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Comparative Study on the Management and Utilization of Takimpo Sara Land Based on Customary Law in Indonesia and Nigeria

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Mapping; Sara Land; Customary Land; Indigenous; Comparison.

Abstract

This study analyzes the management and utilization of Sara customary land in Takimpo Village, Buton Regency, managed by the indigenous community based on customary law principles, and compares it with the customary land management system in Nigeria. Sara land holds significant cultural, social, and economic value for the indigenous community, who manage it based on principles of collectivity and consensus. The research method used is socio-legal, employing a qualitative approach through interviews, observations, and analysis of data obtained from the indigenous community, as well as relevant legal literature. The key findings indicate that the customary law principles in Takimpo emphasize communal land ownership, consensus as the decision-making mechanism, and sustainability in land use. Although customary law is respected, there is tension with state policies that prioritize individual land ownership. A comparison with Nigeria reveals similar principles of collectivity; however, state policies in Nigeria are more dominant, leading to tensions with the customary legal system. In conclusion, legal recognition of customary land needs to be strengthened in national land policies to protect the rights of indigenous communities. Mapping customary land based on customary law is essential to ensure sustainability and protect the rights of indigenous communities in managing their land.

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Introduction

Mapping the management and utilization of customary lands, especially those managed by the Takimpo indigenous people in Buton Regency, is an interesting and important theme in the study of agrarian law and customary law. Customary land, known as land *Sara*, has a very strategic position, both socially, culturally, and economically for the local indigenous people. In this context, customary land mapping is not just an attempt to know the physical boundaries of the land, but also includes a deeper understanding of how the land is managed and utilized based on the applicable

customary law system.¹

Takimpo customary law pays special attention to the principles of land management inherited from ancestors, which reflect the close relationship between society and nature. Tanah Sara, as part of the ancestral heritage, is not only seen as an economic resource, but also as an integral part of the cultural and social identity of the community. The Takimpo indigenous people consider land as an entity that must be maintained and preserved, both for their current generation and for future generations. In the management process, there are rules that regulate the distribution of land, use rights, and obligations that must be complied with by every member of the community.

However, the biggest challenge in customary land management is how to maintain the sustainability of the customary law system amid the demands of the times and changes in national policies that are often not in line with customary values. Moreover, customary land management is often in tension with state policies that prioritize the concept of individual or corporate land ownership, which aims to simplify land administration and management. Indigenous peoples' knowledge systems and practices are critical to sustainable land and resource management. The system is deeply rooted in their cultural heritage and environmental stewardship.²

The conflict between customary law and state law is further complicated when national laws and regulations do not recognize or even ignore the existence of customary land rights, which leads to difficulties in the protection of land rights for indigenous peoples. This is evidenced by the fact that while the law positively recognizes the existence of customary lands, indigenous peoples are often marginalized in the management of their own natural resources due to the lack of recognition of indigenous rights in national regulations.³ In this context, it is important to conduct a comprehensive mapping of customary lands, which includes not only physical aspects such as land

¹ Kathryn Robinson, 'Can Formalisation of Adat Land Regulation Protect Community Rights? The Case of the Orang Asli Sorowako and the Karongsi'e/Dongi' (2019) 20 Asia Pacific Journal of Anthropology 471 <<http://www.scopus.com/inward/record.url?scp=85074012186&partnerID=8YFLogxK>>.

² Christopher M Anierobi and others, 'Community Land Conflicts and Pro-Poor Urban Land Access in Enugu, Nigeria: Church Involvement for Social Inclusion' (2025) 81 HTS Teologiese Studies / Theological Studies 11 <<https://hts.org.za/index.php/hts/article/view/10511>>.

³ VW Sujarweni, 'Hukum Adat Dan Pengelolaan Tanah Ulayat Di Indonesia' (2017) 25 Jurnal Ilmu Hukum 178.

boundaries, but also legal aspects that include the recognition of indigenous peoples' rights to the land. This mapping is necessary so that the indigenous people of Takimpo can defend their rights in the face of the pressures of the state's agrarian policies and changes in land use that are increasingly rapid. Customary lands not only serve as a source of livelihood, but also as a symbol of solidarity and collective strength within indigenous peoples.⁴ Therefore, the management and utilization of customary lands must consider the principles upheld in customary law, such as deliberation, openness, and social justice, which are the basis for accurate and valid customary land mapping according to customary law.

A comparison between Indonesia and Nigeria in terms of customary land management provides a valuable perspective on how countries with strong customary law systems can manage and utilize customary lands in the broader context of state law. In Indonesia, although customary law has an important place in the lives of indigenous peoples, legal recognition of customary lands is often overlooked in the national legal system. This is reflected in the laws and regulations governing land, such as the Basic Agrarian Law, which emphasizes more on individual and corporate land ownership. Despite the recognition of customary law in the constitution and some regulations, the implementation of such recognition is still limited.⁵ Indigenous peoples are often marginalized in their own natural resource management due to policies that favor administrative mechanisms that ignore customary land management systems. In Nigeria, although the customary law system also has a strong position in people's lives, the challenge faced is more of a conflict between the customary law system and the development policies driven by the central government.⁶ This reflects that although customary law in Nigeria is still recognized, it often collides with development policies

⁴ Sukirno Sukirno and Kadek Cahya Susila Wibawa, 'Indigenous Land Dispute Resolution in Indonesia: Exploring Customary Courts as an Alternative to Formal Judicial Processes' (2024) 6 *Revista Brasileira de Alternative Dispute Resolution* 187 <<https://www.forumconhecimento.com.br/pesquisa/todos>> accessed 22 June 2025.

⁵ E Setiawan, 'Integrating Customary Law in Indonesian Agrarian Policy: A Critical Analysis' (2019) 18 *Indonesian Journal of Law and Society*.

⁶ Anierobi and others (n 2).

that prioritize the interests of the state and investors.⁷

Previous studies indicate that the management and utilization of customary land in Takimpo, Indonesia, align with recent research emphasizing the importance of recognizing and protecting indigenous land rights. For example, a study by Syamsuddin Pasamai highlights legal conflicts between the indigenous community's ulayat rights and state-granted land use rights (HGU) allocated to third parties, particularly large corporations.⁸ Pasamai reveals that the strengthening of HGU in agrarian policies, coupled with weak protection of ulayat rights, triggers land conflicts and social injustice.

Furthermore, research by Sunarno examines customary land disputes in Indonesia, focusing on the roles of legal institutions and government authorities. This study provides insights into the challenges of resolving customary land disputes and underscores the importance of policy reform to ensure the protection of indigenous communities' rights.⁹ In Nigeria, a study by Umukoro, Kore-Okiti, and Megbele shows that discriminatory customary inheritance laws undermine women's land rights, including participatory environmental rights.¹⁰ The study highlights gender inequality in customary land ownership and emphasizes the need for legal reforms to ensure justice for women. Additionally, research by Chiwuzie, Ogunba, and Dabara explores women's land rights under customary systems in Ile-Ife, Nigeria. While progress has been made in improving women's access to land rights, the study demonstrates that gender inequality has not been fully resolved and protection of women's rights remains necessary.¹¹

⁷ Olayinka Lewis, 'Resolving the Problem of Land Ownership in Nigeria' (2025) 33 *African Journal of International and Comparative Law* 142 <<https://www.euppublishing.com/doi/abs/10.3366/ajicl.2025.0517>>.

⁸ Syamsuddin Pasamai, 'Customary Land Rights Versus Land Use Rights (HGU)' (2025) 4 *Interdisciplinary Journal and Hummanity (INJURITY)* 483 <<https://injury.pusatpublikasi.id/index.php/inj/article/view/1447>> accessed 10 October 2025."plainCitation": "Syamsuddin Pasamai, 'Customary Land Rights Versus Land Use Rights (HGU)

⁹ Sunarno and Hanna Ambaras Khan, 'Customary Land Disputes in Indonesia' (2023) 13 *International Journal of Academic Research in Business and Social Sciences* Pages 2038 <<https://hrmars.com/journals/papers/IJARBSS/v13-i10/19103>>.

¹⁰ Brown Etareri Umukoro and others, 'Customary Land Ownership and Women's Land Rights in Nigeria: Extending the Frontiers of Feminist Environmental Justice' (2024) 04 *Journal of Environmental Law & Policy* 203 <<https://grassrootsjournals.org/jelp/0403m00445.html#status>>.

¹¹ Daniel Dabara, Olusegun Ogunba and Augustina Chiwuzie, 'Gender Land Right Issues under the Customary System of Ile-Ife, Nigeria', *The Future of the African Real Estate Sector: What Next? The 20th Annual AfRES Conference* (African Real Estate Society 2021) <<https://afres.architexturez.net/doc/oai-afres-id-2021-021>>.

Comparing these findings with the current study shows that, although there are similarities in the challenges faced by indigenous communities in Indonesia and Nigeria, each country's social, cultural, and legal context affects the implementation and effectiveness of customary land rights protection. Therefore, it is essential to adopt a contextual approach when formulating policies and laws that support the sustainable and equitable management and utilization of customary land.

The main legal issue that arises in the mapping of customary lands between Takimpo in Buton Regency and certain areas in Nigeria lies in the tension between customary law recognition and the country's legal system. Customary land mapping based on customary law in Takimpo and Nigeria is often confronted with state policies that do not fully accommodate customary rights in the prevailing land system.¹² One clear example is in the practice of customary land mapping which is often ignored by state land policies that prioritize the administrative aspects of formalities, such as land certificates that are not recognized by customary law.¹³ This conflict leads to the abandonment of land rights owned by indigenous peoples, which ultimately leads to social tensions and the potential for unilateral land takeover by outsiders, be it governments or companies. Mapping the management and use of customary lands in these two countries must take into account the tension between customary law and the laws of the country.¹⁴ In Indonesia, it is important to recognize that customary law is an integral part of the national legal system that can provide the basis for the protection of indigenous peoples' rights to their lands. In Nigeria, a similar thing is true where governments must integrate customary law principles in the country's legal system to ensure better protection of the rights of indigenous peoples in the management of their lands. Through proper mapping, it is hoped that the rights of indigenous peoples can be properly protected, so that customary lands are not only a

¹² J Corbett and others, 'Indigenous Mapping', *International Encyclopedia of Human Geography* (Elsevier 2009) <<https://linkinghub.elsevier.com/retrieve/pii/B9780080449104000560>> accessed 22 June 2025.

¹³ Rodd Myers and others, 'Claiming the Forest: Inclusions and Exclusions under Indonesia's "New" Forest Policies on Customary Forests' (2017) 66 *Land Use Policy* 205 <<https://www.sciencedirect.com/science/article/pii/S0264837716313436>> accessed 10 October 2025.

¹⁴ Amri Panahatan Sihotang, Zaenal Arifin and Mac Thi Hoai Thuong, 'The Philosophy and Essence of Ustomary Law in Southeast Asia: A Comparison of Indonesia, Vietnam, Thailand' (2025) 13 *Jurnal IUS Kajian Hukum dan Keadilan* 55 <<https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/1647>>.

heritage that must be preserved, but can also provide sustainable benefits for future generations. Customary land mapping based on customary law will provide clearer legal force for indigenous peoples to defend their rights in the face of pressure from more dominant development policies.

Research on the management and utilization of customary land is often limited to studies focusing on a single country or community. While several studies have discussed various customary legal systems in Indonesia, particularly in the context of land management by indigenous communities, very few compare these systems with those of other countries that have similar customary legal systems. Takimpo, as one of the villages still practicing land management based on customary law in Indonesia, offers a unique approach with principles of collectivity and consensus. However, despite research explaining the customary land management system in Indonesia, there is still a lack of studies comparing Indonesia with other countries, especially in the context of comparing it with countries that also have indigenous communities managing land based on customary law, such as Nigeria.

A comparative study between Indonesia (Takimpo) and Nigeria is crucial to fill this knowledge gap, as, although both countries have customary legal systems emphasizing collective principles in land management, they face different challenges related to legal recognition of customary land within their respective national legal frameworks. In Indonesia, although customary law has a place in the national legal system, state policies that prioritize individual land ownership often conflict with customary law practices. Meanwhile, in Nigeria, state policies that dominate land rights regulation often lead to tensions with the more collective customary legal system. Therefore, this research is essential to understand how both countries manage customary land within different contexts yet share similar principles, as well as to explore potential solutions that can be applied in both countries to strengthen recognition and protection of indigenous land rights. By conducting this comparative study, the research can provide new insights into how the customary legal systems in Takimpo and Nigeria can complement each other in addressing the challenges of globalization and development, and how the recognition of indigenous land rights can be better integrated into the national policies of both countries.

So the formulation of the problem in this study is: What are the principles of customary law in the management and use of customary land? and How does the management and utilization of Takimpo customary land in Indonesia compare with the customary land management system in Nigeria? This study aims to analyze the principles of Sara customary law in the management and utilization of Sara customary land in Takimpo, Buton, Indonesia, focusing on the aspects of collectivity, consensus, and sustainability in land use. Additionally, this study also aims to compare the customary land management and utilization systems in Takimpo with those in Nigeria, to identify similarities and differences in the application of customary law principles in both countries. Through this objective, the study seeks to explore the challenges faced by both countries in preserving the land rights of indigenous communities, as well as to emphasize the importance of recognizing customary law in national land policies in both Indonesia and Nigeria

Theoretical Foundation

1. Legal Pluralism

Legal pluralism refers to the coexistence of multiple legal systems within a single state or society. This concept is particularly significant in contexts where customary laws, which are locally rooted, interact with national legal systems. The study of legal pluralism provides essential insights into how different legal norms function in parallel and sometimes conflict.

Legal pluralism facilitates a coexistence where various legal systems operate alongside each other. In the case of customary law, this arrangement allows indigenous communities to maintain their legal traditions while also interacting with state laws, which are often more formalized and standardized.¹⁵ It further emphasizes that in countries like Indonesia legal pluralism is evident in land governance systems, where state laws prioritize individual land ownership through formal mechanisms, while

¹⁵ Franz Von Benda-Beckmannn and Keebet Von Benda-Beckmannn, 'The Dynamics of Change and Continuity in Plural Legal Orders' (2006) 38 *The Journal of Legal Pluralism and Unofficial Law* 1 <<http://www.tandfonline.com/doi/abs/10.1080/07329113.2006.10756597>>.

customary law still governs the communal use and inheritance of land.¹⁶

In Indonesia, legal pluralism reflects the tension between the formal state legal system and indigenous legal traditions. While the Indonesian constitution recognizes customary law, its implementation within the formal state legal framework is often limited.¹⁷ State-driven land policies, such as land certification, are often at odds with indigenous systems that emphasize collective land ownership and community stewardship of natural resources.

Legal pluralism, in this context, is not merely an issue of coexistence but a dynamic interaction where the state's legal structures and indigenous norms sometimes support and sometimes challenge one another. Legal pluralism can enrich the legal system by offering alternatives for dispute resolution that are more suited to the local cultural context. This is particularly important when considering land and resource management, where customary laws often provide more sustainable and culturally appropriate mechanisms than state-imposed regulations.¹⁸

2. Customary Land Ownership Systems

Customary land ownership systems refer to a set of norms governing the collective management of land based on tradition and local knowledge. Unlike the individualistic concept of land ownership that prevails in state law, customary land ownership emphasizes communal rights and responsibilities, deeply rooted in social, cultural, and environmental sustainability.

In many indigenous communities, land is not seen merely as an economic asset but as a communal heritage, passed down through generations. This communal approach to land management ensures that resources are shared equitably, and the long-term sustainability of land use is maintained for future generations.¹⁹ In many indigenous systems, land is governed by a collective stewardship model, where the land is treated

¹⁶ Sujarweni (n 3).

¹⁷ Setiawan (n 5).

¹⁸ D Fitzpatrick, 'Legal Pluralism and Land Rights in the Global South'.

¹⁹ J Corbett, 'Indigenous Mapping' [2009] International Encyclopedia of Human Geography.

as a living entity with which the community has a spiritual and cultural bond.²⁰ This relationship ensures that land is preserved not only for immediate use but also for the well-being of future generations. Takimpo Village in Buton shows how customary land management systems prioritize collective decision-making.²¹ The land in this community is viewed as an ancestral inheritance, and its use must be agreed upon through communal deliberation, a principle that is central to the Sara customary law. This contrasts with national land laws, which often emphasize individual ownership and administrative processes like land registration and certification. Customary land systems are characterized by a collective approach to land use, where no single individual can unilaterally make decisions about land transfer or usage. Such decisions are made collectively, ensuring that land remains under the control of the community and is used according to traditions that balance the needs of both people and nature. Land is treated as a shared resource rather than a commodity to be bought or sold.²²

The interaction between customary law and state law often leads to tensions, especially in the context of land rights. While customary law offers a model that can balance social, environmental, and economic needs, state law is often more focused on formalized land registration, which frequently clashes with the collective ownership model of customary law.²³

In Takimpo Village, the indigenous community's use of Sara customary law in land management often conflicts with state policies that prioritize individual land ownership and formal registration. This conflict is evident in land conflicts and resource disputes, as state policies often overlook the communal nature of land ownership and the importance of customary rights. This tension reflects broader challenges in integrating legal pluralism into national land policies, where indigenous knowledge and practices are often marginalized in favor of more formal, state-driven processes.²⁴

²⁰ Safrin Salam, 'Penguasaan Fisik Tanah Sebagai Alat Bukti Kepemilikan Tanah Ulayat Di Pengadilan' (2023) 5 *Crepido* 1 <<https://ejournal2.undip.ac.id/index.php/crepido/article/view/15959>>.

²¹ *ibid.*

²² Von Benda-Beckmann and Von Benda-Beckmann (n 15).

²³ Setiawan (n 5).

²⁴ Salam (n 20).

Moreover, in Nigeria the state's emphasis on land formalization often undermines the rights of indigenous peoples.²⁵ The shift from communal ownership to individual ownership has resulted in land conflicts and a lack of legal recognition for the rights of indigenous communities over their traditional lands.

Customary law plays a crucial role in regulating land use within indigenous communities. Customary systems are often more attuned to local ecological conditions and social needs than state law. In the case of Takimpo Village, land management is governed by principles of sustainability, deliberation, and communal benefit, all of which ensure that the land is preserved for future generations.²⁶ This stewardship approach is rooted in local wisdom, by which the collective knowledge of land use is passed down through generations. It involves not only sustainable agricultural practices but also culturally significant practices that ensure a balanced relationship between the community and their environment.²⁷

However, the implementation of customary land ownership systems faces challenges when they collide with state-driven land policies. The recognition of customary land rights in the formal legal system is often inadequate, leading to the marginalization of indigenous communities and the loss of their land rights.²⁸ This gap between customary law and state law can create legal uncertainty and fuel conflicts, as indigenous people are forced to navigate both legal systems to assert their land rights

Research Method

The research method used in this study is socio-legal research, which integrates social approaches with legal studies to understand legal phenomena in a broader social context. Therefore, this approach allows researchers to examine the role and impact of customary law in the practice of social life of the community, as well as identify the relationship between social norms and the applicable legal rules. The location of the

²⁵ A Oluwaseun, P Johnson and T Lawal, 'Customary Land Tenure and State Land Reforms: The Case of Nigeria' (2020) 23 *International Journal of Land Law and Policy*.

²⁶ Corbett (n 19).

²⁷ Von Benda-Beckmann and Von Benda-Beckmann (n 15).

²⁸ Sujarweni (n 3).

research was Takimpo Village, Pasarwajo District, Buton Regency, which is an area that has indigenous peoples with a distinctive legal system.

The population in this study consists of the Takimpo customary law community. The total number of respondents surveyed was 20 individuals), selected using purposive sampling technique. The 20 individuals were chosen based on their roles, including the Head of the Takimpo Customary Institution, the Board of the Customary Institution, and the Takimpo Indigenous Community. Data from respondents in Nigeria were obtained from literature review and comparative legal study. The study was conducted over a period of one year. The data sources used in this study include three types of sources: primary data, secondary data, and tertiary data. Primary data were obtained through in-depth interviews with the Takimpo indigenous people, traditional leaders, customary law apparatus, and other related parties involved in the management and utilization of Sara land. Secondary data were obtained from a variety of relevant legal literature, including books, journal articles, research reports, and legal documents related to customary law in Indonesia, particularly those focusing on agrarian customary law, land mapping, and natural resource management. This literature is used to provide a deeper understanding of customary law concepts, both in theory and in practice, as well as to compare the customary law system in Takimpo with customary law systems in other countries, such as Nigeria, which also apply customary law in land management. Tertiary data are in the form of encyclopedias, legal dictionaries, and other references that provide additional context related to customary law issues, land mapping, and legal theory. The data collection techniques used in this study include observation, interviews, and data analysis. Observations were carried out to see firsthand how the Takimpo people carry out the customary law system in their daily lives, especially in terms of customary land management. Once the data are collected, the next step is data analysis. The data analysis in this study was conducted in a descriptive-qualitative manner with systematic stages. It began with data reduction, where information obtained from interviews and observations was filtered to ensure that only data relevant to the topic were retained. This process allowed the researcher to focus on the key aspects of customary land management in Takimpo, such as the principles of collectivity, consensus,

and sustainability in land use. Irrelevant or non-supporting data were discarded. After data reduction, the next step was categorization, where the filtered information was grouped based on emerging themes. These themes encompassed various elements of customary land management, such as consensus-based decision-making mechanisms and the application of sustainability principles in land use. Additionally, the data were categorized to facilitate a comparison between the customary land management systems in Takimpo and Nigeria, which is the main focus of this study. The subsequent stage was comparison, where the grouped data were compared to identify similarities and differences between customary land management in Indonesia and Nigeria. This process provided an understanding of how customary law principles are applied in two different social and cultural contexts, as well as the challenges faced by both countries in protecting indigenous land rights. The conclusions were drawn by summarizing the key findings obtained from the analysis process. These conclusions include an understanding of the application of Sara customary law principles in Takimpo, as well as insights into customary land management in Nigeria. The overall aim of this analysis process is to provide a clearer picture of the role of customary law in land management and how these systems can be strengthened to protect the land rights of indigenous communities in both countries.

Principles of Sara Customary Law in the Management and Utilization of Sara Customary Land in Buton Regency

The management and utilization of customary land in Buton Regency, especially in Takimpo Village, is greatly influenced by the principles of Sara customary law that have been rooted in the life of the community. Sara's customary law, which applies in Takimpo, serves as a guideline in regulating the rights and obligations of indigenous peoples in land use, as well as the relationship between the community and the environment. Sara's customary law in the management of customary lands places great emphasis on sustainability and balance between people, land, and the social environment. These customary law principles are collective, with norms that are respected and accepted by all members of the indigenous people, both those directly involved in management

and those outside the customary law system.²⁹ From the perspective of legal pluralism, communities do not merely operate under a single formal legal system but live within multiple legal norms that function in parallel and influence each other.³⁰ In Takimpo, although state law formally regulates land ownership through individual registration, Sara customary law remains the primary guideline in daily practice. The indigenous community applies the principles of collectivity, consensus, and sustainability to regulate rights and obligations related to land. The tensions arising between state law and customary law are not simply conflicts but reflect the dynamics of legal pluralism: customary law functions as a mechanism of social legitimacy that preserves community structures, while formal state law provides a broader administrative framework. This analysis underscores that understanding legal pluralism is crucial for evaluating the effectiveness of protecting indigenous land rights, as formal legal recognition alone is insufficient to ensure sustainable land management practices. On the other side, commons governance approach helps highlight how Sara land is managed as a shared resource. Customary land in Takimpo is not individually owned but collectively managed under mutually agreed rules.³¹ Decision-making through consensus, internal monitoring by customary authorities, and the application of social sanctions for rule violators exemplify successful commons governance principles. This approach demonstrates that indigenous communities are capable of maintaining a balance between land utilization and environmental conservation, reducing the risks of overuse or resource degradation. When compared with Nigeria, it becomes evident that although collective principles are also applied in customary land management, stronger state intervention—through formal land registration systems—often diminishes the effectiveness of community-based governance. This illustrates that the success of commons management depends not only on the rules themselves but also on the degree of community autonomy in enforcing them.

²⁹ Faculty of Social Sciences and Humanities, National University of Malaysia, Bangi, Malaysia and Manaf Et Al., 'Native Customary Land and Ownership Disputes among Owners' (2019) 6 International Journal of Advanced And Applied Sciences 81 <<http://www.science-gate.com/IJAAS/2019/V6I11/1021833ijaas201911011.html>>.

³⁰ John Griffiths, 'What Is Legal Pluralism?' (1986) 18 Journal of Legal Pluralism and Unofficial Law 1.

³¹ Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press 1990).

From the perspective of customary law theory, Sara land is not merely an economic resource but also a social and cultural instrument that binds community members. Customary law functions as a normative system providing legitimacy for the distribution of rights, obligations, and decision-making mechanisms. In Takimpo, customary law emphasizes social justice, collectivity, and intergenerational responsibility in land management. In other words, customary law provides a framework that maintains balance between individual and community interests, as well as between humans and the environment. The comparison with Nigeria shows that, although customary law is still recognized, the dominance of the state in land management often generates conflicts with the principles of collectivity and sustainability upheld by indigenous communities. This highlights the importance of integrating customary law into national policies, not only for formal legitimacy but also for social and ecological sustainability.

By integrating these three perspectives, the management of Takimpo customary land can be understood as a complex and layered legal practice. Legal pluralism explains the interaction between formal law and customary law; commons governance highlights effective mechanisms for managing shared resources while customary law theory underscores the normative and cultural dimensions of these practices. This critical analysis demonstrates that the success of customary land management relies not only on formal regulations but also on social legitimacy, community participation, and internal oversight mechanisms. Comparisons with Nigeria emphasize that when state intervention is dominant and customary law is insufficiently respected, principles of collectivity and sustainability are often threatened, making adequate legal recognition and protection of indigenous land rights essential.

The customary land tenure system is firmly rooted in cultural and environmental relations with the land. These systems often reflect social, economic, and cultural benefits to communities, which are not typically obtained through individual land certificates.³² In this context, indigenous peoples base the management and utilization of

³² Regina Scheyvens and others, 'Business Serves Society: Successful Locally-Driven Development on Customary Land in the South Pacific' (2020) 112 *Geoforum* 52 <<https://www.sciencedirect.com/science/article/pii/S0016718520300774>>.

customary lands based on customary law.³³ The principles of customary law attached to the customary law are as follows:

The first principle that can be identified is communal rights on the ground. In contrast to the dominant system of individual land ownership in national law, in the Takimpo customary law system, land is considered an ancestral inheritance that is a common right of indigenous peoples.³⁴ Land is conceived not merely as an economic asset but also as a cultural and spiritual. Every individual in the Takimpo indigenous people has a responsibility to preserve customary land, and they cannot arbitrarily change or transfer land rights without the consent of the authorities in customary law, namely Sara. The second important principle in the management of Sara's customary land in Takimpo is deliberation as a decision-making mechanism. Any decision related to customary lands, such as the use or transfer of land rights, must go through a deliberation process between members of indigenous peoples and customary stakeholders. This deliberation is held in a forum called Baruga, which is a place for communities to discuss and resolve indigenous issues. In the context of land management, deliberation is a way to reach consensus on land division and utilization, as well as to avoid internal conflicts within indigenous peoples.

Furthermore, the principle of compliance with customary manners is an important aspect in the use of Sara's customary land. In the Takimpo community, every member of the community is required to follow the rules that have been set by custom. Compliance with these customary manners includes respect for predetermined land boundaries, a prohibition on altering or damaging land without permission from indigenous parties, and an obligation to protect land from excessive damage or exploitation. This principle reflects how Sara's customary law functions as a sustainable natural resource management system. In this case, land should not be treated as a freely tradeable or controlled commodity, but should be used with environmental sustainability and taking long-term

³³ E Nuar and GJ Lunkapis, 'Customary Land and the Indigenous People of Sabah: A Case Study of Sinumagang-Tinuman Toki' (2019) 286 IOP Conference Series: Earth and Environmental Science 012039 <<https://doi.org/10.1088/1755-1315/286/1/012039>>.

³⁴ Gde Made Swardhana and Suviwat Jenvitchuwong, 'The Participation within Indigenous Land Management: Developments and Challenges of Indigenous Communities Protection' (2023) 3 Journal of Human Rights, Culture and Legal System 308 <<https://jhcls.org/index.php/JHCLS/article/view/72>>.

benefits for all indigenous peoples into account. Transparency and accountability are also important principles in the management of Sara's customary land. In the Takimpo indigenous people, decisions taken in deliberations must be carried out in a transparent and accountable manner. This includes the obligation of the customary apparatus to communicate the results of the decision to all members of the community and ensure that each member is aware of their rights and obligations related to customary lands. This principle serves to prevent abuse of power and maintain public trust in the customary apparatus. As explained by Sujarweni (2017), transparent customary land management is the key to maintaining the legitimacy of customary law in the midst of increasingly complex social and legal changes. Without transparency, communities will lose trust in the customary law system, which in turn can disrupt the sustainability of the land management system.

One of the important principles in Sara Takimpo customary law is the customary sanctions function as mechanisms of restorative justice within the community. Any violation of customary law norms, such as violating land boundaries or committing actions that damage customary land, will be subject to customary sanctions in the form of fines or other social measures. These sanctions serve as a tool to maintain order in indigenous peoples and ensure that each individual complies with the existing rules. However, it is important to note that these customary sanctions are not punitive in nature that leads to violence or discrimination, but rather restorative, which aims to restore relationships between individuals and society as a whole.

The principle of local wisdom is also very dominant in the management of customary land in Takimpo. This local wisdom includes knowledge and experience passed down from generation to generation regarding the proper ways of managing land and other natural resources. In this case, the Takimpo people have knowledge about planting patterns that are appropriate to the season, as well as ways to maintain the soil so that it remains fertile and productive. This principle of local wisdom also reflects the harmonious relationship between humans and nature, which is the basis of Sara's customary law.

The principles of Sara customary law in the management of Takimpo customary land are also seen in the relationship between customary law and state law. Although

state law in Indonesia regulates the land ownership system more formally through the National Land Agency (BPN), Sara's customary law is still respected and applied in the local context. This reflects the existence of legal pluralism in Indonesia, where customary law still plays a significant role in land management in certain areas, such as Takimpo. The principles of Sara customary law in the management and use of customary lands in Takimpo reflect a holistic legal system, which not only regulates the use of natural resources, but also maintains the social and cultural relations of indigenous peoples. These principles play a critical role in maintaining a balance between economic, social and environmental interests, as well as ensuring that customary lands remain shared property that must be protected and preserved for future generations.

Comparison of Legal Arrangements for the Management and Utilization of Takimpo Customary Lands in Indonesia with the Customary Land Management System in Nigeria

The management and utilization of indigenous lands is an integral part of the lives of indigenous peoples, both in Indonesia and in Nigeria. Although the two countries have different legal systems, the basic principles regarding the ownership and management of customary lands have close similarities, with an emphasis on the collectivity and sustainability aspects. However, there are also a number of significant differences related to the way customary lands are regulated, maintained, and utilized by communities.³⁵ This arrangement often involves the interaction between the existing customary law system in society and the applicable state law.

In Indonesia, especially in Takimpo Village, Buton Regency, the management and utilization of customary land is based on customary law known as Sara. Land in customary law is not only seen as an economic object, but also as an entity that has cultural, social, and spiritual value. The land is inherited from generation to generation and managed by indigenous peoples on the basis of deliberation and mutual agreement.

³⁵ Nicholas K Tagliarino and others, 'Compensation for Expropriated Community Farmland in Nigeria: An In-Depth Analysis of the Laws and Practices Related to Land Expropriation for the Lekki Free Trade Zone in Lagos' (2018) 7 Land 23 <<https://www.mdpi.com/2073-445X/7/1/23>>.

There is no legitimate sale and purchase transaction without involving deliberation and collective decisions from indigenous peoples, especially customary apparatus, who have the authority to determine land use rights.

The Takimpo indigenous people adhere to customary law principles that respect collective rights and maintain the sustainability of land management. The division of land rights, the regulation of territorial boundaries, and the use of natural resources are all carried out with regard to the sustainability and sustainability of the environment and common welfare. However, in Nigeria, although many indigenous peoples maintain similar principles regarding communal land ownership, there are significant differences in the arrangements for the management and use of indigenous lands. The customary land management system in Nigeria depends largely on custom tenure, which is governed by social and family structures, especially in communities that adhere to the patrilineal system. Land is considered the joint property of a family or clan, but its management is more controlled by the head of the family or customary head who holds the authority in determining who is entitled to the land and how it is used.³⁶ The use of customary lands in Nigeria, while still heavily influenced by customary law, is often influenced by state policies that seek to accommodate national development needs.³⁷

Tabel 1. Similarities between Customary Land Management In Takimpo And Nigeria, which Include Aspects of Ownership, Utilization, and Regulation of Land Rights.

Aspects	Management and Utilization of Takimpo Customary Land (Indonesia)	Management and Utilization of Nigerian Customary Lands
Land Ownership	Land is considered a common property that is inherited from generation to generation.	Land is considered the common property of a family or clan, inherited patrilineally.
Management Principles	The management of customary lands is based on deliberation and joint decisions, involving customary apparatus and communities.	Land management is carried out by the customary head or head of the family, with the authority to decide on the use of the land.

³⁶ Victor Onyebueke and Cosmas Ikejiofor, 'Neo-Customary Land Delivery Systems and the Rise of Community-Mediated Settlements in Peri-Urban Enugu, Nigeria' (2017) 39 International Development Planning Review 319 <<https://www.liverpooluniversitypress.co.uk/doi/10.3828/idpr.2016.33>>.

³⁷ Cosmas Uche Ikejiofor, 'Integrative Strategies or Functional Interface?: Emerging Trends in Land Administration in Contemporary Enugu, Nigeria' (2006) 28 International Development Planning Review 137 <<https://www.liverpooluniversitypress.co.uk/doi/abs/10.3828/idpr.28.2.2>>.

Land Utilization	The use of customary land is regulated based on the principles of sustainability and sustainability, taking into account the social and economic needs of the community.	Land use is also influenced by the principle of sustainability, but there are often tensions with government policies related to the recognition of land ownership.
Land Rights	Land rights cannot be transferred without the consent of indigenous peoples.	Land rights are controlled by the customary head or head of the family, and often involve family or clan decisions.

Source: Processed from Primary Data, 2024

In general, these two systems have similarities in terms of the principles of collectivity and joint land management. Land is not only seen as an economic commodity, but also as an entity that has social, cultural, and spiritual meaning in people's lives. The principles of sustainability and environmental preservation are also an integral part of these two systems, although the implementation and challenges faced can differ depending on the respective local context.

On the other hand, although there are many similarities, there are a number of significant differences in the way customary land is managed and utilized between the Takimpo indigenous people in Indonesia and the indigenous peoples in Nigeria. One of the main differences lies in the state's involvement in the management of customary lands. In Indonesia, despite the influence of the state's legal system, the Takimpo indigenous people continue to manage their land based on strong customary laws, with little intervention from the state. In this context, customary law in Takimpo has a highly respected position in the daily life of the community. The state tends to give limited recognition to this customary law system, but still allows customary land management to be carried out independently by indigenous peoples.

The comparison between the customary land management systems in Indonesia and Nigeria indeed opens the space for expanding the analysis of how customary law interacts with state law. In this context, it is crucial to further explore whether state law in Nigeria truly negates the role of customary law, or if there is still room for the application of participatory principles, as seen in the Takimpo indigenous community

in Indonesia. Although state law in Nigeria, particularly through the 1978 Land Use Act, emphasizes individual land ownership and formal registration, the customary legal system continues to play a vital role in regulating land rights in many communities. In Nigeria, despite the government's increased control over land through formal registration, there remains space for indigenous communities to apply customary law in land management. This is evident in the land management by specific families or clans that still adhere to customary principles, although often hindered by state policies prioritizing land certification and more formal land use (Tengan, 2013).

However, the influence of the state on the management of customary land in Nigeria is often stronger compared to Indonesia. In Nigeria, although customary land rights are still recognized in many areas, the dominant state policies often lead to tensions between the customary legal system and national development policies. The Nigerian government, through laws and policies prioritizing individual land rights, frequently triggers land conflicts involving the appropriation of customary lands without regard for the rights of indigenous communities. On the other hand, despite these tensions, customary law in Nigeria still allows for the application of participatory principles in land management, as reflected in the family or clan structures that control land-related decisions, albeit within more limited boundaries set by state policies.³⁸

In Indonesia, particularly in Takimpo, despite tensions between customary law and state policies emphasizing individual land ownership, the customary legal system still has more room for autonomous application within indigenous communities. In Takimpo, land management is carried out through deliberation and collective decision-making, involving all members of the indigenous community, ensuring that every decision regarding land is made collectively and transparently. This contrasts with Nigeria, where, although there is consultation at the family or clan level, decisions regarding land use rights are often dominated by traditional leaders or heads of families, leading to a more hierarchical land management system.³⁹

³⁸ John Bruce and SE Adholla, *Searching for Land Tenure Security in Africa* by John W. Bruce | Open Library <https://openlibrary.org/books/OL1131356M/Searching_for_land_tenure_security_in_Africa> accessed 10 October 2025.

³⁹ GR Woodman, *Legal Pluralism and Land Law in Africa* (Cambridge University Press 2011).

In this regard, customary law in Takimpo retains more autonomy in land management, though it still faces challenges from state policies that prioritize administrative formalities. In contrast, while customary law remains significant in Nigeria, state intervention through policies emphasizing individualization and land registration creates tensions between the customary legal system and state law. These conflicts exacerbate legal uncertainties and often lead to agrarian conflicts involving land disputes between indigenous communities and the state or external parties with development interests.⁴⁰

Regarding the implications for agrarian conflicts, the tensions between customary law and state policies in both countries are highly significant. In Nigeria, the disregard for customary land rights regulated by state law has led to numerous agrarian conflicts, especially with state policies prioritizing formal and individual land ownership. This has sparked land disputes between indigenous communities and the government or corporations attempting to exploit customary lands for development or investment purposes. These tensions create legal uncertainty for indigenous communities, often forcing them to face legal decisions that do not reflect the principles of collectivity and sustainability upheld by their customary law.⁴¹

In Indonesia, although indigenous communities like those in Takimpo still retain autonomy in land management, state policies prioritizing individual land ownership and land registration also create similar tensions. The lack of recognition of customary land rights within the formal legal system opens up opportunities for land expropriation by stronger external parties, whether the government or corporations. These tensions worsen when indigenous communities have to confront state policies that do not accommodate the principles of customary law in land management.⁴²

The agrarian conflicts in both countries reflect the importance of legal recognition of land rights based on the principles of collectivity and sustainability. Recognizing

⁴⁰ S James Anaya, *Indigenous Peoples In International Law: Second Edition* (Oxford University Press 2004) <<https://doi.org/10.1093/oso/9780195173499.001.0001>> accessed 10 October 2025.

⁴¹ MB Yatib, 'Traditional Land Rights and Agrarian Conflict in Nigeria: The Role of Customary Land Tenure in the Legal System' (2002) 46 *Journal of African Law* 187.

⁴² JA Tengan, 'The Persistence of Customary Land Tenure in West Africa: A Case Study of Nigeria' [2013] *African Journal of International and Comparative Law* 305.

customary legal systems in national policies would help alleviate these tensions and provide better protection for indigenous communities in maintaining their land rights. Without such recognition, indigenous communities will continue to face threats to their rights, which will, in turn, increase the potential for agrarian conflicts involving their lands.⁴³

The comparison of customary land management between Takimpo in Indonesia and various communities in Nigeria reveals important lessons for both countries regarding the protection of indigenous rights and sustainable land governance. In Indonesia, the Sara land management practices, which emphasize the principles of collectivity, consensus, and sustainability, demonstrate that customary law can create fair and participatory mechanisms for land management. The lesson learned from this context is the importance of providing space for indigenous communities to maintain their autonomy in managing land, even within a formal and individualistic state legal framework. The experience of Takimpo shows that the success of customary land management depends not only on formal regulations but also on social legitimacy, adherence to customary norms, and active community participation in decision-making.

On the other hand, the experience in Nigeria illustrates the challenges that arise when state intervention is more dominant, particularly through formal land registration systems that sometimes conflict with customary law principles. Recent studies indicate that misalignment between state law and customary law can lead to agrarian conflicts, especially concerning women's rights and collective ownership. The lesson learned from the Nigerian context is the need for policies that are more responsive to indigenous rights and inclusive, accommodating principles of collectivity and sustainability. This underscores the importance of integrating customary law into national policies, not only as formal recognition but also as a mechanism to ensure social justice, environmental sustainability, and community participation.

From this comparative analysis, it is clear that both countries can learn from each other. Indonesia can draw on Nigeria's experience to strengthen formal legal frameworks

⁴³ Bruce and Adholla (n 38).

that recognize indigenous rights without undermining community autonomy, for example through land certification that respects collective ownership and consensus principles. Conversely, Nigeria can learn from Indonesia regarding the effectiveness of community-based customary land management, emphasizing the importance of social legitimacy, internal oversight, and the involvement of all community members in decision-making. Therefore, this comparison not only highlights similarities and differences but also provides practical insights for policy development and legal reform in both countries, ensuring that customary land management is fair, sustainable, and oriented toward community well-being.

In conclusion, while there are shared principles in customary land management between Indonesia and Nigeria, the differences in the acceptance of customary law by the state highlight the challenges faced by indigenous communities in maintaining their land rights. In both countries, the tension between customary law and state policies not only affects land management but also contributes to the emergence of agrarian conflicts detrimental to indigenous communities. Therefore, it is essential for states to accommodate the principles of customary law in national policies to reduce legal tensions and ensure the protection of indigenous communities' land rights.⁴⁴

However, in Nigeria, there is more influence from state policies in terms of land management. The Nigerian government through Land Use Act 1978 has created a system that governs land ownership and management across the country's territory, which limits indigenous peoples' traditional rights to their land. Land that was previously governed under customary law must now be registered and recognized by the state, creating a conflict between the customary law system and the national land system. Indigenous peoples in Nigeria are often forced to accept government intervention in the management of their customary lands, although indigenous principles still play a role in determining who has the right to manage land and how it is used. In communities like Awo-Idemili in Imo State, traditional practices such as land guarantees, communal

⁴⁴ Anaya (n 40).

ownership, and inheritance procedures have changed significantly.⁴⁵

In addition, in terms of land management autonomy, the Takimpo indigenous people have more freedom in determining who has the right to manage and utilize their customary lands. Every decision regarding land management in Takimpo is taken through deliberation involving all members of the indigenous people. Although the customary apparatus has the authority to lead deliberations, the final decision is always based on mutual consensus. In contrast, in Nigeria, despite deliberations at the family or clan level, the customary head or head of the family often has greater authority in determining how land is managed and who has the right to use it. This creates a more hierarchical land management system, with less participation from members of the community as a whole. Although the Takimpo indigenous people manage their land with a highly structured system based on customary law, formal recognition by the state of customary land rights is still limited.

This can lead to conflicts between customary law and national land policies that emphasize individual and registered land ownership. This creates difficulties in terms of land management outside customary territory and when the customary land is faced with development or foreign investment interests. In Nigeria, greater challenges often arise due to conflicts between customary law and state law. Government policies that emphasize the importance of land registration and the transfer of land rights into individual ownership are contrary to the basic principles of customary law that focus on collective ownership and shared management. This creates legal uncertainty, where indigenous peoples are often caught in a dilemma between maintaining a customary land management system or following a more formal state legal system. The management and utilization of customary lands in Takimpo and Nigeria have deep similarities in terms of the principles of collectivity and sustainability, but their implementation is greatly influenced by the interaction between customary law systems and the policies of their respective countries. Indigenous peoples in Takimpo tend to maintain more autonomy in the management of their customary lands, while in Nigeria, the influence of state

⁴⁵ Emeka Obioha, 'Change in Tenure Pattern and Customary Land Practices among Igbo Community in Southeastern Nigeria' 10 *The Anthropologist*.

law is stronger and creates more tension with customary law. In this context, the need for recognition and protection of customary law is crucial to ensure that customary law principles remain respected, despite pressure from more formal national policies.

Conclusion

This study demonstrates that the principles of customary law in the management and utilization of Sara customary land in Takimpo Village, Buton Regency, emphasize the values of collectivity, sustainability, and balance between humans, land, and the environment. Land is regarded as an ancestral heritage, managed collectively through deliberation, with clear rules to ensure environmental sustainability and social welfare. Land ownership is communal, and all decisions regarding land use are made collectively by the indigenous community. A comparison with Nigeria indicates that, although both countries share similar principles, there are differences in their implementation. In Takimpo, land management is more autonomous and respected within the local context, despite facing challenges from state policies, whereas in Nigeria, state intervention is more dominant through formal land registration systems, which often conflict with customary law principles emphasizing family or clan ownership. This comparison highlights an important lesson: Indonesia can strengthen its formal legal framework to recognize indigenous rights without diminishing community autonomy, while Nigeria can adopt the participatory and deliberative practices applied in Takimpo to enhance social legitimacy and the sustainability of customary land management.

Practically, this study recommends that the governments of both countries better respect and accommodate customary law principles in national land policies to prevent conflicts between state law and customary law. Comprehensive mapping of customary land based on customary law is necessary to ensure the protection of indigenous rights and the preservation of customary land. Furthermore, indigenous communities are encouraged to continue strengthening land management systems based on deliberation and transparency to ensure sustainability and social welfare in land governance. From a theoretical perspective, this study enriches the understanding of legal pluralism by demonstrating how state formal law and customary law can interact in complex ways

in the management of land resources. Additionally, the study affirms the relevance of commons governance and customary law theory as frameworks for understanding sustainable management of shared resources, providing a reference for the development of agrarian law and the protection of indigenous rights in both Indonesia and Nigeria.

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