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Editor

The Legal Protection of the Intangible Cultural Heritage

A Comparative Perspective



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The Legal Protection of the Intangible Cultural Heritage in the Hashemite Kingdom of Jordan

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1 Introduction

The safeguarding of the Intangible Cultural Heritage (*hereinafter* ICH) has emerged in Jordan as one of the urgent priorities in light of the decrease of valuable cultural heritage in modern times. This article will shed light on the implementation activities that have taken place in this domain since Jordan's ratification of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (*hereinafter* Convention). It will tackle the institutional, including the legal, protection of ICH at the national level. As an example of a potential inscription into the Representative List, the ICH element *Mansaf* has been portrayed; it is known as a manifestation of

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the Jordanian culinary traditions and deemed as a stimulus for social cohesion and communal identity. Some glimpses were given on an already inscribed element, namely the Cultural Space of the Bedu in Petra and Wadi Rum; it was proclaimed as one of the Masterpieces and incorporated into the Representative List in 2008.

2 The Role of the State in the Relationship with UNESCO: A Continuous Cooperation

Jordan joined UNESCO on 14.06.1950 (see JoNatCom 2006, p. 11). The Jordanian National Commission (JoNatCom) is part of the overall constitutional structure of the Organization. It is a governmental body and acts as a point of liaison with the Jordanian Government for UNESCO. It provides expert analysis and policy advice to the Jordanian Government on issues and matters relating to UNESCO and appropriate ways and means by which educational, scientific and cultural developments can best benefit the country. It is attached to the Ministry of Education and headed by its Minister. Its history in Jordan was indicative of the country's strong endorsement of UNESCO's main goals of human and sustainable development and building a culture of peace through its fields of competence: education, science and technology, social and human sciences, culture and communications. It brings several governmental departments, agencies and experts from different community spectra for the sake of developing strategies related to UNESCO matters. JoNatCom is engaged through relevant portfolio departments and institutions with consultation which covers individuals, organizations and agencies that are concerned with solidifying the engagement of Jordan with UNESCO.

According the information extracted from the Jordan UNESCO Country Programming Document (UCPD)¹ of 2012 prepared by the UOA (UNESCO Office in Amman), we can glean that UNESCO has constantly invested in targeted areas in which it has a comparative advantage in Jordan. For example, in the field of culture, the Office has supported and

will continue its support for the protection of Jordan's sites inscribed on the World Heritage List and assist in improving the management of museums and cultural objects, as well as in promoting cultural diversity.

In implementing its goals, it takes an intersectoral approach in the implementation of the majority of its activities through cultivating synergies between the sectors. It strives

to build inclusive knowledge societies, to preserve and encourage cultural diversity and to operationalise the link between culture and development, to promote sustainable development through natural and social sciences, to support freedom of information and expression

¹Information under this heading are *inter alia* derived from a UNESCO document (UNESCO 2012). I would like to express my sincere thanks to Ms Valentina Gamba (UNESCO OFFICE—Amman) for drawing my attention to this document.

for all. This is particularly relevant to the Jordan context, and encapsulates (the) in-country field office approach.

It is intended to revise the legal framework that governs management of culture, because it is so far unclear which government entity is responsible, and overlapping mandates and responsibilities create confusion. The government has the responsibility for the management of all cultural heritage (both intangible and tangible). However, the overlapping government roles (particularly between the Ministry of Tourism, Department of Antiquities, Ministry of Culture and decentralized regional authorities) have led to the mismanagement of sites, and a dissociation of the local community from their heritage, i.e.

- Communities have no decision-making authority and feel no sense of ownership of the sites beside which they live;
- They do not associate their heritage with their identity (the educational system teaches heritage only in terms of its economic worth), believing that heritage is merely a source of income to be exploited;
- The lack of ownership is leading to a loss of the cultural aspects of Jordanian society;
- Heritage sites are being damaged and cultural traditions are not being practiced;
- The lack of ownership will, in turn, lead towards the privatization of sites, which is a possible future for the major sites in the country.

UNESCO is working in partnership with the Government of Jordan as guided by the 2011–2013 Executive Development Program and the overarching 2006–2015 National Agenda. Both underwent revision which began in 2012. It will assist the Government of Jordan in the design and implementation of its national plans aimed at developing a knowledge-based economy, protecting its natural environment and rich cultural heritage, promoting democracy and reform, protecting freedom of the press and access to information, including media reform, and ensuring social justice for all individuals in Jordan; e.g. in the cultural sector, it improves the Government of Jordan's capacities to better value and protect the heritage in Jordan and engage equally with communities in its management.

Fostering cultural diversity, intercultural dialogue and a culture of peace through enhanced systems that promote and protect cultural and natural heritage. It implements its strategy on the country level by creating synergies with local partners and international organizations to improve efficiency and better coordinate the implementation of programs and activities; effectively monitor and evaluate all activities to understand the short and long-term impact of all capacity development activities; identify and reflect upon lessons learned from previous interventions.

The UOA will support Jordan in enhanced systems that promote and protect the cultural and natural heritage, enhanced environment for the promotion of intercultural dialogue and cultural diversity and strengthening institutionalization of culture for development. Moreover, some of the UOA's comparative advantages in the field of culture in Jordan can be mentioned here:

Setting standards for the protection and preservation of the tangible and Intangible Heritage and access to specialized international expertise.

Convening peace, dialogue and reconciliation initiatives such as promoting intercultural and interreligious dialogue for social cohesion and conflict resolution.

Fostering the development of cultural and creative industries and cultural development.

Best positioned to identify and address capacity-development needs in the fields of museums and cultural resources management.

On the other hand, the challenges that influence the operations and plans of UNESCO in Jordan can be summarized as follows:

- Regular turnover of government;
- Resource mobilization;
- Different planning.

The UOA has a wide net of national and international governmental and nongovernmental as well as local academic partners who work with it hand in hand to realize the common interests and benefits of the Jordanian community, e.g. Ministries, NGOs, museums, societies, institutions, and universities.

3 The Protection of the Intangible Cultural Heritage at the National Level: The Implementation of the 2003 Convention²

The Jordanian community consists of several cultural segments that shape its society, some of which are quite similar in nature and others completely different. As such, there is a great wealth of cultural heritage manifestations to be found within the present borders of Jordan, both tangible and intangible. These cultural products include those passed down from ancestors over many generations, as well as new works that still maintain close ties to the past. A wide range of ICH domains are still functional among Jordanians, e.g., folksong, folk poems, folk music, beliefs, rituals, traditional festivals, performing art, traditional crafts etc. There are many traditional practices related to agricultural, Bedouin life, and traditional medicine as well. As in other countries of the world, Jordanian ICH is facing the danger of certain ICH elements disappearing. Changes influenced the entire ICH domain, e.g. the change of Bedouin weaving traditions in Arab countries which is attributed to the changes

²Parts of the information discussed here were derived from a national report on ICH. The present author was heavily involved in preparing this report. It was conducted in the context of the Mediterranean Living Heritage Project which is co-financed by the EU and UNESCO.

that occurred in the lifestyles of the Bedouin³ and in the weavings and techniques used to make them (see e.g. Hilden 2004).

3.1 Jordan's Policy Regarding ICH

Jordan seeks to adopt a general policy that aims at highlighting the role of ICH within the community in harmony with sustainable development through a wise strategic planning. This is evident from the National Agenda which emphasizes that cultural development is vitally related to political, economic and social development. It aims as well to activate the institutional work to establish a high council for culture and the arts to be headed by the minister of culture to draft policies and set strategies related to this sector, monitor a support fund that is going to be established in partnership with the public and private sectors. This step will allow for the financial support and funding of individuals and institutions and cultural, artistic centres and relevant projects. As a result, the Cabinet approved in 2010 the establishment of a supreme national committee for ICH chaired by the minister of culture with the membership of other involved parties. As a result, a Department for ICH within the ministry's administrative structure was established. It will, inter alia, help in setting a national strategy for ICH. The working mechanism of this Department will rely on the various sectors working on ICH issues. Its mission goes beyond management to reach the communities as bearers of ICH to ensure their proper participation in safeguarding process.

Before taking this administrative step, Jordanian institutions used to work in this field according to the regulations and legislations of the ministries concerned. Universities and centres were playing a crucial role in training on cultural heritage management, but mostly concentrating on the tangible aspect of it. For example, the Hashemite University, Queen Rania Institute of Heritage and Tourism at the Hashemite University, Princess Basma Bint Talal Centre for ICH at Al-Hussein Bin Talal University, Department of Heritage Resources Management at the Ministry of tourism and Antiquities, Ministry of Municipal and Rural Affairs, which has given attention to documenting heritage in the municipalities of the ministry.

3.2 Capacity Building

Institutional capacity building in the field of ICH is still lacking in Jordan. It is crucial to launch programs and activities that lead to safeguarding ICH in the country

³Bedouin is a term used in the modern linguistic usage as an equivalent to "nomadism" and serves the designation of life style of Bedouins and nomads (see Leder 2002, for more details.). Samman (2010) sees that other type "as living in tents, herding goats, riding camels, and living in a nomadic and Bedouin 'premodern' lifestyle was part and parcel of placing the Arab into a time narrative that made him or her appear as belonging to an earlier Age of Man."

from different perspectives. Such programs and activities can contribute to raising awareness about the importance of ICH, strengthen national and regional measures for safeguarding ICH, enhance capacities at the local and national levels, and realize a classification system of ICH on the basis of a shared methodology among the participants taking into account both UNESCO's well-defined cultural policy and orientation in this field.

Prior to 2010, no central Safeguarding authority for the Jordanian ICH was known. However, some institutions have attempted to play a certain role in the process of documentation, which includes some aspects of ICH, e.g. the Department of National Library, which controls the implementation of copyright law 1992. It documents, organizes, makes public, and preserve scripts, periodicals, pictorials, recorded materials, films of the national heritage in particular and the Arab and Islamic World in general.

Within the management bodies and programs of the Jordanian Government we could not find any specialized institutions, activities, or plans that lead to establishing programs for capacity building in the ICH. At this stage it is necessary to launch workshops on the documentation and promotion of the intangible cultural heritage. Such workshops will provide knowledge and experience to personnel involved in documentation work on intangible cultural heritage, instruct the participants on how to record the intangible cultural heritage, and promote awareness of the significance of safeguarding ICH. The authorities should recognize and accordingly apply certain principles at the national and local levels, e.g. that ICH resources have a lasting value in their own right, provide the sense of identity, valuable, finite, and irreplaceable, and should accordingly be managed carefully in order to ensure their survival and transmission. Identifying ICH bearers, especially individuals of specific skill, and NGOs is of great significance to determine priorities and work with consultants, develop goals, objectives, and strategies toward safeguarding ICH and strengthen its future strategies, enhance capacities at the local and national levels.

The Ministry of Higher Education approved in the last decade a wide range of academic programs on heritage studies to be offered at the various Jordanian universities, e.g., Yarmouk University, Hashemite University, and Al-Hussein Bin Talal University. During his service as a Dean of the Faculty of Archaeology, Tourism and Hotel Management at the latter university, this author launched the Princess Basma Bint Talal Centre for ICH, which is expected to support the process of identification and documentation of ICH in southern Jordan. It seeks the dissemination of technical knowledge and provision of equipment and necessary infrastructure, carrying out conservation, and restoration and conversion of digital multimedia data on ICH. Creating inventories for the preparation of nominations, in addition to preparation and operation of programs and educational resources to ensure the continued transfer of Intangible Heritage, are further aims of the Centre.

The MedLiHer Project as a First Pioneering Step Towards Capacity Building⁴

Within Jordan's constant efforts in safeguarding its ICH and in line with the implementation of the 2003 Convention, Jordan is involved since 2010 together with Egypt, Lebanon, Maison des Cultures des Monde (Paris) and the UNESCO ICH Section in Paris, in a project known under the acronym *MedLiHer* (= Mediterranean Living Heritage). It is co-funded by UNESCO and the European Union within the Euromed Heritage IV and aims to support the implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage in the mentioned countries. It intends to strengthen their institutional capacities in order to facilitate their effective participation in the international mechanisms for the safeguarding of the intangible cultural heritage and to elaborate safeguarding measures and develop safeguarding projects with the participation of communities and relevant groups. The *MedLiHer* project is also intended to improve regional cooperation and exchange of skills/experiences by establishing a network of institutions and developing a web portal that will serve as interface of a database developed to this end. It focused on documenting and supporting the identification of the ICH in Jordan in general. This project, in which this author is involved, was of great help in developing activities to safeguard parts of our ICH in cooperation with the communities and groups concerned. It constituted an ideal venue for setting up safeguarding projects that will take due account of Jordan's needs, priorities and constraints. The three following phases are already implemented:

- Assessment of the situation concerning the state of safeguarding the ICH in the Mediterranean partner States;
- Development of national safeguarding projects and setting up of a regional network;
- Implementation of the national safeguarding projects identified and developed in phase II.

The main objective of this project was to assess capacities for implementing the Convention in Jordan, since such an assessment will allow to evaluate the situation of existing safeguarding measures, activities and programs, as well as governmental and non-governmental entities specialized in the field of the intangible cultural heritage. *MedLiHer* was an essential step for establishing safeguarding measures as recommended in the Convention and the operational directives. It allowed us to prepare specific activities tailored to the national situation (such as national and/or international projects), identify and involve main institutions/organizations working in the field of the intangible cultural heritage, and provide detailed information for the database that will be developed with the above-mentioned web portal. To achieve an important target for the Jordanian ICH, the government together with

⁴For details on the background of the project, its objectives and aims, see the project documents under the link: <https://ich.unesco.org/en/medliher> (accessed December, 15 2018).

local communities and other stakeholders decided to establish an inventory of ICH as a pilot project. This was in line with the aims set for the entire project, i.e.

- Promoting the function of the intangible cultural heritage in society, and integrating the safeguarding of such heritage into planning programs (in accordance with Article 13 of the Convention).
- Elaborating a methodology to draw up inventories for the intangible cultural heritage elements in Jordan.
- Drawing up and updating such inventories (in accordance with Article 12 of the Convention⁵).

The project was able to identify inventories of the Jordanian intangible cultural heritage, through investigations, interviews, and the collection and compilation of information. Information had to be collected from different related sources, and as a result a database including institutions, experiences and structures related to the Intangible Heritage in Jordan were identified. Two local workshops were conducted within this project with a strong participation by relevant institutions in Jordan, e.g. the Ministry of Education, the Ministry of Culture, and the local community (see Hayajneh 2012). These activities will assess national capacities for implementing the Convention.

3.3 *ICH Inventorying*

Certain governmental and non-governmental institutions have accomplished some work on ICH, though much of this work is dispersed and characterized by different nomenclatures and titles. Among the previous attempts to deal with ICH, it is remarkable that no unified and constant standards or criteria were followed. Different lists, studies, and treatises on the subject were traced in the history of research on ICH in Jordan. They remain, however, as valuable sources of the country's ICH and a basis for any future inventory that complies with the Convention. A committee was established to determine standards for the inventorying of Jordan's ICH, and also identifying the organizations and individuals working on ICH, as well as the actual practitioners and tradition bearers.

The ICH of Jordan needs to be granted a status equal to that of its tangible culture. As this is not the case, this in part reflects difficulties inherent in identifying the existence of, much less capturing ICH. The creation of an accurate inventory of ICH in Jordan will constitute an important step towards safeguarding its future and it is recommended that such endeavours are best carried out as either community level projects or embedded as part of the delivery of the curriculum in schools. If young people are progressively involved with the customs and practices of their own cultures, through both the curriculum and community-based projects, this is

⁵We have already prepared some Models to survey our local ICH.

undoubtedly the most effective way of promoting a safeguarded ICH in Jordan for the future.

The nature of ICH in Jordan exhibits a range broadly consistent with the generic UNESCO typology. Within the UNESCO Convention categorization, an inclusive approach to what constitutes ICH in Jordan is advocated which embraces the cultural spaces of well-established non-Arab minority communities. The establishment of an inventory of ICH in line with UNESCO best practice is not, however, a sufficient condition to ensure adequate safeguarding, although it does ensure that those examples of ICH most in need of support can be identified.

As Jordan has witnessed dispersed, individual and sometimes unorganized endeavours toward preserving and documenting its ICH, it was not possible to measure whether it satisfied the requirements of participation of communities, groups and NGOs in the identification and definition of ICH present in their territory. Therefore, certain conditions should be established in accordance with the requirements of the Convention, i.e. identification of communities, groups and individuals, ensuring that only ICH that is recognized by communities and groups is inventoried with their prior consent and permission.

3.4 The First Community Based Inventory in Jordan: The Case of Madaba

The *MedLiHer* project was the stimulus for creating the first ICH inventory in Jordan. As a pilot project in the context of the mentioned project, Madaba Governorate was selected to apply the first community-based inventorying rules of ICH in line with the UNESCO Convention. Based on the results and recommendations of phase II of the abovementioned *MedLiHer* a consensus was reached that the pilot project should consider establishing ICH inventories in the project Partners States. Therefore, the *Jordanian National Supreme Council for Heritage* convened in December 2010 to discuss the intended project and its visibility and took the decision to select Madaba Governorate as a starting point for the future national inventory of ICH in Jordan. The project was then called "Inventory of Intangible Cultural Heritage of *Madaba Governorate*", as this will constitute an important step towards safeguarding its future. It will enable us to manage and support ICH according to the obligations of the Convention. As an example, inventorying ICH elements would help in building cultural enterprise, and would encourage the responsible use of traditions and practices in a variety of economic development efforts. It will provide a platform for the reporting obligations of the Convention and contribute in building the capacity of inventory-makers.

Why Madaba?

Madaba Governorate⁶ lies in the mid-southern region of Jordan. The Madaba District (*Qasabat Madaba*) forms around 42% of the whole Governorate and its population is around 155 thousand. The city of Madaba is located 30 km southwest of the Jordanian capital, Amman. Its history is made up of varied and rich civilizations. Madaba city is a round 27,650 dunams and is located at an elevation between 775 and 800 m above sea level. In ancient times Madaba city and its surroundings came under the control or influence of the Assyrians, Babylonians, Moabites, Nabateans, Romans and Byzantines. It witnessed the Christian era and later the rise of Islam during the first half of the seventh century CE. Its ancient settlement is mostly buried under the modern town.

In 1871, some tribes emigrated from Al-Karak and settled on the ruins of the ancient town of Madaba. They reused the Ottoman village, by which they supplemented a further historical phase to the existing historical diversity of this city. Madaba, to some extent, is a new city, which was formed by assembling various groups or parts brought back and juxtaposed. The city represents one of the most recent evidences of Ottoman urbanism. As a result, the development of Madaba city was part of an extensive movement to encourage the settling process and the multiplication of villages in the surrounding areas that later formed the Madaba Governorate. Family relations remained the structuring principle of the residential space and urban morphology. The town grew like a mosaic in a series of juxtaposed territories, established according to family relations and/or confessional proximity or background. In this framework, it is worth mentioning that local tribal members do not endorse their association with the remote past but identify themselves with recent history that is 140 years old. Accordingly, their ICH and cultural memory is associated to their old origins and their exodus from Al-Karak in the late nineteenth century CE.

The stability of the town was fundamental in the transformation of the tribal groups into deeply rooted territorial communities. The coexistence within one neighbourhood of family and community relations made them share heritage elements and traits that were crucial for their cohesion, identities and collective memories. The city went from a tribal to an urban industrial structure characterized by a growing diversification of populations, activities and lifestyles—as reflected in the ICH manifestations—, and by increased interaction, imitations and exchanges among the different groups and communities. The whole process resulted in fractures from the tribal order, agricultural and pastoral activities to develop new economic, commercial, craft and agricultural activities which had a significant impact on their ICH within the context of the urban market.

Madaba underwent rapid expansion from 1953 until 1984, mostly on its northeast side. Two major highways run through it, connecting it directly to the capital,

⁶See Abu Ghanimeh et al. (2010), Bikai and Dailey (1996), Chatelard (2000), Harrison (1996), (Al-)Nahhas (1987) and (Al-)Rabady (2012).

Amman. Since the mid-1990s, Madaba city has been integrated into the tourism industry to overcome economic hardship in the country. The city attracted people from the surrounding rural and pastoral region. Thus, the town grew steadily from a population of almost 2000 people at the beginning of the twenties, to approximately 13,000 at the end of the sixties, and around 70,000 today.

Madaba Governorate is among the few territories in Jordan where some of its indigenous craft, traditions, beliefs and skills has survived over many decades or centuries. For example, traditional folk medicine, the Bedouin customary tribal law, traditional wedding ceremonies, oral poetry and some other traditional handicrafts have so far ensured that the visual and the oral/aural arts are handed over from one generation to the next, largely rich in their authenticity and expression. Much of the societal milieu of Madaba is a treasure trove of such living traditions. However, a number of its manifestations, such as traditional and popular songs, dance, festivals and know-how of craft production, oral traditions and local dialects have already disappeared or are in danger of doing so, because of the fact that the local ICH is rapidly replaced by a standardized monoculture, fostered not only by socio-economic modernity but also by the progress of information and transport techniques. In addition, due to the fact that people gave up their original crafts, much of the population migrated from surrounding areas to Madaba city. New cultural waves had an enormous impact on its ICH. The older way of life began to rapidly disappear, while the remainders of ICH expressions that made up the formerly prevalent way of life are in jeopardy of rapidly disappearing. The need to stop further losses became very urgent and the *MedLiHer* Project played a major role in assessing the Madaba Governorate's ICH as a first step leading to future safeguarding strategies.

The selection of Madaba Governorate by the *Supreme Council of Heritage* constitutes the first stage of the intended inventorying activities in Jordan. The Governorate witnessed strong urban and industrial advancement which influenced the social structure of the inhabitants. In addition, the demographic diversity of the region, the religious, social and ethnic diversity constitute major, rich and deep foundation for the inventory making process, which should be conducted to avoid the acceleration of deterioration and disappearance of the existing ICH elements in this territory. The society there is composed of deeply rooted demographic spectra that represent a diverse society, in terms of religion and traditions. In addition, due to the geographic proximity of MG to the capital city Amman, the consequences of the rapid urban development may affect the social, ethnic and demographic structure negatively, so that its Intangible Heritage will come under threat of deterioration and disappearance. Additionally, *Madaba* has been chosen to host two new universities. Moreover, a new settlement operation not far from the historic city will host over 600 villas.

The Results of the Inventory and the Future Insights Into Madaba's Inventory

Inventorying *Madaba* Governorate's ICH established a framework and methodology for inventorying ICH in Jordan and it would give the Jordanian authorities sufficient information to manage and support ICH according to the obligations of the Convention. For example, inventorying ICH elements would help in building cultural enterprise, and encourage the responsible use of traditions and practices in a variety of economic development efforts. It will assist in identifying and establishing a mechanism to coordinate, carry forward the goals and objectives of safeguarding, encouraging ICH through the MG and training researchers in inventorying methods and techniques. For these training purposes, two UNESCO accredited trainers, Hani Hayajneh and Annie Tabet, were hired to conduct a CBI (= Community Based Inventorying) workshop in Madaba itself (see Hayajneh 2012).⁷ It lasted ten working days, establishing amongst the trainees a methodology of inventory making specifically tailored to the Jordan context. The researchers received training in operating the equipment they are required to use such as the audio recording equipment, and digital video and still cameras. Participants were able to cope with the key elements of Intangible Heritage in Madaba Governorate and creating appropriate methodological framework in defining further steps. Participants were trained on methods and tools regarding the recognition, good management and inventorying of ICH and its transmission. With the view that ICH is intrinsic to cultures all over the world and that traditional knowledge has been passed on from generation to generation, the workshop heralded the ICH inventorying project which is of massive significance in the value system of the Madaba people. It is aimed at promoting, respecting and safeguarding Madab's living heritage especially with regard to the fact that ICH represents knowledge and information sustained through memory and transmitted orally and by practice from one generation to the next. It tackled several issues, e.g. the main concepts of the UNESCO 2003 Convention, Key concepts, e.g. authenticity of ICH, commercial exploitation, the meaning of communities' groups and individuals, decontextualization of the ICH, ICH domains, the meaning of the ICH "element", transmission of the ICH, associated objects and spaces, respect, safeguarding measures, shared or cross-border ICH, sustainability, threats and risks, and viability. Identification of the ICH and inventorying and engaging with communities in inventorying were some of the crucial issues discussed during the workshop. It attempted to develop a framework for inventorying, identifying and defining ICH, including themes related to attitudes, ethics, and responsibilities in community-based inventorying of ICH. The concept of free, prior, and informed consent, information generation methods, and ground preparations for inventorying occupied a major part of the whole workshop structure.

⁷See also <https://ich.unesco.org/en/meetings-and-workshops-00232> (accessed December 15, 2018).

One of the major issues discussed is the logic and rationale behind Inventorying process of the ICH. It is becoming clear that the process doesn't aim at establishing a sort of classification or hierarchy of ICH, but it is essentially made to reflect the situation of the ICH in Madaba Governorate to recognize which elements comprise it and serve as a basis for other safeguarding actions.

Participants were given a foundation understanding that identifying and documenting ICH is an important part of safeguarding tradition. Information in the form of photographs, audio or video interviews, recorded oral histories, performances and craft demonstrations can all form part of an ICH collection, and there have been dispersed attempts to collect this material in Madaba region in particular and Jordan in general for about 40 years. However, much of it is stored in disparate locations in the country.

During the workshop, participants understood as major issues the need to identify, document and arrange for the preservation of collected ICH information for the purpose of safeguarding. With the establishment of a Department of Cultural Heritage at the Jordanian Ministry of Culture, some attempts to organize and fund inventorying activities were conducted. Participants became aware of the fact that it is the communities which should decide which traditions local people feel are important to inventory. Sometimes these traditions could be threatened; sometimes particular elders or tradition-bearers could be highlighted.

It has been suggested that an advisory board made of representatives from various areas of the Madaba region including heritage organizations identifies ICH themes at risk and sets priority areas for action, to open the arena to propose local projects or themes from communities. Another suggestion was organizing a digital inventory, which requires large, secure online storage space and technical support. This is actually a long-term initiative, which will be useful for the on-going digitization of ICH documentation. A website could be created at the Ministry of Culture devoted to ICH activities, to be continually updated. Certain regulations based on the community expectations and wishes will regiment and adjust the access to the inventory or parts of it. Within this approach, it became clear and obvious for the participants that inventorying should be perceived as a process rather than a final product, as it will be in a constant state of evolution, reflective of the organic nature in which information is collected by and from communities.

The participants, who are members of Madaba region communities, discerned through the training material the need for their empowerment to identify, define and assess their own ICH, as a prerequisite to making their own inventories. Proposals by the participants were made to hold further events, forums and spaces for communities to celebrate and access their ICH. Trainees became aware now that it is of great importance to pave the way for participatory "bottom-up" and "top-down" methodologies that meet the priorities of the ICH bearers and custodians, i.e. the communities, for safeguarding their ICH. Within this context, it became apparent for them to establish relationships between institutions and bearer communities. As for the administrative dimension, ICH is looking for an anticipated administrative umbrella to ensure the integration and streamlining of the administration of the ICH at all levels of government, so that bearers' concerns are represented in all policies.

As the CBI of the ICH is combined with the identification, dissemination and implementation of best practices related to inventorying, audio and video digital recording standards, and ethics, it was necessary to explain to the participants developing guidelines for metadata content that take into consideration best practices for the description of digital resources on the Web or any other medium. Moreover, the copyright issues were discussed, i.e. that the ICH researchers should follow proper documentation procedures that respect issues of copyright. In other words, intellectual, legal and moral implications of holding and providing access to the information collected should be taken into account, as the free, prior and informed consent must be obtained for the sharing of information gathered through field work, and all items placed on the ICH inventory must have the clear consent of the communities. During the workshop, a methodology and guidelines on generating free, prior and informed consent were developed. Participants were guided through sample consents.

With regard to the fieldwork as a part of the information generating process, participants were exposed to different methodologies for achieving this objective, e.g. visiting the region, living there, going to events and festivals, getting to know people and interviewing them, as this allows for direct contact with ICH elements. Personal observation contributes largely to resolving any doubts about the sense of identity. At the same time, we must be aware that subjectivity is an integral part of this practice and therefore we should try to be as objective as possible in reaching our conclusions.

Participants experienced some difficulties regarding the field work. For example, the period defined by the project doesn't enable us to observe a full natural cycle of events in the Madaba Governorate, due to the fact that many practices occur annually and correspond to a season or month. We have to keep in mind, however, that it would be extremely difficult to cover all the elements in the given period, even more so if we take into account that it is often necessary to create a climate of trust with community members before being able to gather the information that we need. This could mean that more than one visit may be necessary per element or person. Therefore, good organization is crucial to prioritise the elements that need to be worked on.

The inventory of the ICH in the Madaba region will shape the future activities in this regard, as it considered aspects that respect the different levels of participation, i.e. discriminating between the different levels of participation in or influence of different examples of ICH, e.g. those that have had little or no impact on the wider community, and have remained isolated, were included. It reflected the inclusivity of all ICH elements spread over the area concerned. This allowed for the incorporation of a diverse range of practices and knowledge that exist within the region. Another relevant issue is that oral traditions and expressions that will be recorded and safeguarded through the Jordanian inventory should not be restricted to the indigenous Arabic dialects of Jordan, but should go beyond that, to reach the ethnic minorities, i.e. Chercassians, Chechnians, Armenians and Druze communities etc., to be equally considered within the scope of the ICH in Jordan. In Jordan, processes of identifying areas of occurrence should be accompanied by ascribing the ICH

elements prevalent in the country to their geographical places, their holders, and their communities, followed by the processes of protection, conservation and transport. The final stage, can only be achieved by an educational tutorial, which can be achieved either through formal or informal media; this will lead to revitalizing the heritage item.

4 Awareness-Raising Concerning the Convention and ICH⁸

Concerning awareness and promotion of the ICH in Jordan, it has become evident in the years after the ratification of the Convention that there is still an inadequate awareness of the importance of safeguarding the ICH.

Like the rest of the world, since Jordan is going through the critical phase of globalization, whose future consequences are not known, we must recognize the limits of the awareness of Jordanian citizens and their inability to identify the ICH that forms part of their national identity. Even those who work in this field themselves not having the experience to enable them to execute the safeguarding and preservation, in addition to the scarcity of scientific instruments, which blocks the way towards achieving the desired goal. After the ratification of the Convention, the Jordanian Government realized the importance of organizing systematic awareness programs that aim to put into effect the purpose of safeguarding Jordan's ICH as well as to create the incentives among Jordanians to be aware of the importance of the ICH. Awareness-raising programs are important to enable people to explore the values of their ICH and be aware of its importance as reflected in the cultural diversity of Jordanian society. For these reasons, the Jordanian National commission in cooperation with the UNESCO Office in Amman and this author organize an awareness-raising campaign on ICH and the Convention among several sectors and stakeholders. As there are various levels of understanding about the ICH in Jordan, different stakeholder groups were targeted, i.e. the public, secondary school teachers, university faculties and educators, NGOs & CBOs (with a focus on cultural activities) and the Media. These stakeholders were provided with itemized information on the importance of the ICH, the UNESCO 2003 *Convention for the Safeguarding of the Intangible Cultural Heritage*, some tools for teaching about the Intangible Heritage, detailed understanding of how to apply for funding, what projects could be undertaken and conducted, how ICH can be communicated, what new media can do to enhance the role of the Intangible Heritage, and what activities are in place in Jordan to safeguard it. The following issues were addressed:

- The definition of the ICH and the various nomenclatures used to designate the ICH and the conceptual development of the ICH.

⁸Detailed information on raising awareness concerning the Convention and safeguarding measures of the ICH, see Hayajneh (2009, 2011a, b, c).

- Introduction to the ICH in Jordan including geographical distribution and ethnic representations.
- Representative examples of the ICH elements in Jordan in particular and in the region in general.
- The role of the ICH in sustainable development.
- UNESCO efforts toward safeguarding the ICH
- The inscription on the Urgent Safeguarding and Representative lists; programs and projects that reflect the principles and objectives of the Convention; the Convention's Fund, International assistance, Implementation of the Convention.
- The essentiality of the implementation of the Convention for identifying ICH elements, the description and analysis of the ICH, supporting communities to ensure the viability of the ICH as a mediator between government structures, the communities and others.
- Promoting the transmission of the ICH from generation to generation within communities in a spirit of tolerance, pluralism and peace. This included the motivation of the bearers as a key element in ensuring the continuity of the ICH.
- How communication and education are considered to be fundamental to the viability of the ICH.
- Giving some examples on documentation, inventory-making and the importance of establishing an ICH national inventory.
- Role of the intangible cultural heritage in building intercultural dialogue.
- The status of the ICH in the context of intellectual property rights and the role of a future national strategy and legislation for the ICH properties.

As a result of the campaign which covered a 3-month-period, the designation ICH became now more familiar among the public and the governmental sectors. It created a public discussion among the Jordanians on ICH, i.e. conducting a dialogue with the participation of representatives of the targeted group/categories on social and educational aspects of preserving ICH and promoting cultural diversity. It was an ideal venue to propose methods of applying information and networking for developing strategies for ICH safeguarding, and it gave us some clues on how to promote dialogue and discussion around strategies for ICH safeguarding. It attempted to identify and discuss the positive and negative aspects affecting cultural diversity and its continuous development in general and on the vitality and the transmission of ICH in particular.

5 ICH and Legislations

The misappropriate use of the ICH and its related issues, e.g. globalization, social change and economic development etc. formalized an incentive for the protection and preservation of the ICH as defined in the Convention. The same reasons urged the International Community to consider this issue in the sustainable development policies. Jordan, like the rest of the Arab countries, is vehemently facing the trends of

modernization and globalization. Thus, designing a legislation and law for the protection of the ICH is becoming a pressing demand and a great challenge at the same time, not only for the law-makers, but also for a wide range of institutions in the country. Documentation, inventorying, awareness-raising, and other safeguarding activities of the ICH constitute a major part of the safeguarding activities, however, such steps remain incomplete in the absence of a comprehensive legal instrument for safeguarding ICH (Abdel Latif 2008, p. 269f.). In fact, the Convention is what stimulated the International Community to think of a legal process based on a philosophical rationale, taking into consideration human rights laws because ICH is considered as an integral part of cultural human rights (see for this issue Lenzerini 2011).

Before launching the Convention, i.e. from the seventies of the last century, several initiatives related to the protection of the ICH, but under several nomenclatures, have taken place; e.g. in 1989 UNESCO adopted its *Recommendation on the Safeguarding of Traditional Culture and Folklore*, which defines folklore as

the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity.

The April 1997 World Forum on the Protection of Folklore, which was held in Phuket, Thailand, adopted a “plan of action” to achieve protection. In February 1999, the UNESCO/Secretariat of the Pacific Community Symposium on the Protection of Traditional Knowledge and Expressions of Traditional and Popular Indigenous Cultures in the Pacific Islands convened in Noumea. In late 2000, the WIPO established its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) (see Recht 2009, for an extensive overview, Bauer 2008, p. 259f.; Abdel Latif 2008).⁹

As can be gleaned from Article 3 (b) of the Convention

Nothing in this Convention may be interpreted as affecting the rights and obligations of State Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties,

it is evident that UNESCO has deliberately intended not to tackle intellectual property issues relating to the intangible cultural heritage or to look over the WIPO's mission in this field, given the fact that its Intergovernmental Committee had started its work in 2001. Moreover, the article indicates that the Convention didn't aim to intervene in or mutate the contractual obligations of State Parties in the field of intellectual property, nor more generally to interfere with the way the intellectual property system operated in relation to the intangible cultural heritage (see Abdel Latif 2008). In fact, the deliberate intention of UNESCO not to be involved with the WIPO, but just limited to mutually sending observers, can be explained thus: “the WIPO follows an approach of IP rights, which is trying to maximize the private

⁹For a detailed description of the international efforts toward the legal protection of the ICH, see Deacon (2005).

rights of individual right holders, whereas UNESCO is more concerned with the protection and promotion of cultural diversity as a global public good" (Karjala 2008).

Adapting IPRs on the ICH to serve the needs of indigenous knowledge is obviously inadequate for this task (Recht 2009). Developing countries have been aware of how the impediments of the western system of IPRs were against them on various occasions. Bauer (2008, p. 259f.) states that "Though developed to protect the rights of individuals to their ideas, the copyright, patent, and trademark protections comprising Intellectual Property (IP) law were almost immediately recognized as insufficient for safeguarding the rights of cultural groups to their traditional knowledge and practices on several grounds." States complying with UN and WIPO guidelines look onto aspects that are considered as critical gaps of the Western IP law, i.e. "the gap is between a kind of human isolate, the imagined community-less, 'acultural' creator or 'author,' and the political state within which this person resides. The other is between an anonymous 'traditional' creative work of 'folklore' and a 'modern' uniquely attributable creation called 'art.'" (Aragon and Leach 2008, p. 624f.). Moreover, the copyright framework is not suitable for protecting the "shared knowledge" of many cultural properties, as these frameworks are there to protect original works of individual creators rather than communally-practiced "traditional" expressions. "Furthermore, IP only grants rights to persons for a limited time, with the ultimate purpose of enriching the public domain, which is often the opposite goal of groups seeking to protect their traditional knowledge from exploitation and appropriation by others. In many people's eyes, IP schemes, which treat knowledge and creative expressions as alienable commodities—and regard "folk" traditions as being in the public domain already—actually served corporation interests instead of its practitioners" (Bauer 2008, 259f.). Using the IPRs on indigenous groups and knowledge might yield to the risks of determining it as a legal category, and as soon as it is categorized under the Western legal system, which entails "drawing boundaries, creating categories and enforcing rules, the "law" will seek to "define and manage the boundaries of Indigenous knowledge" (Bauer 2008). In addition, the transferable nature of copyrights gives powerful persons or firms, who are not directly involved in cultural production, a sort of control and IPRs would play a negative role by replacing the community reciprocal approach with supervised royalties; thus, this could cause disputes among the producers themselves (Aragon and Leach 2008).

Some other scholars argued that the application of new intangible property rights means a retraction of the public domain as it is currently understood, which requires traditional knowledge holders to provide a solid public policy rationale for limiting access to, and use of, such information. Moreover, traditional knowledge is linked to a people rather than to a concept that has been reduced to form by a single identifiable creator (Thom 2006, p. 190). In addition, a further challenge lies in drawing the line between cultural and ethnic aspects in defining property rights (Thom 2006, p. 190).

One can conclude that applying IPRs can harm the ICH and the right of its bearers and presents some obstacles that will lead at the end to shrink and limits its

sustainability (Karjala 2008). In other words, it is very difficult to apply modern legal concepts to communities that are living in archaic life patterns.

Applying Indigenous customary laws is another proposed scenario which, according to some scholars, can play an effective role, when compared with existing IPRs and *sui generis* solutions, in protecting the traditional knowledge of indigenous peoples, as they have the right to “practice and revitalize their cultural traditions (Raorane 2006). Raorane (2006) believes that although there are challenges that will originate from such implementation of indigenous customary laws, they are not invincible and the solution itself should not be rejected because of them, because such challenges are either identical to, or no worse than those posed by existing IPRs or *sui generis* solutions. Any ICH legislation which is based on indigenous people should give “the control of manifestations of Intangible Heritage to the communities, and it adds the help of a governmental entity as a means to ensure that the community has not been deceived into giving [...] authorization or was simply not consulted” (Lixinski 2010, p. 49f.).

5.1 *Jordanian IPRs and the Future of ICH Legislations in Jordan*

Speaking of Jordanian Law, we do not encounter in the 1952 Jordanian constitution a definition with a precise meaning of “intellectual property”. In Articles 11, 12, 44 and 75 (i) & (f) “property” occurs in general without any specifications of the word “property”. According to Nawafleh (2010: —). The concept of IPR in the Jordanian Investment Law No. 68 of 2003 is not defined, but Article (12/B) of the same law refers to intellectual property right. It defines “foreign capital” as “Intangible rights such as licenses, patents, trademarks and trade names registered in [Jordan].” According to the same scholar, the definition of intellectual property can be found in Article 2 (viii) of the *Convention Establishing the World Intellectual Property Organization* (1967), amended in 1979, to which Jordan became a party on July 12, 1972. In this article, intellectual property includes the rights relating to:

- literary, artistic and scientific works;
- performances by performing artists, phonograms, and broadcasts;
- Inventions in all fields of human endeavour;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

From this definition there are various forms of IPRs that can be divided into two categories. Firstly, there is industrial property, which includes patents, trademarks,

industrial designs and trade secrets. Secondly, there are copyright issues, which include literary, musical, artistic, and audio-visual works (Nawafleh 2010).

Jordan law considers "National folklore" as public property and explicitly indicates that it is work protected by law (Mulki 2008). Article 7 of the Jordanian Copyright Law grants the Minister of Culture, a public figure, exclusive rights pertaining to works of national folklore. According to Mulki (2008), the reasons for this are "to protect the works from distortion, alteration, or damage to cultural interests." However, decision and policy makers have found out that the term has a manifold meaning, attributed by the WIPO to difficulties of translation, as it is very difficult to precisely identify the contextual meaning of the original message. Jordan was fully involved in the IP matters even before its membership in the WIPO. According to the WIPO, "traditional knowledge", as a working term only, deals with "indigenous cultural and intellectual property", "indigenous heritage", "customary heritage rights", and "expressions of folklore". Fact-finding missions were organized in 1998 and 1999 by the WIPO to assess the framework used for protecting intellectual property resulting from advancements in information technology; and changes in economic, social, and cultural conditions. Its outcome was focused on certain recommendations to the Arab countries; e.g.

- (1) the establishment of a national and cultural entity responsible for the collection, classification, conservation, documentation, and dissemination of national folklore;
- (2) collaboration between national legislations in the area of protection of national folklore; identification of folklore expressions that should be protected;
- (3) reliance on the WIPO and UNESCO when designing national laws intended to protect folklore expressions, i.e. providing Arab states with technical and legal assistance in the area of protecting national folklore in the form of: training, technical equipment and material support.¹⁰
- (4) The necessity of establishing a national centre aimed at protecting national folklore, elaborate an international convention on the protection of folklore expressions, and establish a standing committee on expressions of folklore and traditional knowledge (Mulki 2008)

As part of the Arab World, Jordan should play an active role in the international plans related to the protection of the ICH and draft binding legal measures, i.e. *sui generis* solutions,¹¹ that are in line with the UNESCO Convention and prevent misappropriation of the ICH and protect its bearers and owners (Abdel Latif 2008).

¹⁰While the WIPO took responsibility for considering the feasibility of applying existing intellectual property (IP) laws or principles to the protection of *traditional knowledge* (TK), UNESCO was tasked with developing a framework for protecting cultural heritage. This bifurcation formalizes a conceptual division that is comfortable for Western legal experts but artificial with respect to indigenous knowledge (see Recht 2009).

¹¹According to Lixinski (2010, p. 49f.) *Sui generis* solutions to ICH safeguarding "are solutions tailored specifically to the specific needs of a certain group, and, when dealing with indigenous or minority groups, more sensitive to their customary law, while still attempting to translate it into a

After Jordan's ratification of the Convention, Jordanians have become more sophisticated about the necessity of legal protection of the ICH and more aware of its limitations. Forms of legal protection have come to the forefront. Jordan is planning to establish legislation that aims to implement this strategy. Its significance lies in the fact that Jordanian communities and decision-makers increasingly recognize the significance of the ICH in sustainable development. Central to the cultural paradigm is an agent responsible for protecting this heritage on the legislative level. The absence of a Jordanian ICH authority, which is in the position to manage the Jordanian ICH yielded to the absence of a legislation tackling the ICH matters in Jordan, although it is generally accepted in national and international legal instruments that Cultural Heritage should constitute cultural significance for present and future generations. Such legislation is intended to pay attention to the whole ICH spectra in Jordan and guarantee its protection and preservation. Jordanian future ICH-related legislation will take into consideration "a non-proprietary approach which aims at recognizing both moral and material interests of the ICH bearers and their human rights, especially the moral and material interests" (see Vadi 2007 for this concept). The approach proposed, instead on focusing on proprietary rights, underlines the social function of knowledge and includes the cultural values, moral rights of ICH bearers, at the same time recognizing their rights to benefit-sharing and prior informed consent.

In addition, Jordan's legislative strategy will take care to comply with several questions within the local context, i.e. "the ownership and possession of the protected rights, customary practices of ownership, transfer, and control, regulating the commodification and commercialization. These aspects demand local contextualization and application" (Recht 2009). Maintaining the dynamism of Jordanian ICH will be in its legal safeguarding mechanism and how the indigenous knowledge will interface with other aspects of knowledge and property. For example, "native design styles have become part of the warp and weft of mass culture and visual expressions of national identity" in settler societies like the United States, Australia, and New Zealand. Will protection of indigenous knowledge require that non-indigenous uses and users purge such imagery? If not, how can one design coherent and consistent rules of ownership and protection that would exempt such uses?" (Recht 2009).

mainstream legal format. The clear advantage of this model is that, at least in theory, these tailored solutions will be able to overcome objections against the use of intellectual property. At the same time, they establish a framework that generates *erga omnes* effects towards third parties who would otherwise meet no legal impediment to misappropriate a given group's Intangible Heritage. At the same time, however, this type of solution can be rather expensive, to the extent that it requires the creation of implementing/supervisory bodies, in addition to all the studies necessary to ensure that cultural specificities are accounted for, and this works as a disincentive to the implementation of *sui generis* schemes".

6 The *Mansaf*: A Manifestation of Jordanian Culinary Traditions and Identity

In this section I am going to present a national dish called *Mansaf*, as a manifestation of national identity and culinary tradition. The *Mansaf* tradition is widely practiced across Jordan, in cities and rural and Bedouin areas, and its practice is maintained in almost all governorates. Culinary and eating traditions are means to establish collective identities, inculcate virtue, and build character and individual and communal identity. Such traditions are changing in time and place (Jansen 1997). Particularly in Jordan, the *Mansaf* tradition is a strong manifestation of solidarity and collective identity, as it has important and significant social values that are known among the members of the Jordanian community. It fits under the ICH domains defined by the UNESCO 2003 Convention as part of the social practices, rituals and festive events. It can be placed under the section of knowledge and practices concerning nature and the universe as well.

"Historically, the dish is associated with the Bedouins, the nomadic and semi-nomadic populations that dominated the area now called Jordan before the establishment of Hashemite rule in 1921. The dish (literally, "the dish", because *Mansaf* refers to the platter on which the meal is served) is also familiar, and has been for several generations, to the settled peasant and town-dwelling populations in the area" (Howell 2003). The *Mansaf* is served at ceremonies that vary between occasions for joy and sorrow, distinguished by large-scale community participation. It is associated with "a traditional culture based on an agro-pastoral lifestyle in which meat and yogurt were readily available and hosts had ample time to attend to the needs of guests" (see Howell 2003).

Howell (2003) describes the process for making this traditional dish as follows: "The first layer is composed of *khubiz ash-shrak*, a large sheet of thin, unleavened bread, which is shredded and steeped in a rich yogurt broth. The bread is covered by a mound of rice. Before affordable rice became widely available in the 1960s and '70s, cracked wheat was also used. Large chunks of lamb or goat that have simmered in yogurt broth are then carefully arranged on top of the rice. The head of the slaughtered animal, especially on ceremonial occasions, is placed atop the centre of the tray. Pine nuts, toasted almonds, and chopped parsley, when available, are sprinkled over the meat and rice, adding colour, texture, and a touch of sweetness. Finally, yogurt broth made from a thin, fresh, soured milk (*laban imkheedh*) or from dried yogurt (*jameed*) is poured over the dish and added regularly to keep the dish warm and moist. *Mansaf* is eaten from a large communal tray. As offered, accepted, and consumed among Jordanians of tribal descent, *mansaf* stands for security and respect, and it does so by bestowing honour: on those who labour to produce and serve the meal; on those who welcome and provide for guests; and on those who are served and protected."

Cooks are trained in a master-apprentice tradition. The cook and his/her assistants in charge of *Mansaf* cooking start the preparations in the early hours of the morning of the occasion. Requiring a long-lasting source of heat, the meat chunks on the bone

are cooked with yogurt in large cauldrons. It is important to maintain the heat at a certain temperature while cooking. The ceremonial *Mansaf* is associated with some aspects of oral expressions that are uttered during the various phases of *Mansaf* cooking and eating. Besides oral expressions, the tradition encompasses performances, e.g. *Dabka*, *Samir*, in the case of weddings and joyful occasions. The reason behind *Mansaf* being the major element of communal ceremonial events and dissemination within the country is the collective quality of the element. In this respect, *Mansaf* tradition has an important functional and symbolic meaning in terms of emerging solidarity and collective identity in society as well as contributing to cultural transmission.

It is one of the social practices which survived from the past to the present day. Cooking *Mansaf* requires specialized knowledge. The most significant aspect of the tradition is unifying all people in the ceremonies during which *Mansaf* is eaten regardless of age, ethnic origin, gender and culture, even being invited or not. The hosts of the ceremony check whether all the guests are at the dining table for *Mansaf*. The unifying aspects of ceremonial *Mansaf* tradition are observed in traditional occasions which continue in cities, villages and Bedouin desert areas.

Safeguarding this tradition in the cities is particularly important in terms of how much this tradition is embraced by the communities concerned. Followed by a variety of ethnic and religious groups, the tradition can be regarded as a shared element blending different cultures with some cultural values, which enables developing social communication and dialogue. This culinary tradition is transmitted through participating in the preparation and consumption processes by people from different age groups. The cooks transmit the tradition by teaching key points of both oral and applied training. Transmission of the tradition is an opportunity to enhance solidarity, lessen conflicts and pave the way for cultural dialogue. The division of labour in the *Mansaf* tradition is clearly represented by the participation of women, men, the youth and the elderly.

In addition to the spontaneous and natural safeguarding measures that are known in the Jordanian community, I believe that by organizing festivals, celebrations and festivities on *Mansaf* by NGOs and local governments, *Mansaf* tradition can be safeguarded, promoted and carried. The tradition can survive in new forms, as it passes through new waves of new cultural interferences that might contribute to safeguarding it against industrialization and globalization.

The ceremonial *Mansaf* tradition is a subject that is studied within the academic and governmental framework in Jordan. This will enable tracking the dangers, if any, that impair this tradition, so that the right measures can be taken to safeguard it in a proper way. The media can increase awareness at the local and national levels. *Mansaf* was therefore inscribed in the ICH inventory of the *Madaba* Governorate. With a view to safeguarding the element, the local administrative sector and governorships shall provide any financial and logistic support requested by the people and communities concerned. Today, *Mansaf* doubles as a meal and a medium through which Jordan can be represented as a modern nation-state and, simultaneously, as a cultural attraction whose very appeal—to tourists and locals alike—is its rootedness in Bedouin tradition. This convergence of identity discourses suggests that *Mansaf*

is, in theory and in practice, a context in which the boundaries of nationhood can be drawn, and the nation's Others can be drawn in (Howell 2003).

7 Case Study: The Cultural Space of the Bedouins in Petra and Wadi Rum (of Jordan) as "Masterpiece of the Oral and Intangible Heritage of Humanity"

In 1997, UNESCO instituted the "Masterpieces of the Oral and Intangible Heritage of Humanity" program. In the context of this initiative, it took into consideration cultural traditions of outstanding value and in need of safeguarding against deterioration in the face of globalization. The inscription entailed plans to announce listed masterpieces in a series of proclamations (Bauer 2008, p. 259f.). The aim of the Proclamation is to encourage governments, NGOs and local communities to identify, safeguard and promote their heritage. The Proclamation also encourages individuals, groups, institutions and organizations to make outstanding contributions to managing, safeguarding and promoting the intangible cultural heritage.

Wadi Rum is home for several Bedouin tribes in the southern Jordanian desert and in the nineties it became a site of Bedouin heritage and culture.¹² The Bedouin of Petra and Wadi Rum became national signifiers for Jordan. This is attributed to certain political and historical factors and processes that developed through the modern history of Jordan to construct a sort of collective national memory and accordingly, Bedouins became a symbol for Jordanian national identity ((Al-)Mahadin 2007). In the same direction, Fuleihan (2001, p. 100f) states that Jordanians identify themselves as rightful descendants of the Ancient Nabataeans and Petra was portrayed as Arab/Bedouin, while in turn the Bedouin's centrality to Jordanian history and identity was secured.

Jordan's intentions to nominate this element could be understood in light of the fact that Bedounism in Jordan, which is supposed to be a major signifier of Jordanian identity, is due to the introduction of "post-nomadism" waves, which includes, according to Khazanv, "cultural practices and traditions that are found among pastoral nomads which became part of the sedentary world. Post-nomadism itself can only be understood as a corollary of transition that reflects the condition of a whole range of societies over many centuries which were without fixed parameters and boundaries" (quoted in Fuleihan 2011). Moreover, due to the rapid change in Bedouin lifestyle, the dissociation from the landscape and an increased engagement with tourism caused by tangible heritage management was recognized in 2005 by UNESCO as a threat to the cultural diversity and traditions of the Bedouin (Bille 2008, p. 195f.).

¹²For the influence of tourism on Bedouin society in that particular area, see Chatelard (2005).

On 25 November 2005, UNESCO proclaimed the "*The Cultural Space of the Bedouins in Petra and Wadi Rum (of Jordan)*" a Masterpiece of the Oral and Intangible Heritage of Humanity UNESCO (2005). The cultural space of the Bedouins in Petra and Wadi Rum comprises the living relationship that Bedouin communities maintain with the spaces they inhabit and practice, and from which they derive resources as mobile pastoralists, as agriculturalists, as people engaged in tourism-related activities. Natural and man-made elements determine and inspire specific social, spiritual and artistic expressions that become defining features of a tribe's identity.

To comply with the community participation concept, the associations in both areas, i.e. Petra and Wadi Rum, have entrusted a royal NGO called the Jordan Hashemite Fund for Human Development (JOHUD) with preparing an action plan to safeguard, promote and develop their cultural space in Petra and Wadi Rum. After establishing a research team, a survey for collecting information about this space around Petra and Wadi Rum was conducted; i.e. the two Bedouin communities from Petra and Wadi Rum. Princess Basma, who is the head of the mentioned NGO, wanted to make an application to the UNESCO proclamation. JOHUD was planning a project aimed at making Bedouin culture part of the world heritage. The anthropologist Géraldine Chatelard played a key role in preparing the second application under the title "*The cultural space of the Bedu in Petra and Wadi Rum*", after the first one was turned down. Without going into the details of the first submission,¹³ she stressed in the second "the adaptive, modernizing and evolving processes that the Bedouin cultures are experiencing and capable of dealing with. By renaming the project to fit with the UNESCO category "Cultural Spaces" (Bille 2008), the project became oriented towards showing the people in place, in the particular landscape they inhabit..." A plan was made to evoke the interest of younger generations for ICH. Establishing an archive of documentation and photographs was not the main goal, but rather ensuring the sustainability of traditions (Bille 2008). The "Action Plan" aimed at supporting "the maintenance and revival of Bedu oral and intangible heritage in the area of Petra and Wadi Rum" in the hands of the local people which in the long term would "locate culture and intangible heritage in development for Bedu communities in the areas of Petra and Wadi Rum" and "re-establish cultural pride and a sense of place among Bedu communities" (quoted in Bille 2008). Making living museums, heritage centres, sound and light shows, and an outreach project that includes academics from Jordanian universities were some of the main components of the action plan. Certain ICH aspects were targets for safeguarding, e.g. preserving and transmitting the pillars of Bedu culture (e.g. the Bedu tent, Coffee and hospitality, the camel, legal code), pastoralism and the natural environment: knowledge, know-how and practices (resource use and tribal territories, naming and navigation, shepherding skills, language and communication, desert tracking skills, climbing skills, traditional healing, rain-making), poetry, song and dance, storytelling, interconnection: the pilgrimage to Nabi Harun, practitioners of

¹³For details on the circumstances of submission of both applications, see Bille (2008, 2012).

the tradition. The application was successful, and the Bedouin tribes from Petra and Wadi Rum became part of "Masterpieces of Oral and Intangible Heritage of Humanity" on November 25, 2005.

It might be worth mentioning here that the action plan was carried out by organizations already involved in the preservation of the cultural identity of the Bedouin communities. The set of actions comprised two projects, each divided into oral expressions (identifying and supporting practitioners; intergenerational transmission, archive and documentation centre, research program), and pillars of Bedouin culture (camel husbandry and use, weaving). Workgroups were established to keep working in the years to come to ensure the future preservation and maintenance of the Bedouin Intangible Heritage. These committees met several times to coordinate the various activities undertaken under the project. In this context, the first Festival of Bedouin Cultural Heritage was held in Deeseh on December 13 and 14, 2007, as part of the project. It was organized by JOHUD in close cooperation with the Deeseh Youth Club and involved several other local societies. Its objectives were to provide a venue for the expression of Intangible Heritage (in particular oral poetry and "*samer*" performances), promote camel-related practices, support traditional handicraft such as weaving. For this reason, a steering committee was established to organize all activities related to the festival.¹⁴

In the third session of the Intergovernmental Committee, which took place in Istanbul 2008, the 90 previously proclaimed *Masterpieces* were incorporated into the Representative List of the Intangible Cultural Heritage of Humanity as its first entries, to be known as elements. The incorporation of these items in the mentioned Representative List shall in no way prejudice the criteria for future inscriptions decided upon in accordance with Article 16, paragraph 2 of the Convention. Moreover, no further Proclamation will be made after the entry into force of this Convention.

8 Conclusion

The survey presented in the preceding pages shows that Jordan has a serious intention to establish institutions, instruments and methods that would lead to a proper safeguarding of its ICH in harmony with UNESCO guidelines. The

¹⁴Bille (2008, p. 195f.) has conducted an intensive study with a critical approach on the nomination process in the context of his Ph.D. dissertation, in which he tried to investigate "the process of constructing UNESCO recognition of Bedouin heritage as being shaped by diverse images of the role of the Bedouin and Petra in Jordanian national identity". He concluded that such "heritage production has as much to do with attempts to offer recompense for past injustice caused by Petra's heritage protection, constructing alternative identities, and urban nostalgia, as it has to do with preserving Bedouin culture. According to him, dual narrative was dominant among the Bedouin interviewees he met, "On the one hand they express a longing for a 'simple' tent life, and on the other they have a very pragmatic attitude towards their Bedouin heritage. He addressed the issue of how the Bedouin themselves understand and contest their past and contemporary identity.

Convention furnished the proper conditions and bestowed some stimuli among the decision-makers, communities, groups and individuals, including stakeholders, to give this issue a high priority. I believe that Jordan will take more measures to realize its targets towards an institutional and community-based safeguarding. Jordan started to pave the way in the last 6 years for the establishment of a strategic plan and legislations that will contribute to safeguarding its ICH. With more cooperation with UNESCO, e.g. investing international assistance offered by UNESCO, Jordan will be in a position to achieve its goals both on the national and international levels. I think that the future of ICH is strongly based on what we have already achieved, and what we have indeed achieved, although it is still in its infancy, deserves appreciation. The future of ICH in Jordan cannot be prepared, but we have to prepare the youth and children for the future of ICH by finding the proper ways for its wise transmission.

References

- Abdel Latif A (2008) Intangible cultural heritage, traditional knowledge and folklore: dilemmas in relation to intellectual property at international level. In: Hassan F, de Trafford A, Youssef M (eds) *Cultural heritage and development in the Arab World*. Bibliotheca Alexandrina Cataloging-in-Publication Data. Bibliotheca Alexandrina, Alexandria, pp 269–279
- Abu Ghanimeh A, El-Ghul A, Al Saqqa R, Al Nabulsi M (2010) Analysis of the socio-cultural heritage of Madaba – an approach to conservation of heritage buildings: the case study of Dar Al Saraya in Madaba. *Anthropologist* 12(1):27–33
- (Al-)Mahadin S (2007) An economy of legitimating discourses: the invention of the Bedouin and Petra as national signifiers in Jordan. *Crit Arts* 21(1):86–105
- (Al-)Nahhas S (1987) *New history of Madaba: historical roots of the city Rebirth and main events until 1930* [translated]. Arabic House for publishing, Amman
- (Al-)Rabady R (2012) Creative cities through local heritage revival: a perspective from Jordan/Madaba. *Int J Herit Stud* 2012:1–16
- Aragon LV, Leach J (2008) Arts and owners: intellectual property law and the politics of scale in Indonesian arts. *Am Anthropol* 35(4):607–631
- Bauer AA (2008) Heritage preservation in law and policy: handling the doubleedged sword of development. In: *Cultural Heritage and Development in the Arab World* Fekri Hassan, de Trafford A, Youssef M (eds) *Cultural heritage and development in the Arab World*. Bibliotheca Alexandrina Cataloging-in-Publication Data. Bibliotheca Alexandrina, Alexandria, pp 354–267
- Bikai PM, Dailey TA (1996) *Madaba: cultural heritage*. American Center of Oriental Research, Amman
- Bille M (2008) *Negotiating protection: Bedouin material culture and heritage in Jordan*. Unpublished Ph.D. Thesis. University College London -Department of Anthropology, London
- Bille M (2012) *Assembling heritage: investigating the UNESCO proclamation of Bedouin intangible heritage in Jordan*. *Int J Herit Stud* 18(2):107–123
- Chatelard G (2000) *Lien social et identités collectives Chez les chrétiens de Madaba*. Ecole des hautes Etudes en Sciences Sociales, Paris
- Chatelard G (2005) *Tourism and representations: of social change and power relations in Wadi Ramm*. In: Latte-Abdallah S (ed) *Représentation et construction de la réalité sociale en Jordanie et Palestine*. Institut français du Proche-Orient (IFPO), Beyrouth. <http://wadiram.userhome.ch/fichiers/Tourism%20and%20representations.doc>

- Deacon H (2005) Legal and financial instruments for safeguarding our intangible heritage. In: ICOMOS scientific symposium: place-memory-meaning: preserving intangible values in monuments and sites, Victoria Falls, 2003. <http://www.icomos.org/victoriafalls2003/papers/C3-2%20-%20Deacon.pdf>
- Fuleihan L (2001) Urban Nomads of Petra: an alternative interpretation of the Bedouin's relationship with history and space. *Consilience* 6(1):91–112
- Harrison TP (1996) The history of Madaba. In: Bikai PM, Dailey TA (eds) *Madaba: cultural heritage*. American Centre of Oriental Research, Amman, pp 1–17
- Hayajneh H (2009) *Turathuna al-Thaqafiy fi Al-Urdunn: Afaq Sawnih wa-Ab'ad Hifzhih*. Majallat Al-Yarmouk 95:98–110. Irbid: Yarmouk University. (in Arabic)
- Hayajneh H (2011a) Awareness campaign on the importance of ICH in Jordan. *ICH Courier* 7:8–9
- Hayajneh H (2011b) *Ru'yat al-Urduniyin li-turathihim al-thaqafiy ghayri al-maddiy*. Anba': Nashra l'lamiyya Dauriyya tasdur 'an al-Lajna Al-Wataniyya al-Urduniyya li-Tarbiya wa-l-thaqafa wa-l-'Ulum 22:26–30. (in Arabic)
- Hayajneh H (2011c) ICH lecture/workshop series. Joint Awareness Campaign: UNESCO Office in Amman and the JoNatCom (Unpublished Report submitted to the UNESCO Office in Amman)
- Hayajneh H (2012) Report on community based inventorying in Madaba Governorate conducted within the context of the MedLiHer Project. (unpublished)
- Hilden JM (2004) Changes in Nomadic Arab weaving due to outside and internal influences textile society of America Symposium Proceedings. Paper 486. pp. 488–495 <http://digitalcommons.unl.edu/tsaconf/486>
- Howell S (2003) Modernizing *Mansaf*: the consuming context of Jordan's national dish. *Food Foodways* 11:215–243
- Jansen W (1997) Gender identity and the rituals of food in a Jordanian community. *Food Foodways* 7(2):87–117
- JONATCOM: Jordanian National Commission (2006) *Al-Urdunn wa-l-Yonisco: Sharaka Mutajaddida*. Amman: Ministry of Education. (in Arabic)
- Karjala DS (2008) Why intellectual property rights in traditional knowledge cannot contribute to sustainable development. National conference on traditional knowledge systems, intellectual property rights and their relevance for sustainable development, sponsored by the National Institute of Science Communication and Information Resources (NISCAIR), New Delhi, 24–26 November 2008. http://works.bepress.com/dennis_karjala/5
- Leder S (2002) Nomaden und nomadische Lebensformen in arabischer Begrifflichkeit. Eine Annäherung. Pp. 11–4. In Leder S, Streck B (eds) *Nomadismus aus der Perspektive der Begrifflichkeit*. Beiträge der 1. Tagung am 11.7.2001. Halle. (Orientwissenschaftliche Hefte 3; Mitteilungen des SFB „Differenz und Integration“ 1)
- Lenzerini F (2011) Intangible cultural heritage: the living culture of peoples. *The European Journal of International Law* 22(1):101–120
- Lixinski L (2010) A framework for the protection of intangible cultural heritage in international law. Thesis submitted for assessment with a view to obtaining the degree of Doctor of Laws of the European University Institute
- Mulki F (2008) Implementing national copyright laws: a Jordanian case study. ICEGOV 2008, Proceedings of the 2nd international conference on theory and practice of electronic governance, Cairo, 1–4 December 2008, pp 191–198. New York, NY. http://delivery.acm.org/10.1145/1510000/1509134/p191-mulki.pdf?ip=87.236.233.3&acc=ACTIVE%20SERVICE&CFID=232309206&CFTOKEN=32611451&__acm__=1355914947_6a0a722825807ea6fe0dbedaa2e718b0
- Nawafleh A (2010) Development of intellectual property laws and foreign direct investment in Jordan. *J Int Commercial Law Technol* 5(3):142–153
- Raorane M (2006) Aiming straight: the use of indigenous customary law to protect traditional cultural expressions. *Pac RIM Law Policy J* 15(3):827–856
- Recht J (2009) Hearing indigenous voices, protecting indigenous knowledge: international efforts to provide a framework to protect indigenous knowledge. *Int J Cult Prop* 16:233–254

- Samman K (2010) The temporal template of tourism: a comparative analysis of Epcot Center (Orlando) and Wadi Rum (Jordan). *J Tour Cult Chang* 8(4):305–315
- Thom B (2006) Respecting and protecting Aboriginal intangible property: copyright and contracts in research relationships with Aboriginal Communities. © *Brian Thom*, 2006 - Department of Canadian Heritage, Copyright Policy Branch
- UNESCO (2005) The cultural space of the Bedu in Petra and Wadi Rum. Third proclamation of masterpieces of the oral and intangible heritage of humanity [online]. http://www.unesco.org/culture/intangible-heritage/20arb_uk.htm. Accessed 21 Aug 2011
- UNESCO (2012) A training workshop on “How to prepare nominations for the Urgent Safeguarding List and the Representative List of UNESCO’s Convention for the Safeguarding of the Intangible Cultural Heritage” 7-11/10/2012. <http://www.unesco.org/culture/ich/index.php?pg=00232>
- Vadi V (2007) Intangible heritage: traditional medicine and knowledge governance. *J Intellect Prop Law Pract* 2(10):682–691

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Pier Luigi Petrillo *Editor*

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