthens community trust. It is also consistent with Article 21 of the Constitution of the United Republic of Tanzania of 1977 which guarantees citizen's participation in public affairs.

- **Allocate Sufficient Budget for Implementation and Awareness Programs**

The Parliament in its budget approval role, should ensure that sufficient financial resources are allocated annually for the implementation of laws and policies relating to the protection of traditional knowledge and cultural Expressions. Legal reform without funding is ineffective. Budgetary allocations can support training, infrastructure for example, cultural centers, registries, and public education. Parliament's power of the purse under Article 63(3)(c) enables it to prioritize cultural heritage protection in national development.

4.1.2 To the Judiciary

- **Interpret Intellectual Property Laws in a Manner that Advances Protection of Traditional Knowledge and Cultural Expressions**

Judicial officers should adopt a progressive and purposive interpretation of existing Intellectual Property laws to promote the protection of Traditional Knowledge and Cultural Expressions even when statutory provisions are limited or outdated. While current Intellectual Property laws may not directly mention Traditional Knowledge or Cultural Expressions, Courts can interpret them in ways that recognize community interests, especially under the broader principles of justice, equity, and cultural rights found in the Constitution under Article 27 of the Constitution of the United Republic of Tanzania of 1977, Right to participate in cultural life. This judicial activism helps bridge legislative gaps until Parliament enacts sui generis laws.

- **Recognize and Apply Customary Law in Cases Involving Traditional Knowledge and Cultural Expressions (CEs)**

Judges should give due recognition to customary law and community norms in cases involving disputes over ownership, usage, or misappropriation of traditional knowledge and cultural Expressions. Tanzania's legal system is pluralistic, Section 9 of the Judicature and Application of Laws Act (JALA) permits the application of customary law where appropriate. Recognizing customary principles helps uphold justice in culturally sensitive matters and affirms the legitimacy of indigenous systems.

- **Promote the Use of Expert Evidence and Community Testimony in Traditional Knowledge and Cultural Expressions Cases**

Courts should be encouraged to admit and rely on expert witnesses, community elders, and cultural practitioners in matters involving Traditional Knowledge and Cultural Expression (CEs), especially where documentary evidence is limited. Traditional knowledge is often orally transmitted and undocumented. Relying solely on written evidence disadvantages communities, Courts should exercise their discretion under Rules of Civil Procedure and

Evidence Law to allow alternative forms of proof (including oral history and customary practices) to ensure fair adjudication.

- **Encourage Judicial Training on Intellectual Property, Traditional Knowledge, and Cultural Rights**

The Judiciary, in collaboration with the Judicial Training Institute, should regularly offer capacity-building programs on the intersection of Intellectual Property law, Customary law, and the protection of Traditional Knowledge and Cultural Expressions in Mainland Tanzania. Due to the evolving nature of Intellectual Property law and the increasing number of Traditional Knowledge related disputes, it is vital for judges and magistrates to remain informed on international standards, treaties and regional frameworks, Judicial training enhances consistency, competence, and sensitivity in handling such cases.

- **Protect Community Rights in Disputes Involving Commercial Exploitation of Traditional Knowledge and Cultural Expressions**

In cases where traditional knowledge or expressions are used without consent for example, in music, tourism, fashion, or Bio-prospecting Courts should uphold the rights of communities to benefit from their cultural resources, including ordering remedies such as compensation or injunction. Courts have a role in enforcing Access and Benefit Sharing (ABS) principles recognized under the Convention on Biological Diversity and the Nagoya Protocol, which Tanzania has ratified. Judicial enforcement ensures communities are not left vulnerable to exploitation.

- **Promote Alternative Dispute Resolution (ADR) in Traditional Knowledge and Cultural Expressions Related Cases**

Judges should promote the use of mediation, arbitration, and community based resolution mechanisms in culturally sensitive cases involving Traditional Knowledge and Traditional Cultural Expression (TCEs). Alternative Disputes Resolution (ADR) mechanisms align with customary approaches and often provide quicker, culturally acceptable, and less adversarial paths to justice. Encouraging Alternative Disputes Resolution in line with Section 86A of the Civil Procedure Code and the Judiciary's ongoing commitment to reduce court backlogs.

4.1.3 To the legal Scholars

- **Undertake Context Specific Legal Research on Traditional Knowledge and Cultural Expressions**

Legal scholars in Tanzania should prioritize empirical and doctrinal research focused on the effectiveness of existing Intellectual Property frameworks in protecting local traditions. This article must go beyond general Intellectual Property law to explore how legal norms interact (or conflict) with customary practices and indigenous knowledge systems on the ground.

- **Promote Legal Reform through Academic Advocacy**

Legal Scholars should use their platforms in universities, journals, and legal conferences to advocate for the development of a sui generis legal framework tailored to protect Traditional Knowledge

and Cultural Expressions. Such advocacy should be grounded in case studies traditions, showing the limitations of conventional copyright or patent systems in capturing collective, orally transmitted knowledge.

- **Bridge Academic Knowledge with Community Realities**

Legal academics should engage directly with local communities by translating complex Intellectual Property concepts into accessible formats, such as public legal education materials or collaborative workshops. By connecting scholarship with the lived realities of knowledge holders, scholars can contribute meaningfully to law reform and social justice.

4.1.4 To the Community or society at large

- **Actively Document and Preserve Traditional Knowledge**

Community should be supported in recording and archiving their traditional practices, dances, songs, healing knowledge, and art forms. This can serve as legal evidence of ownership and deter unauthorized use. Documentation should be done respectfully and

in alignment with cultural values, ideally through community-led initiatives.

- **Form Cultural Associations to Protect Collective Rights**

The community is obliged to rise and strengthen their voice and negotiating power, communities should also form local cultural groups or cooperatives that represent their collective interests in matters of Intellectual Property. These associations can engage with policy makers, Intellectual Property offices, and researchers, ensuring that community perspectives are not sidelined.

- **Participate in Legal Literacy and Intellectual Property Awareness Programs**

Knowledge holders should seek out, or collaborate in developing, educational programs about their rights under Intellectual Property law. These programs should explain both the strengths and weaknesses of current laws, equipping community members to make informed decisions when sharing or commercializing their traditions.