

Strengthening Customary Legal Protection of Sacred Natural Sites against Commercial Development Nigeria and Indonesia

Patience Omohoste Agbale^{1*}, Mu'adil Faizin ² and Izevbuwa Osaretin George ³,

¹ Faculty of Law, Ambrose Ali University, Edo State, Nigeria. E-mail: patient.agbale@aau.edu.ng

² UIN Sunan Gunung, Djati Bandung, Indonesia, Email: muadilfaizin27@gmail.com

³ College of Law, Igbinedion University Okada, Nigeria, Email: izevbuwa.george@iuokada.edu.ng

* Correspondence: patient.agbale@aau.edu.ng

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ABSTRACT

Sacred natural sites are vital cultural, spiritual, ecological, and legal places for indigenous and local communities in Nigeria and Indonesia. Nevertheless, there has been an increase in commercial activities such as mining, tourism, infrastructure development, agriculture, and urbanization, threatening the integrity of sacred natural sites and undermining the customary systems of protection of such sites. This study investigates the effectiveness of customary legal protection of sacred natural sites and identifies means of enhancing legal and regulatory recognition of these sites in Nigeria and Indonesia. The study employs a comparative doctrinal research methodology through analysis of constitutional provisions, laws, case law, policies, customs, and academic works from both countries. The findings show that while customary laws and practices continue to be the backbone of protecting sacred natural sites, their efficacy has been reduced because of poor formal recognition, conflicting interests, poor participation of the communities in decision-making processes, ineffective enforcement, and a fragmented environmental governance regime. The study finds that legal protection will be achieved through the harmonization of customary law with statutory laws, formal recognition of custodianship, adequate participation of communities, and proper environmental impact assessment and conflict resolution mechanisms.

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1. INTRODUCTION

Sacred Natural Sites (SNS) can be described as the longest form of biocultural heritage in which spiritual worldviews, ecological understanding, and local wisdom combine¹. In Nigeria, the SNS is in the form of sacred lakes in the Niger Delta, sacred forests like the Osun-Osogbo World Heritage site, and community groves in Owerri where the totem of the python is conserved through ancestral worship². These sites act as biodiversity sanctuaries, conserved using customary law and taboos. The same case applies to Indonesia, where SNS includes indigenous classifications of lands such as tanah ulen and leuweung larangan, as well as the Subak water temple network in Bali³. These sites demonstrate the Tri Hita Karana doctrine that encourages harmony between man, spirits, and the natural environment. In both countries, governance is done through communities where traditional leaders like kuncen in Kampung Naga and Chief priests in Nigeria own these sites, using oral tradition to conserve them and strengthen social cohesion⁴. These sites are important ecological assets for conservation at national and global levels.

Commencement of commercial activities, especially tourism, within such sacred locations is becoming more common. Commercial tourism has become an issue of interest to both Tana Toraja in Indonesia and Bali in Indonesia due to the economic importance associated with ethnic tourism in Tana Toraja and religious ecotourism in Bali⁵. Despite the fact that the development of the tourist industry ensures much-needed revenue, there is a possibility of "cultural commoditization" of sacred ritual processes, resulting in internal conflicts within the community, as well as a feeling of a lack of control over the process. The Osun festival held at the Osun grove in Nigeria is a multi-million dollar festival funded by large corporations, which is indicative of the business opportunities associated with religious tourism⁶. At the same time, the development of commercial tourism puts considerable pressure on SNS since inappropriate tourist behavior may result in a loss of sacredness and irritation among pilgrims. What is more, poor tourism organization allows mass tourism to be managed by outside organizations, thus depriving the local population of equal benefits and causing the degradation of temples and groves⁷.

Apart from tourism, in both countries, the SNS is under grave threat from the development of the extractive industry and infrastructure. The Jos Plateau and Enugu

¹ Kamaldeen O. L. Omosanya and Oseni Ridwan, "Global Strategies for Protecting Geoheritage Sites from Mining with Lessons for Nigeria and Africa," *Discover Geoscience* 3, no. 1 (2025): 218.

² Seun Bamidele and Innocent Pikirayi, "Between Spirits and Statutes: Sacred Land, State Power, and the Politics of Urban Space in Nigeria," *Urban Forum* 37, no. 1 (2026): 25–54.

³ Yohanes Purwanto, "Sacred Forests, Sacred Natural Sites, Territorial Ownership, and Indigenous Community Conservation in Indonesia," in *Sacred Forests of Asia*, 261–276 (2022).

⁴ Budi Yasri et al., "Conflict Resolution Strategies in Kampung Naga Indigenous Community: Preserving Tradition in the Face of Modernity," *Jurnal Ilmu Sosial dan Humaniora* 13, no. 3 (2024): 663–671.

⁵ Opeyemi A. Gbadegesin and Olaide Abass Gbadamosi, "Indigenous Ecological Knowledge: A Transformative Approach to Biodiversity Legislation in Nigeria," *Environmental Management* 74, no. 2 (2024): 317–331.

⁶ Prasetyo Hadi Purwandoko, Adi Sulistiyono, and M. Hawin, "The Implementation of the Traditional Cultural Expression (TCE) Protection Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright," *Indonesian Journal of International Law* 18 (2020): 543.

⁷ Moh Fadli et al., "The Legal Construction of Spirituality, Ethical and Sustainable Tourism of Temples in Malang Raya, Indonesia," *GeoJournal of Tourism and Geosites* 35, no. 2 (2021): 515–524.

State of Nigeria have seen heavy mining of tin and coal, which led to soil degradation and pollution of regions endowed with geoheritage and spirituality⁸. Customary groves of Owerri are affected by timber loggers and multinationals interested in agricultural land and mineral resources. In Indonesia, the development of the Trans-Papua Highway and roads in Tanah Papua have allowed access to "sacred" or pamali forests, resulting in a change in traditional subsistence hunting into hunting for markets, posing threats to endangered wildlife⁹. Mangrove forests in North Sumatra have been damaged due to logging and oil palm concession expansion, which overrides customary forest management and destroys natural barriers protecting villages. This developmental activity prioritises national master plans of economic growth over sustainable and culturally based management by the native communities for centuries¹⁰. Also, uncontrolled commercial logging of the mangrove forest areas remains one of the significant contributors to deforestation in Wildlife Reserves.

The major challenge is in the complex duality of the interaction between customary laws and the state legal frameworks, leading to conflicting jurisdiction and authorities. Eurocentric law has historically been used as a "civilizing technology" which misrepresents the indigenous forms of governance and imposes a violent regulatory regime that brings nature under the purview of the state¹¹. In Nigeria, while the Minerals and Mining Act of 2007 does not recognize geoheritage as an item of protection, the Land Use Act of 1979 has been criticized for taking the control of resources away from the customary authorities. While in Indonesia, despite the fact that Law No. 11/2010 deals with cultural heritage, there is a notable deficiency in the implementation regulations for temples and sacred sites. Also, "fortress conservation" is common in many cases of state-led conservation efforts that take away the ancestral territories from indigenous peoples to establish national parks aimed at economic safaris rather than relational spirituality¹². While Resolution 372 of the African Commission has sought to protect SNS, it is seen to be defective because of its over-reliance on Western-centric definitions of SNS offered by the international conservation industries.

The novelty of the present paper "Strengthening Customary Legal Protection of Sacred Natural Sites against Commercial Development in Nigeria and Indonesia" resides in its inter-disciplinary comparative perspective on issues related to law, economics, and culture¹³. In comparison with previous literature, which considers

⁸ Godwin E. K. Dzah, "Law, Nature Conservation and Sacred Natural Sites under Resolution 372 of the African Commission on Human and Peoples' Rights," *Journal of African Law* (2026): 1–20.

⁹ Abdurrauf Umar, "Integration of Islamic Law and Customary Law and Its Application in the Indonesian Legal System: Opportunities and Challenges," *Sortuz: Oñati Journal of Emergent Socio-Legal Studies* 16, no. 1 (2026): 89–111.

¹⁰ Sanny Susanto et al., "Biocultural Heritage and Conservation Practices in Sacred Natural Sites across Europe and Asia," *ICES: International Conference on Environmental Science* 2, no. 1 (2025): 10–22.

¹¹ Chris-Valentine Ogar Eneji, Charles Nnaji Ogundu, and I. A. Ojelade, "Indigenous Cultural Practices and Natural Resources Conservation in Owerri, Imo State, Nigeria," *Advances in Social Sciences Research Journal* 6, no. 8 (2019): 30–44.

¹² Haruna Hassan, "Appraising the Significance of Traditional Knowledge in Enhancing Environmental Law in Nigeria," *KWASU Business and Private Law Journal* 2, no. 1 (2025).

¹³ Bas Verschuuren, Jeffrey McNeely, Gonzalo Oviedo, and Robert Wild, *Sacred Natural Sites* (Taylor & Francis, 2012). Ibiang Okoi and Linda Iheanacho Nnebuihe, "The Influence of Pre-Colonial African

separately the issues of mining, tourism, and conservation, the present study is unique in addressing the identified lacuna in the literature through an analysis of international approaches to geo-heritage protection and the lessons learned that can be drawn from those cases regarding the special challenges existing in Africa and Asia. This research is also unique in considering "selective modernization" strategies of indigenous people when negotiating outside projects based on their compatibility with adat. The present paper aims to develop an integrated legal approach that will help enhance the adaptive potential of customary institutions. More precisely, the goal is to formulate strategies for institutionalizing hybrid conflict resolution frameworks that combine the specificity of customary law and the strength of state law to make SNS strategic ecological assets.

2. METHOD

In relation to the research topic, this study will utilize a doctrinal research methodology to study the enhancement of protection of customary law for sacred natural sites. The analysis methodology and the method of collecting the data for doctrinal research are explained below in the following sub-sections:

Research Approach: The research approach adopted is a qualitative doctrinal research method, which focuses mainly on the analysis of legal principles and laws applicable to the protection of sacred natural sites in Nigeria and Indonesia.

Data Collection Instruments: The main instrument used for data collection is the technique of document analysis and library research for national laws, such as Law No. 11/2010 of Indonesia and the Minerals and Mining Act of Nigeria, along with international resolutions such as Resolution 372 of the African Commission.

Validity and Reliability of instruments: Validity and reliability were established using triangulation of the legal text by comparing it with official policy reports, institutional documents, and scholarly journals.

Data collection Procedures: Collection of data was done using a technical roadmap that identified literature and policy sources from academic databases (Scopus and Web of Science) and repositories of UNESCO, IUCN and national geological institutions.

Data analysis Tools: In the analysis, systematic and interpretive analyses are done to detect repeated legal problems, using the Policy Effectiveness Matrix that compares both countries in balancing between resource extraction and protecting their customary heritage.

3. RESULTS AND DISCUSSION

3.1. Concept of Customary Sacred Natural Sites and Development of Commercial Activities in Nigeria and Indonesia

A customarily managed Sacred Natural Site (SNS) is an area of the land or water which is spiritually important. In Indonesia, these areas are indigenous zones such as tanah ulen or leuweung larangan and Subak rice terraces that represent the philosophy of harmony between man, nature, and the supernatural world called Tri

Trade Customs on Modern Nigerian Commercial Law," *Alkebulan: A Journal of West and East African Studies* 5, no. 2 (2025): 70–82.

Hita Karana¹⁴. In Nigeria, SNSs appear as sacred lakes in the Niger Delta and Osun-Osogbo groves, where community veneration of ancestral spirits makes possible biodiversity refuges¹⁵. SNS operates by means of communal management using customary law (adat) as a base, employing taboos and ritual observances to control natural resource consumption and maintain community integrity¹⁶. SNS is globally unique in its ability to conserve rare species and ecosystem processes that are extinct in the altered environment surrounding it. Both in Indonesia and Nigeria, SNS acts as "a living archive" of traditional ecological knowledge and a cornerstone of communal life, which gives an important conceptual framework for resolving contemporary issues of environmental conservation and public health¹⁷.

Commercial exploitation, through mass tourism, has had an impact on Indonesian SNS. The change from agriculture to tourism services has been damaging to the Subak system in Bali, where the loss of rice fields has been around 4,000 hectares per annum since 1994. In Kampung Naga, Western Java, where there has been heritage labelling, there has been a 40% rise in demand for traditional handicrafts; however, community leaders have expressed concern about "cultural commoditization" through which sacred rites are commercialized¹⁸. Moreover, poor tourism institutions have resulted in mass tourism being controlled by outsiders, which means no benefit sharing for local people and physical deterioration in terms of vandalism, littering, and illegal constructions¹⁹. While tourism is essential for the economy, it could lead to the erosion of the spiritual integrity and autonomy of communities, as can be seen in Tana Toraja, where government consultants were once considering "tradition-free" performance zones.

Religious tourism has emerged as a big business venture in Nigeria, evidenced by the Osun-Osogbo Sacred Grove where the Osun festival has transformed from being a religious affair to a multi-million-dollar venture through corporate sponsorships from the telecommunication and brewing industries²⁰. Likewise, in the Idanre Hills 'Mare Festival' for mountaineering and culture, the annual visitor participation fluctuated from 600 to 8,700 people during 2005 and 2013, respectively. Nevertheless, SNS in Nigeria encounter difficulties, including a lack of synergy amongst stakeholders as well as the lack of efficient DMOs to handle adverse effects on the

¹⁴ Ayuk Catherine Mbi, "Legal Examination of Benefit Sharing and Livelihood Improvement in Protected Area Managements: The Case of the Bakossi National Park," *Scholarly International Journal of Law, Crime and Justice* 7, no. 10 (2024): 434–443.

¹⁵ Nilobon Hiranras, "The Intellectual Property and Alternative Legal Protection for Thai Cultural Heritage Properties, Traditional Knowledge and Products" (PhD diss., Durham University, 2015).

¹⁶ Muhammad Mutawalli Mukhlis, Paul Atagamen Aidonojie, Zulhilmi Paidi, and Muhammad Saleh Tajuddin, "Democratic State Governance: The Urgency of Implementing Conventions in Constitutional Practices in Indonesia," *Fenomena* 23, no. 1 (2024): 1–14.

¹⁷ I Gusti Ayu Purnamawati, Ferry Jie, and Saarcce Elsy Hatane, "Cultural Change Shapes the Sustainable Development of Religious Ecotourism Villages in Bali, Indonesia," *Sustainability* 14, no. 12 (2022): 7368.

¹⁸ Alfath Satria Negara Syaban and Seth Appiah-Opoku, "Unveiling the Complexities of Land Use Transition in Indonesia's New Capital City IKN Nusantara: A Multidimensional Conflict Analysis," *Land* 13, no. 5 (2024): 606.

¹⁹ Ndidzulafhi I. Sinthumule, "Traditional Ecological Knowledge and Its Role in Biodiversity Conservation: A Systematic Review," *Frontiers in Environmental Science* 11 (2023): 1164900.

²⁰ Ibid

destination²¹. The industry is hampered by worsening insecurity in the form of kidnapping in the East, hostage-taking in the South-South region, and terrorism in the North, resulting in poor tourist satisfaction and repeat visits. The local community of areas such as Inyi town thinks that religious extremism also leads to the abandonment of the groves, making them vulnerable to encroachment and elimination of customary laws that prohibited timber harvesting for their own use²².

Apart from tourism, large industrial undertakings such as infrastructure development and logging are a threat to the sustainability of SNSs. In Tanah Papua, Indonesia, the government has plans for 3,146 km of road development between 2020 and 2025 at an estimated cost of US \$319.5 million. While this is for poverty reduction, it creates "development corridors" and makes illegal hunting easier, thus shifting indigenous peoples' methods from subsistence hunting to market hunting²³. Some 25 per cent of protected areas in Papua are currently within 20 km of the roads, causing increased fragmentation of the habitat. Logging and oil palm concessions around the Karang Gading Wildlife Reserve in North Sumatra have been found to have caused extensive destruction of the mangrove ecosystem, which was initially a natural barrier against any kind of danger coming from the coast. Indonesia has 22.6 per cent of the world's mangrove area; however, such areas come under threat of HPH that leads to monopolization in exploitation without any benefits to the local people²⁴.

In Nigeria, extractive industries constitute a major threat to the geoheritage and sacred groves. In particular, tin and columbite mining has been undertaken for many years on the Jos Plateau, leading to land degradation and formation of abandoned mine dumps. The same applies to the coal mining operations at the Udi, Onyeama, and Iva mines in Enugu State, where there has been groundwater contamination and habitat loss, hence undermining the aesthetic and spiritual aspects of these heritage sites²⁵. The Land Use Act of 1979 has been accused of taking away the resources from traditional custodians, allowing the state to promote its own economic interests rather than the traditional aspect of SNS. This often results in encroachment by multinationals into the traditionally protected forest areas for mineral extraction and timber logging. According to an indigenous declaration, specifically that of Belem, there is a need to revoke the concessions that destroy the ecological balance of the

²¹ M. Iqbal, Permata Sari Ajeng Pamuji, Fernandho, and Paul Atagamen Aidonojie, "Maqashid Sharia Approaches in Pension Fund Programs: Bank Muamalat Indonesia and Taspen Comparison," *Asy-Syari'ah* 27, no. 2 (2025): 211–236.

²² Rindia Fanny Kusumaningtyas, Arif Hidayat, Gabrielle Poetri Soebiakto, Ahmad Fauzan Permana, and Ibadurrahman Hanan Abdullah, "Traditional Cultural Expression as an Embodiment of Indigenous Communities and Regional Identity (Semarang Indonesia Case)," *JILS* 8 (2023): 45.

²³ Yulia Yulia, Malahayati Rahman, Herinawati Herinawati, and Novita Novita, "Legal Protection of Traditional Medicine Knowledge as Intellectual Property of North Aceh Communities," *Queen Mary Journal of Intellectual Property* 13, no. 4 (2024): 407–421.

²⁴ Donna Sheppard, *Improving Community-Based Natural Resource Management Practice in West Africa: Mapping Changing Spiritual Values within Belief-Based Conservation Networks in Ghana and Liberia* (PhD diss., University of Guelph, 2021).

²⁵ Colleen Corrigan and Terence Hay-Edie, *A Toolkit to Support Conservation by Indigenous Peoples and Local Communities: Building Capacity and Sharing Knowledge for Indigenous Peoples' and Community Conserved Areas* (Cambridge, UK: UNEP-WCMC, 2013).

sacred forests²⁶. However, research conducted in Owerri, Imo State, revealed that 86% of community respondents believed that the customary "evil forests" and "sacred groves" were the best mechanisms of natural resource conservation and climate change resilience.

3.2. Customary Legal Protection of Sacred Natural Sites against Commercial Development in Nigeria and Indonesia

The constitutional framework of both Indonesia and Nigeria is the main, although contradictory, source of protection of Sacred Natural Sites (SNS). According to the Constitution of Indonesia, 1945, Articles 18B (2) and 28I (3) require that the state acknowledges traditional communities and recognizes the importance of their culture. Likewise, according to Nigeria's Constitution, Section 21 requires the state to protect and promote Nigerian cultures²⁷. However, there is a serious conflict in the fact that the mentioned protection is frequently overshadowed by the interest of the state itself. For example, in the case of Indonesia, Article 33(3) grants the right to the control of all the natural resources of the country to the state "for the greatest benefit of the people", which is similar to the notion of the "right to control" and reflects the fact that forests in Indonesia are viewed as "political forests", rather than ecological units²⁸. In the case of Nigeria, while Section 20 requires the state to protect the environment, the supremacy of the state's right to land acquisition undermines the spirituality and traditional rights of local communities.

Indeed, the two nation-states' land tenure systems erode the protection of customary law through centralized land control regimes. First, the Nigerian Land Use Act (LUA) grants all the land to the State Governor, who will hold the land in trust. According to Section 28 of LUA, the Governor can revoke the customary rights of occupancy where there is an overriding public interest, which may include mining and oil pipelines, industries that have been repeatedly threatening SNS. Second, Section 47 of LUA precludes the jurisdiction of courts to consider the state's right to issue statutory rights of occupancy or compensation. The above legal provision nationalizes the customary land, denying traditional communities the right to veto commercial projects²⁹. In Indonesia, it has been the long-standing legal principle that customary forests fall under "state forests," allowing the Ministry of Forestry to grant commercial concessions regardless of the customary community's opposition. Even when the above has been contested, it has remained the interpretation of the "right to

²⁶ Hunggul Yudono Setio Hadi Nugroho et al., "Incorporating Traditional Knowledge into Science-Based Sociotechnical Measures in Upper Watershed Management: Theoretical Framework, Existing Practices and the Way Forward," *Sustainability* 15, no. 4 (2023): 3502.

²⁷ Rizal Darwis et al., "Negotiating Sharia, Customary Law, and Gender: Feminist Legal Pluralism in the Learo Tradition of Marriage in the Bintauna Community, Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 11, no. 1 (2026): 436-458.

²⁸ Praditha Dewa Gede Edi, Mella Ismelia Farma Rahayu, I Ketut Sukewati Lanang Putra Perbawa, Paul Atagamen Aidonojie, and Adelowo Stephen Asonibare, "The Future of Bali's Kerauhan Tradition: Legal Pluralism, Reforms, and Conflict Adjudication Challenges," *Journal of Sustainable Development and Regulatory Issues* 4, no. 1 (2026): 118-137.

²⁹ Ismail Jalili, Muhammad Firdaus, and AbdulGafar Olawale Fahm, "The Role of Qawā'id Fiqhiyyah in Strengthening Waqf Law: A Review of Challenges and Solutions in Indonesia," *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 11, no. 2 (2024): 226-250.

control" that favors industrial exploitation over customary tenure, causing structural conflicts between indigenous communities and business interests³⁰.

An important development in Indonesian law came through the Constitutional Court Decision 35/PUU-X/2012, which gave a critical review of the Forestry Law (No. 41 of 1999). Earlier, Article 1 Number 6 described "customary forest" as "state forest" in traditional territories. The Court declared the term "state" used in the definition unconstitutional, stating that customary forests are forests in traditional territories and not state land. It was, in essence, correcting a "hidden change" in the law which had utilized state control to eliminate the concept of inheritance³¹. The Court clarified that designation of customary forests as state status amounted to ignoring the traditional rights of communities which the Constitution upholds. The protection is, however, subject to conditions; Article 5(3) stipulates that the customary law community "in fact, still exists" as defined by the State. This "conditionality" imposes an administrative problem in that communities will have to go through complicated "ranking" and "stipulation" processes to obtain legal status for their SNS. The lack of official status leaves SNS open to classification for business purposes in case the state decides that the community has "ceased to exist"³².

Particular laws of cultural heritage also offer extra levels of protection, although they tend to protect static monuments rather than dynamic "sacred" ones. As per Indonesia's Cultural Conservation Law No. 11 of 2010, the definition of "Cultural Conservation Site" refers to "an area that contains any remains that have significant historical and religious or cultural values from previous periods of time." ³³. Importantly, Article 13 stipulates the ability of the indigenous population to own these sites on a hereditary basis. Likewise, the definition of "antiquities" as provided by the Nigerian National Commission for Museums and Monuments (NCMM) Act includes "sacred places" and "shrines". The acts grant powers to particular commissions to declare SNS as "national monuments" to protect them from destruction or modification. However, such a declaration results in alienation of control³⁴. As per the NCMM Act, after a declaration of monument status of a particular site, "the rights of the owners are extinguished." The restriction of public access may be as destructive as commercial development for communities who consider SNS ritual spaces.

Laws on environmental and park management provide procedural guidelines, but are often ignored or ineffectively enforced. The Environmental Impact Assessment (EIA) Act in Nigeria provides for the evaluation of environmental consequences before any significant project can be implemented³⁵. According to section 4 of the EIA

³⁰ Daniel Fitzpatrick, "Disputes and Pluralism in Modern Indonesian Land Law," *Yale Journal of International Law* 22 (1997): 171.

³¹ Freddy Pattiselanno and Andrew Krockenberger, "Road Development and Indigenous Hunting in Tanah Papua: Connecting the Facts for Future Wildlife Conservation Agendas," *Forest and Society* 5, no. 1 (2021): 181-189.

³² Ibid

³³ Erma Rusdiana, Darnela Lindra, Muwaffiq Jufri, Paul Atagamen Aidonojie, and Ezzerouali Souad, "The Potential for Corporate Corruption in Mining Licensing Policies for Religious Organizations in Indonesia," *Lex Scientia Law Review* 9, no. 2 (2025): 1587-1636.

³⁴ Hery Lilik Sudarmanto, "Legal Protection Analysis of Maria Cave as a Spiritual Tourism," *Jurnal Inovasi Ilmu Sosial dan Politik (JISoP)* 2, no. 1 (2020): 55-66.

³⁵ Ibid

Act, such evaluations are supposed to include measures for mitigating the harmful environmental impacts, including protection of sacred groves. Moreover, the National Park Service Act provides for a "positive environmental impact assessment report" before the establishment and modification of park borders, ensuring that "significant cultural and natural resources" are stated³⁶. Nevertheless, business interests use "excluded projects" or "emergency" clauses to sidestep this requirement. In Indonesia, it is clear from witness statements that even if SNS are situated within the protected National Parks such as Mount Halimun Salak, the state may issue permits for mining activities (for example, for PT. Aneka Tambang) which would encroach on customary lands. It illustrates the inefficiency of the "zoning system," where commercial "development zones" are superimposed upon "core zones" protecting the spiritual part of the forest.

Table 1: Comparative Legal Framework of Nigeria and Indonesia

Feature / Area of Law	Nigeria	Indonesia
Constitutional Basis	Section 21 directs the state to protect, preserve, and promote Nigerian cultures. Section 20 tasks the state with environmental protection.	Article 18B(2) and Article 28I(3) mandate the state to recognize and respect traditional communities, their customary rights, and cultural identities.
State Control of Resources	Section 44(3) vests the entire property and control of all minerals, mineral oils, and natural gas in the Federal Government.	Article 33(3) vests land, water, and natural resources in the state to be used for the "greatest benefit of the people".
Land Tenure & Revocation	The Land Use Act (LUA) vests all land in the State Governor. Under Section 28, the Governor can revoke rights of occupancy for "overriding public interest" (e.g., mining, pipelines).	Historically, the state's "right to control" was used to categorize most customary land as "state forest". Judicial shifts have begun to challenge this absolute ownership.
Customary Forest Status	Customary land is generally managed through "customary rights of occupancy," which remain subject to state revocation without a specific "customary forest" statutory category.	Article 1 Number 6 of the Forestry Law originally defined customary forest as "state forest". Constitutional Court Decision 35/2012 ruled this unconstitutional, declaring customary forests distinct from state land.
Cultural Heritage Laws	The NCMM Act protects "antiquities," including sacred	Law No. 11 of 2010 on Cultural Conservation allows indigenous

³⁶ Frederik J. W. Van Oudenhoven, Dunja Mijatović, and Pablo B. Eyzaguirre, "Social-Ecological Indicators of Resilience in Agrarian and Natural Landscapes," *Management of Environmental Quality: An International Journal* 22, no. 2 (2011): 154–173.

	places. However, declaration as a "monument" extinguishes the owner's private rights in favor of state maintenance.	people to own conservation sites on a hereditary basis. It recognizes religious and cultural value in sites.
Environmental Safeguards	The EIA Act mandates environmental assessments before project authorization. The National Park Service Act requires a positive EIA report before altering park boundaries.	The state may designate forest for "special purposes" such as religion and culture. However, mining concessions are sometimes granted even within protected zones like National Parks.
Recognition Hurdles	Section 47 of the LUA ousts court jurisdiction to inquire into the state's right to grant occupancy or the adequacy of compensation.	Article 67 of the Forestry Law requires customary communities to navigate state verification and Regional Regulations to prove they "in reality still exist".
Community Participation	The National Park Service Act provides for the participation of local communities in park management.	Decision 35/2012 emphasized that determining forest boundaries must involve stakeholders rather than being a unilateral state action.

In order to enhance legal protection of SNS, it is necessary to shift from “pseudo-recognition” to binding and independent communal rights. Indeed, the present-day protection in both countries is characterised by “politics of indigenous ignorance,” which involves development objectives, prioritising physical and economic targets at the expense of the “human factor” and “social distraction³⁷.” Despite significant advances achieved by the Indonesian judiciary to demarcate customary forest from the state domain, the requirement for recognition via Regional Regulations remains a crucial limitation. In its turn, in Nigeria, the Land Use Act, which concentrates powers, and the NCMM Act that extinguishes private rights for monuments make SNS vulnerable³⁸. According to critical approaches, it is impossible to provide any legal protection to SNS until these areas are perceived not as “objects” of the state scientific knowledge, but as “subjects” of the living customary law³⁹. To fight commercial development, the law should implement the principle of “free, prior and informed consent”, enabling indigenous peoples to oppose policy threats to their sacred natural sites.

3.3. Legal issues and Challenges

The first normative problem is the hierarchical nature of the subordination of customary rights to state sovereignty over natural resources. For example, Article 33(3) of the Indonesian Constitution of 1945 provides for state control over natural

³⁷ Ranggalawe Suryasaladin Sugiri, “Utilization of Geographical Indication Protection System for Traditional Handicrafts in Indonesia,” *Indonesian Law Review* 10 (2020): 252.

³⁸ Anil K. Gupta, *WIPO-UNEP Study on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the Use of Biological Resources and Associated Traditional Knowledge* (Geneva: WIPO, 2004).

³⁹ Masanori Nagaoka, *Cultural Landscape Management at Borobudur, Indonesia* (Cham: Springer International Publishing, 2016).

resources with the aim of achieving "the greatest benefit of the people"⁴⁰. In Nigeria, the Land Use Act (LUA) transfers all the land to the possession of the State Governor, who exercises his possession "in trust"; however, this trust usually causes dissociation of indigenous custodians of sacred groves from those sites. Another crucial problem is the loose interpretation of the notion of "overriding public interest" that includes mining and oil pipelines according to the provisions of Section 28 of the LUA; these industries usually violate SNSs. Therefore, a statutory preference is given to commercial activities in comparison to communal religious identity⁴¹. Moreover, Section 47 of the LUA excludes the jurisdiction of courts in questioning the state's right to grant occupancy; this is a serious problem for protecting the traditional territories of indigenous peoples⁴².

The other important gap is the "conditionality" challenge where the very existence of the traditional communities is contingent upon the arbitrary state verification process. According to Article 18B (2) of Indonesia's constitution and Forestry Law Article 67, the existence of the customary law communities is recognized "as long as they in reality still exist." The very existence of such a community is specified by the Regional Regulation. The requirement makes the process of "pseudo-legal recognition" the burden of proof, as the burden is fully placed on marginalised communities. If the state declares the community "no longer in existence," then the management rights to their customary forest, including the sacred sites, automatically become the possession of the government according to Article 5(4) of the Forestry Law⁴³. Such a complex bureaucratic procedure amounts to "political ignorance of indigenous peoples", where the lack of official recognition makes it possible for the reclassification of the SNS into the area for commercial purposes⁴⁴. In Nigeria, a similar gap occurs where the state recognises Nigerian culture through Section 21 but does not have a standardized mechanism to verify the communal identity of "living" sacred sites.

The first legal challenge is in the extinguishment of community titles when the state declares the place a protected area or monument. The Nigerian NCMM Act states that upon declaration of any antiquity as "a national monument," the private estate, right, and title of ownership is forever extinguished to ensure the care of the monument by the state⁴⁵. Although meant for protection, this leads to the nationalisation of spiritually significant places, restricting the access of the community to the space for their spiritual rites through "tourist traffic" or state-led scientific

⁴⁰ Ashish Kothari, "Community Conserved Areas," in *Managing Protected Areas*, 549–573 (2012).

⁴¹ Fikret Berkes and Tikaram Adhikari, "Development and Conservation: Indigenous Businesses and the UNDP Equator Initiative," *International Journal of Entrepreneurship and Small Business* 3, no. 6 (2006): 671–690.

⁴² Graham Dutfield and Uma Suthersanen, "Traditional Knowledge and Genetic Resources: Observing Legal Protection through the Lens of Historical Geography and Human Rights," *Washburn Law Journal* 58 (2019): 399.

⁴³ Lutfun Nahar Lata and A. Z. M. Manzoor Rashid, "Social Forestry: Principles, Evolution, and Implications for Sustainable Development," in *Life on Land*, 881–891 (2020).

⁴⁴ Heri Apriyanto et al., "Sustainability Assessment and Sustainable Management Scenario of Lake Batur in Bali, Indonesia: Insights from a Multi-Aspect Approach," *Resources* 14, no. 9 (2025): 135.

⁴⁵ Eromose E. Ebhuoma, "Indigenous Knowledge and Natural Infrastructure Resilience to Climate Change in Developing Countries: A Bibliometric Analysis," *Frontiers in Environmental Economics* 3 (2024): 1295690.

activities. Moreover, the National Park Service Act puts the ownership of all wild plants and "historical origin" material in the Federal Government and thus prohibits customary management activities of the sacred forest in the parks. In Indonesia, although Constitutional Court Decision 35/2012 recognizes that "customary forests are not 'state forests,'" this recognition cannot be implemented. The sacred sites continue to be endangered due to the "zoning system" of the protected areas where "development zones" can be established over "spiritual zones" for mining and similar development, as in the case of Mount Halimun Salak disputes.

The superiority of the extraction rights over the cultural heritage laws is an acute normative problem. For instance, according to Section 13(3) of the NCMM Act of Nigeria, mining rights can supersede any monument in case the title holder notifies the Commission of such intention one month before, thus making mineral extraction more important than the heritage⁴⁶. The legal loophole does not make the monument inviolable from destruction for the sake of "public purposes". The same is the case in Indonesia, as witness testimony shows the overlapping of state-owned mining concessions (such as PT. Aneka Tambang) with the customary land and the consequent destruction of "Hutan Titipan" or "sacred jungles". The legislation does not give the indigenous communities the right to exercise the "veto power" on the protection of the spiritual quality of their territory. The legal system considers the forests as "objects of scientific knowledge" (political forests) rather than living customary law, resulting in the reduction of environmental wisdom⁴⁷.

Lastly, the lack of process-based legislation regarding the management of the environment and parks results in the absence of any community participation in the conservation of sacred natural sites⁴⁸. For example, Nigeria's EIA Act requires the completion of an assessment before a project, but according to Section 14, the President may exclude a project from such an assessment under "national emergency" or "health" provisions, which can apply to places of spiritual importance⁴⁹. The National Park Service Act refers to the involvement of communities in some activities, but it does not specify "Free, Prior, and Informed Consent" (FPIC). This is needed to make sure communities have the opportunity to oppose projects that could endanger their sacred natural sites⁵⁰. Law No. 11 of 2010 on Cultural Conservation of Indonesia includes zoning but rarely coordinates with other laws, such as forestry or mining, making the legislation fragmentary. There is no legal code for sacred natural sites

⁴⁶ Rudi Aprianto Maturbongs et al., "Adaptation Strategies in Wildlife Hunting Practices among the Tehit Knasaimos Ethnic Group, South Sorong, Southwest Papua, Indonesia," *Biodiversitas: Journal of Biological Diversity* 25, no. 9 (2024).

⁴⁷ Adam D. Tyson, *Decentralization and Adat Revivalism in Indonesia: The Politics of Becoming Indigenous* (London: Routledge, 2010).

⁴⁸ Mulyana Mulyana and Busro Busro, "From Philosophy to Practice: Building Sustainable Tourism through Balinese Local Wisdom," *From Philosophy to Practice: Building Sustainable Tourism through Balinese Local Wisdom* 106, no. 2 (2025): 1-17.

⁴⁹ Irina Safitri Zen et al., "Sustaining Subak, the Balinese Traditional Ecological Knowledge in the Contemporary Context of Bali," *IOP Conference Series: Earth and Environmental Science* 1306, no. 1 (2024): 012034.

⁵⁰ Michael C. Ogwezzzy, "Protection of Indigenous or Traditional Knowledge under Intellectual Property Laws: An Examination of the Efficacy of Copyright Law, Trade Secret," *International and Comparative Law Review* 12, no. 1 (2012): 5-34.

covering various sectors, and thus a sacred natural site, even if protected by one law, may be cleared under another⁵¹.

4. CONCLUSION AND RECOMMENDATION

The existing legislation in Nigeria and Indonesia makes it possible to marginalize the Sacred Natural Sites systemically, considering them state property or an “object” of scientific management. The main dispute is due to the “nationalization” of customary lands, when the constitutional guarantees of cultural consideration are nullified through statutory legal acts such as Nigeria’s Land Use Act and Indonesia’s Forestry Law. Under their terms, state actors can take away customary rights in exchange for the economic interests of the commercial development of “public interest” in which the loss of irreplaceable spiritual heritage is a norm. Despite the progressive decision in the case with Indonesia’s Decision 35/2012, which helps distinguish customary forests from state lands, there are still bureaucratic difficulties with recognizing the rights of communities. Without an essential reform of the legislative definitions of the “subject of rights,” the SNS will remain the victims of the “politics of indigenous ignorance” in which the economic goal overcomes the “human factor.”

Both states should take the initiative of incorporating a community-based legal framework, which is based on the notion of FPIC. They must ensure the passage of organic laws that automatically recognize SNS based on the community's own "living law," which will not involve complicated processes of verification by the state. This implies that the Nigerian government must make amendments to the NCMM Act and LUA by striking off provisions that annul communal titles and give precedence to mining over the preservation of cultural heritage. The Indonesian government, too, must streamline the process of Regional Regulation for customary forests, thus implementing the decisions of courts favouring the rights of the indigenous communities. In addition to this, both nations must incorporate the "sacred site core zones" in the statute as an area of non-extraction irrespective of whether it falls within national parks or state forests.

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⁵¹ Edy Sahputra et al., “Assessing the Sustainability Status of Mangrove Forest Ecosystem Management by Coastal Community in Jaring Halus Village, North Sumatra, Indonesia,” *Biodiversitas: Journal of Biological Diversity* 23, no. 1 (2022).

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