

Legal protection of intangible cultural heritage as a tool of sustainable development in Jordan: initiatives, challenges and opportunities

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ABSTRACT

Intangible cultural heritage (ICH) has significant potential value and is important for development and sustainability. This has led international organisations and national governments to regulate its protection. Jordan has taken various initiatives in this field. However, those initiatives have encountered challenges because a debate has arisen in Jordan as to whether ICH is public property, or falls under the protection of intellectual property rights, or should receive protection under a *sui generis*

system. This paper is concerned with studying the issue of legal protection of ICH according to the relevant Jordanian legislation. It presents a comparative study of the various systems currently used to protect ICH, with the aim of identifying an effective means of protecting Jordan's intangible cultural heritage.

Keywords

Legal protection, *sui generis*, UNESCO, Jordan, sustainability

Introduction

Background

Cultural heritage (CH) is considered one of the most important socio-cultural rights (Chapman 2009: 19–20). Moreover, it represents an important aspect of the relationship between intellectual property rights (IPR) and human rights (Blake 2023: 25). The development and importance of this heritage have given rise to recognition of the cultural property rights of traditional artisans or craftsmen, now considered a stand-alone legal field. This represents a new generation of rights that provide compensation for the contributions made to preserving cultural heritage through the transmission of traditional techniques and traditional cultural expressions from generation to generation. CH plays an important role in reflecting a society's history and civilisation (Eichler 2021: 793) by distinguishing societies and groups from one another.

Cultural heritage consists of both tangible and intangible elements. In the past, interest in protecting and preserving CH focused more on its material aspects (Kermani 2020: 343), such as monuments and historical and archaeological sites (Eide 2001: 289). In fact, for a long period, the term 'cultural heritage' was synonymous with historical monuments, collections of artifacts, and antiques. It then witnessed a change in discourse as the scope expanded to include traditions and forms of living expression that were created by our ancestors and were then passed down through the generations and still exist today. Intangible cultural heritage (ICH) helps to measure the extent of a society's development. Interest in the preservation of ICH is based mainly on the fact that many countries possess a rich heritage of traditional expression and folklore that has been illegally exploited from all sides.

CH is a tool driving sustainable development, and best practices from around the world show that protecting

this heritage offers great benefits to environmental and economic sustainability (Blake 2023: 360). Recently, ICH have begun to face a growing crisis with the revolution of the internet and artificial intelligence (AI) (Yu 2007a: 1039).

Numerous regulations concerning the protection of ICH have been implemented on both national and international levels. Initiatives in developing countries have supported amending IPR laws to protect ICH (OseiTutu 2011: 150), although developed countries have been less inclined to modify and expand existing protections for this type of CH. Some of them lean towards the protection system, considering the ICH as a public domain. This interest in ICH led to the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and the Charter on the Preservation of the Digital Heritage of 2003.¹

ICH was relatively overlooked until more and more countries began to realise that protecting the rights of states, peoples and groups – in terms of their traditions and traditional knowledge – contributes to strengthening a sense of national identity (Bedjaoui 2004: 152), defines its specificity, and constitutes an important path to economic development. Interest in preserving and protecting the intangible aspects of cultural heritage has also grown as the toll of wanton destruction and of illegal exploitation, distortions and forgeries becomes more apparent. Many forms of ICH have been threatened and endangered by globalisation (Malik and Coombe 2021). National legal frameworks are thus needed to provide effective protections for ICH that enable it to face the cultural challenges that endanger it due to its lack of physicality (Jhamb and Kaur 2021: 210). These challenges include the domination of certain cultures over the prevailing cultures, customs, traditions, beliefs and values, which threatens the demise of weaker cultures and their disintegration within the framework of stronger cultures, in addition to the challenges posed by the society itself that stands in front of its past and originality. In Jordan, it seems that interest in the protection and promotion of ICH has not yet reached the required level despite several government agencies with mandates to protect it. This lack of interest is due to their failure to take seriously the need to provide protections, to the dispersion of their work at times and to the lack of an appropriate legal framework.

Forms and elements of ICH in Jordan

Located in the Middle East, Jordan's total area

is 89,342 square kilometres and its population is approximately ten million. It was named after the Jordan River, on its western border. Jordan combines a mix of cultures and was the site of multiple civilisations, such as the Moabite kingdom in southern Jordan and the Nabataean kingdom, where Petra is located. It was at one time subject to Roman control; then Islamic rule came. The country is characterised by the cultural homogeneity that exists between it and its neighbours – Saudi Arabia, Iraq, Palestine and Syria. Jordan is rich in intangible cultural heritage, which is considered a vital element of its cultural identity and a valuable resource for local communities. The Jordanian Ministry of Culture developed a national plan for elements of ICH for the years 2020–2024 that was approved by the Council of Ministers as part of the country's national efforts to consolidate Jordanian cultural identity. Its recommendations included preparing a set of ICH elements for inclusion on the UNESCO Representative List of the ICH of Humanity, issuing legislation to officially recognise ICH, providing protection for its components, and lending support to local communities through associations interested in the sustainability of ICH elements.

Thus, preserving and enhancing Jordan's heritage appears nowadays to be a priority for the country, but this raises the issue of promoting ICH seriously in the face of increasing globalisation, as ICH remains an important factor in preserving cultural diversity (Malik and Coombe 2021). Gaining a better understanding of the ICH of different societies is also beneficial for engaging in intercultural dialogue and enhances respect for others. The multitude of ICH elements in Jordan reinforces the diversity of its cultures and groups, from Bedouin heritage to rural and urban heritage.

Jordan has successfully registered many of its ICH elements on UNESCO lists, such as when the art of the Jordanian *As-Samer*² (i.e. customs, traditions and practices related to the *As-Samer* dance) was included on the Representative List of the ICH of Humanity in 2018. *As-Samer*, a Bedouin dance accompanied by folkloric singing, is performed at occasions such as wedding ceremonies. It is an art reserved for men, although women can sometimes participate. The singing of the *As-Samir* poem may sometimes last for nearly two hours, alternating between the poet and the participating attendees who are arranged in the form of a compact arc. The verses of poetry that are repeated during the performance form

an integral part of the tradition, and express feelings of joy, peace, intimacy and sympathy among those present. Practitioners of this art range from young people to older individuals. The performance includes specific roles for specific people. For instance, during a wedding, the groom's father directs the attendees to line up and begin clapping and singing, so that one of them sings and the other responds, or two sing and respond, and sometimes the entire group. The customs and rituals associated with the date palm have a common Arab heritage and are also on the Representative List of the ICH of Humanity for Jordan and many Arab countries.³

We can refer also to the cultural space of the Bedouins as among Jordan's 'Masterpieces of the Oral and Intangible Heritage of Humanity'.⁴ This cultural space includes the Bedouin communities living in the Shuhuriyat region, the semi-arid deserts in the southern part of Jordan, near Petra and Wadi Rum. The communities inhabiting this region preserve the Bedouin pastoral culture and skills related to it, such as residual knowledge of plants, traditional medicines, camel raising, tent making, and tracing and progression skills. In 2022, *mansaf* was added to the UNESCO list of ICH in Jordan. It is considered an essential festive dish at social events in Jordan, as it is a symbol of identity and social cohesion. *Mansaf* has social and cultural connotations for Jordanians and, as a form of intangible cultural expression of Jordanian food habits, also reflects the national cultural identity.

On 14 December 2021, UNESCO included Arabic calligraphy on its list of intangible heritage, as well as 40 traditions from five continents. UNESCO considers the art of writing in Arabic as an expression of consistency and beauty. The inclusion of Arabic calligraphy on UNESCO's Representative List of the ICH of Humanity effectively contributes to the promotion of ICH, especially of the calligraphy arts, in local communities. The calligraphy file includes Jordan and many Arab countries. Since ancient times, Arabic calligraphy has been a symbol of the Arab and Islamic world and an important part of its civilisation. Its inclusion on the Representative List will enhance not only its presence locally but also the knowledge and educational role associated with it as an art in itself.

Another ICH element that might be listed by UNESCO is the *dabkeh*, a popular traditional dance performed at certain celebrations, including weddings, in Jordan, Palestine (Shtayah 2019: 29–40), Syria and Lebanon.⁵

This group dance, accompanied by traditional songs, is performed mainly on the occasion of village parties in public squares or at festivals and has become a cultural institution. The *dabkeh* is a lively art that has been passed down through the generations. It is performed by people of different ages, with the elderly dancers holding the hands of the younger dancers and performing the same movements as the rest of the group.⁶

Additional ICH elements present in Jordan are the tales, aphorisms and legends that spread across society; the knowledge related to the manufacturing of soap, olive oil, honey and milk products; and the treatment of some diseases using traditional plants and herbs, and knowledge related to their cultivation. Tribal justice is another ICH element; it is a means of finding solutions to problems and disputes that occur between people, in cooperation with the administrative ruler and the police but without resorting to civil justice.

In Jordan, when collecting material to support the addition of an item to the Representative List, it is necessary to define the culture of the group to which the item applies – that is, whether it is Bedouin, rural or urban, the group's affiliation (i.e. with Arabs, Circassians, Chechens, Kurds, Druze or Turkmen), the group's religion, and the extent to which it adheres to its inherited culture. The application is presented to a committee comprised of experts from the Ministry of Culture and from the Advisory Committee, which is in charge of establishing and confirming the properties of cultural goods. The Committee undertakes the evaluation process and examines whether the item belongs to one or more categories of ICH and whether that element conforms with the relevant international conventions. The ICH element proposed should be based on mutual respect between societies and be compatible with the concept of sustainable development.

This paper highlights the initiatives implemented since Jordan's ratification of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage. The significance of the study stems from the importance that Jordan attaches to safeguarding its rich ICH. The paper is focused on Jordan as a case study for several reasons. The first of these is Jordan's historical and heritage value and its long exposure to a variety of civilisations, such as the Romans, Nabataeans, Edomites, Moabites, Ammonites, Ottomans and Arabs (Hayajneh and Cesaro 2022: 388). Second, its cultural diversity includes Bedouin,

rural and urban heritage, as well as Islamic and modern cultural influences. Third, Jordan is rich in ICH elements that include traditional expressions, traditional knowledge and genetic resources. Some of these elements have been registered on the representative heritage list, while others are under registration or have not yet been registered. The importance of studying the case of Jordan arises from the fact that many members of Jordanian society do not realise the importance of, and the serious nature of the threat to, their intangible cultural heritage. This problem is made more acute by the weak interest in introducing these cultural elements in school curricula, other than an abiding interest in the country's material heritage.

There is no doubt that the Jordanian experience in documenting elements of its ICH deserves study and may be useful to other countries, for several reasons. First, Jordan is located among several Arab countries that share similar challenges or difficulties and threats regarding the preservation of their ICH. They also have many elements of ICH in common, such as the Bedouin character, date palm cultivation and Arabic calligraphy, which have been registered on the representative list in joint files submitted by Jordan and several Arab countries. Jordan is also a participant in the MEDLIHER project, which groups together countries with a common cultural legacy, such as Egypt and Lebanon (Hayajneh 2019: 107). Second, these Arab countries can benefit from the Jordanian experience in documenting its ICH elements. Third, documenting an element of cultural heritage in Jordan's name prevents any other country from claiming the ownership of this element or registering it in its name.

Methodology

Using the analytical approach, this study reviews and evaluates the current status and content of ICH protection in Jordan and then offers suggestions for a suitable legal system. The study identifies the challenges and opportunities relating to the effective protection of ICH. A review of the impact of existing legal instruments related to copyright, patents and trademarks follows, organised in a descriptive framework to comprehensively analyse the symbiotic relationship between IPRs and ICH. The analytical approach helps the researcher to be aware of the development of the existing legislative texts.

In this paper, the author identify the regulations governing ICH protection according to Jordanian

legislation. The author suggests a basis for evaluating the efficiency of these rules in Jordan and recommend the adoption of different frameworks to ensure the appropriate protection of this type of heritage. We then examine this legal framework based on data collected from research papers and websites representing legislative and legal bodies in Jordan. The documents related to this research were collected since February 2021 from numerous formal sources in Jordan. The theoretical framework for ICH was collected from research papers and relevant books.

This research employed a descriptive and analytic method by analysing official legal documents, particularly the provisions of Jordanian intellectual property laws. It also drew upon relevant international law to identify the best system for protecting ICH in Jordan. This paper tries to indicate the points at which ICH is compatible with the copyright provisions in Jordan, and the geographical indication, trademark and patent laws, in addition to the insufficiencies of these texts in protecting ICH.

In the context of the IPR legislation, the protection extent is analysed and the probability of integrating ICH into the IPR system, such as copyright, geographical indications and trademark laws, is discussed. The author have presented a literature review of the ICH and IPR and conducted an examination of Jordanian laws to demonstrate the difficulties and inconsistencies associated with applying the concept of ICH. From this, a thematic theme emerges to show that legislation has a significant role in increasing interest in effectively protecting and sustaining ICH. Moreover, there are two principal systems of protection: an IPR system and a *sui generis* system.

The paper concludes with some recommendations related to reforming and reviewing the legal regime of IPR to ensure the effective protection of ICH elements and to clarify the legal status and relationship that exists between ICH holders, their knowledge and their ecosystems. This study shows how the legal framework can represent an important aspect of the protection of ICH. The paper proposes the passing of a legal framework to inaugurate a fair benefit-sharing system, but stresses that any legislation that is introduced must consider the rationality of the public domain. This research proposes the subjection of ICH to category-based management within the IPR system and defines

the main concern of protection and extent of rights. The paper proposes to keep and preserve the rights of stakeholders, indigenous people, local communities and users of ICH in an equitable and proper relationship to maximise the beneficial impacts.

To this end, the author will study the concept and nature of ICH protection in Jordanian legislation and examine the attempts being made to care for and regulate it. The author will then consider the appropriate protection methods and legislative efficiency while keeping in mind that there is no specific legislation dedicated to ICH in Jordan.

The current status of ICH protection in Jordan

In this section, the author will focus on the initiatives taken in Jordan to preserve ICH; I will then analyse the IPR provisions related to ICH to identify the main challenges associated with ICH protection in Jordan and how best to transform them into opportunities.

Institutions responsible for and initiatives taken concerning ICH preservation

Jordan attaches importance to cultural heritage in general and has ratified many conventions in this regard, including the Berne Convention of 1886, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961, and the Convention on the World Intellectual Property Organization signed in 1967 and entered into force in 1970. More recently, interest in ICH has emerged through the ratification of the Convention of Biological Diversity of 1994, the 2003 UNESCO Convention, and the Charter for the Safeguarding of the Digital Cultural Heritage of 2003.

Jordan has also launched the Jordanian National Library for Folklore project, which is being carried out by students and researchers from five Jordanian universities under the supervision of the Heritage Directorate at the Ministry of Culture. It is considered one of the most important projects aimed at reviving and preserving Jordanian heritage through the formation of a Jordanian database for popular fields after collecting circulated words and explaining their meanings. Approximately 100,000 heritage items have been collected from different governorates, the Badia region and the Jordan Valley in various heritage fields.

The project 'Protecting the Cultural Heritage in Jordan' (2017–2020) documented and preserved the archaeological holdings in the Jordanian Antiquities Museum on Citadel Mountain, and in 2018 the Ministry of Culture succeeded in including a file on the Representative List about the customs, traditions and practices related to the *Samer* dance.

A national project designed to inventory Jordanian cultural and intangible heritage and to establish a database called the National Data and Inventory of Endangered Heritage has been implemented in the governorates of Madaba, Karak, Zarqa, Balqa, Jerash, Mafraq and part of Aqaba. The inventory results can be accessed electronically on the website and paper at the Heritage Directorate. Several books and encyclopaedias were produced as a result of the project, and work is also being done to enumerate some elements of cultural heritage through relevant projects submitted to those cities chosen as the cities of Jordanian culture every year.

The Ministry of Culture is keen to care for Jordan's cultural heritage by creating a Heritage Directorate responsible for establishing a national database for tangible cultural heritage and ICH, to arouse interest in and encourage research on it, to establish a national heritage library available to the public, and to publish the outputs of work being done in the field of heritage (Hayajneh 2019: 91). This database will be updated in light of new developments and surveys and will be coordinated with local, regional and international stakeholders regarding developments related to intangible heritage in Jordan in a manner that serves the development of museums and departments of the Ministry and the documentation of intangible heritage. The national ICH project includes an inventory of practices, perceptions, expressions, knowledge and skills and the associated tools, pieces, artifacts and places of culture that groups, and sometimes individuals, consider part of their cultural heritage.

There is also a project to recover and transcribe audio material that was recorded in the 1970s by a group of heritage researchers in various regions of Jordan. The Heritage Directorate has decided that these tapes should be examined for evidence of valuable information that might help preserve the Jordanian identity and become an important reference material for researchers in Jordanian heritage. About 950 tapes have been collected from various parts of the country.

In response to the efforts being made by UNESCO to preserve ICH, the Princess Basma Center for ICH was established in 2009 as the result of an Al-Hussein Bin Talal University initiative to create the first scientific centre in a Jordanian university to specialise in ICH (Hayajneh 2019: 91). As mentioned above, the cultural space of the Bedouins in Petra and Wadi Rum is considered among the 'Masterpieces of the Oral and Intangible Heritage of Humanity'. Under the supervision of the Heritage Directorate, the ICH Survey Project (2013–2016) inventoried ICH in the governorates of Karak, Zarqa and Balqa with the help of the local communities to provide the Heritage Directorate with everything related to ICH.

A more recent ICH project in Jordan is Thesaurus, which is a knowledge container that includes all of the popular vocabulary describing various aspects of public life in the country. It is included within the Arab Heritage Framework and sponsored by the Arab Organization for Education, Culture, and Science. The project path seeks to collect intangible Jordanian folklore in the field through Thesaurus and document it in two tracks by examining what is stipulated in the draft Arab Convention for the Protection of Folk Traditions 2010 and by collecting Jordanian folklore according to the Ministry's plan to preserve this heritage. This path requires the Ministry to address the institutions that have worked to collect some heritage elements and to gather what has not yet been collected. The project's goals are to create a spoken vocabulary for each aspect of public life in Jordan, to develop a brief explanation for all of the vocabulary collated, to classify and enter all data related to Thesaurus into a special computer database, and to prepare the data so that it can be output in the form of a qualitative dictionary of Jordanian folklore.

There are also other non-governmental organisations interested in the subject, such as the Jordanian Writers Association, Middle East University, and the Society of Historians Concerned with Tribal Heritage and Ancestors, as well as other minority charities in Jordan such as those supporting Circassians, Armenians and Druze.

Major gaps and challenges for ICH protection in Jordan

ICH is rarely legislatively defined in Arab countries, and some – for instance, Egypt, Jordan and the United Arab Emirates – have referred to folklore only within the context of laws protecting intellectual property rights. However,

some national legislations include special laws for ICH, as in the case of Algerian Law No. 98-4 of 1998 regarding the protection of cultural heritage. In addition to the lack of a specific definition of ICH or a precise definition of its forms and rights holders (Li and Yu 2019: 978), Jordan also lacks a national archival policy for cultural heritage (Kiswani 2009: 14). In the absence of effective Jordanian legislation to protect the country's cultural heritage, ICH is merely subject to the protections contained in Jordan's Copyright Law, Geographical Indications Law, Trademarks Law, Industrial Designs Law, Trade Secrets and Unfair Competition Law and Patent Law.

The protection of ICH in Jordan is further complicated by the large number of agencies, institutions, and governmental and non-governmental organisations and individuals working in the field of cultural heritage preservation, the dispersion of their work, and the lack of coordination among them, all of which makes for an ineffective heritage management system (National Assessment Of The State Of Safeguarding Intangible Cultural Heritage In Jordan?). Clear standards and specific protection measures are also lacking, such as a special database listing and identifying intangible heritage practitioners and researchers, along with the necessary human and financial resources. Financial support for ICH constitutes only a small part of the national budget, and the protection and preservation of intangible heritage collides with the absence of joint bodies bridging the public and private sectors. Thus, clear national policies and strategies that coordinate all efforts and provide access to financial resources are needed.

Among the challenges is the lack of sufficient information offered by Jordanian institutions and organisations and the general lack of awareness and understanding of many people in Jordanian society regarding the nature and concept of ICH. Somewhat surprisingly, despite Jordan's cultural, ethnic and religious diversity, there is little special interest in the ICH of some groups that have a distinctive character, such as the Circassians, Chechens, Armenians, Druze and Christians. Therefore, attention should be paid to these groups when preparing inventories of ICH. The absence of educational programmes on ICH, and the general ignorance of ICH and of its importance, are among the dangers confronting it. Many ICH elements are particularly vulnerable due to the threats posed by wars and conflicts, and also because those who are keeping them alive are elderly; the younger

generations do not attribute the same importance to these elements of their culture (Lin Q. and Zheng 2018: 4369). Ultimately, interest in Jordan's heritage is largely limited to academic and research circles; outside of these spheres, ICH is commodified, mutilated or manipulated.

Overview of ICH laws in Jordan

There is no specific legislation dedicated to ICH in Jordan. Therefore, its protection must be found in several different laws, such as the Copyright Law (No. 22 of 1992), the Patent Law (No. 32 of 1999), the Geographical Indications Law (No. 8 of 2000), the Trademarks Law (No. 33 of 1952), the Trade Secrets and Unfair Competition Law (No. 15 of 2000), the New Plant Varieties Protection Law (No. 24 of 2000) and the Industrial Designs and Models Law (No. 14 of 2000). The protection offered by the provisions of these laws simultaneously has advantages and disadvantages.

The Jordanian government is partnering with UNESCO in implementing programmes expected to develop a sustainable economy based on knowledge, respect for the environment, and cultural heritage, ensuring cultural diversity (Hayajneh and Cesaro 2022: 389). The government has ratified many UNESCO conventions in the cultural field to protect, preserve and conserve cultural heritage, in addition to promoting its diversity. The author refers here to the Convention for the Protection of Heritage from Armed Conflict of 1954, the Convention for the Prevention of Illicit Trafficking in Cultural Property of 1970, the World Heritage Convention of 1972, the Convention for the Protection of the Underwater Cultural Heritage of 2001, the Convention for the Protection of the ICH of 2003, and the Convention for the Protection and Promotion of Cultural Expression of 2005. The Jordanian Ministry of Tourism and Antiquities, specifically the Department of Antiquities, is responsible for implementing agreements related to Traditional Culture (TC), while the Jordanian Ministry of Antiquities and Culture supervises the implementation of agreements related to ICH and forms of cultural expression. Cooperation between the UNESCO office in Jordan and the Jordanian authorities has resulted in the holding of many conferences, lectures and workshops related to cultural heritage, in addition to supporting institutions working in this field, conducting awareness campaigns and strengthening the capabilities of communities.

ICH protection under copyright and related rights laws

The relationship between intellectual property rights and intangible cultural heritage is complex. There is a clear conflict between these two systems, which can be viewed from several aspects. The application of the rules of the legal framework to this heritage may be consistent and harmonious with the rules of IPR (Blake 2023: 365). On the other hand, applying the latest rules may lead to risks in protecting ICH. Interaction between ICH and IPR is necessary in order to achieve sustainable development (Ubertazzi 2022: 122). The problem arises regarding the content of legal protection when a specific element of ICH, whether a traditional expression, traditional practice or genetic knowledge, is recreated by the communities and groups that hold and practise it. Protecting this element under IPR may lead to the freezing and obstruction of this ICH. The IPR rules also relate to individual rights and are not the public property of local communities. This may contradict what is indicated in Article 1 of the UNESCO Convention regarding the need to guarantee respect for the ICH of the groups and individuals.

IPR may not be sufficient to protect ICH and may encourage the misuse of this heritage. However, there are situations in which IPRs are beneficial to the empowerment of communities, groups and individuals themselves and enhance their ability to work. IPRs can offer effective protection for ICH by requiring the registration of IPRs over ICH elements to realise the required protection.

The discussion today revolves around the necessity of adopting a cooperative approach between IPR, ICH and sustainable development, through the use of IPR to promote measures that contribute to the preservation of a specific element of ICH, and the promotion of the cultural rights of indigenous or local groups, not only human rights or the rights of individuals, and ensuring cultural diversity, sustainability and the inclusion of indigenous and local communities in the protection of their heritage (Ubertazzi 2022: 120).

There are no practical cases decided by the Jordanian courts based on the application of IPR rules related to acts of unfair competition, patents, trademarks and geographical indications in Jordan concerning ICH. We find only one case study. The facts of the case are that a singer composed and sang a song considered a part of popular heritage, and then another singer used the same

melody and changed the lyrics of the song to release a new song. The first singer filed a complaint before the judiciary and demanded compensation for the harm he suffered. The court confirmed that the song in question is a Jordanian national popular heritage (folklore) and that determining this is due to expertise in this field. The Jordanian Court of Cassation decided that the task assigned to the experts by the trial court was to estimate the value of the damage and not to investigate whether the song is heritage or not, so the decision is incorrect and its explanation is incorrect. The letter of the Minister of Culture, which contained a response to the letter of the West Amman Court of First Instance, confirmed that the melody of the aforementioned song is a heritage melody available to everyone and is public property, and that any singer has the right to benefit from it, and no one has the right to claim his creativity. Further, it confirmed that Jordanian Radio has worked to revitalise traditional songs. The court decide that: 'In this regard, given their intellectual property ownership of the musical distribution and notation of these songs as for the lyrics of the disputed song sung by the plaintiff, the court cannot decide on them and point out the need to consult experts in folklore.' The court decided that the Court of Appeal had to discuss the validity of the Minister of Culture's letter in light of the provisions of Article 56 of the Law for the Protection of Copyright and Neighboring Rights and its amendments (No. 22 of 1992), which stipulates that "expressions of heritage (folklore) that reflect the national popular heritage are the public property of the state that cannot be transferred and that the Minister of Culture shall exercise the copyright concerning these expressions as well, and discuss the personal evidence that dealt with this, and if it is taken into account in the task that is determined to experiment so that the action based on which the experiment and assessment are conducted is limited to singing and attacking the words of the song only, without composing, and on the contrary, she must explain the reason for her lack of conviction in that evidence."⁸

The Jordanian court's decision is very important, as protection in Jordan is limited to tangible heritage, with a brief mention of the issue of ICH, which is exclusively summarised in traditional folklore arts, without the word 'intangible' ever appearing in the text of the court's decision. We learn from this decision the necessity of taking into account the specificity of ICH in terms of mechanisms for its protection and societal reintegration in light of all cultural changes.

The importance of the court's decision also arises from the confirmation that ICH in Jordan is classified as public property and is managed through the Ministry of Culture, which means that elements of this heritage are outside the freedom to dispose of goods in the market and excluded from the possibility of acquiring ownership. The main point of this decision is that the goal of the judiciary's confirmation is to protect ICH as public property, given the strictness of its protection and preservation, unlike if it is in the hands of individuals. According to this, it is not permissible to dispose of this heritage through sale, and the state, represented by the Ministry of Culture alone, and in particular the competent minister, must adhere to the invalidity of the contracts contained on these items and not accept the claim of the possessor against the public person who owns the cultural property. The claim for compensation for damages shall only be for this Ministry.

The Copyright Law offers IPR protections in Jordan, but this law requires certain conditions to be met in artistic work, such as the conditions of originality and novelty. Once these conditions are met in a work, the law grants the author moral and financial rights. This law also guarantees protections for some rights related to copyright, such as the rights of performers. The second article of the Jordanian Copyright Law states that 'every literary, artistic or scientific creativity is protected under Article 3'. The Jordanian legislature produced a list of protected works but did not expressly stipulate that ICH deserves protection. However, considering that this law offered examples of protected works but did not limit the extension of protection to those works on the list, it envisaged the possibility of the emergence of other works that would deserve protection if they met the conditions. This law also considers folklore a protected work and provides protections according to the rules of copyright and related rights.

The debate regarding the possibility of ICH being protected under copyright law in Jordan or in countries that have adopted the IPR system also extends to jurisprudence. Some scholars have argued that ICH cannot be protected by copyright law due to its special character (Zhang 2018: 5). Those who object to granting protection to these elements have relied on the opinion that heritage is not a work deserving of protection under the concept and terms of copyright law since it fails to meet the criteria of originality and innovation (Kariuki 2019: 89) and the 'author' is unknown (Techera 2011: 329). Moreover,

the latter cannot be considered an 'artist' and does not have copyright or related rights since these traditions have been carried out by multiple unknown persons across many generations through a continuous and slow process of repetition and emulation of the traditions and creative activities of a particular group. Finally, if ICH were protected under copyright law, this would only offer temporary protection, and that would be inconsistent with the special nature of ICH, which is characterised by its living nature, by being passed down from one generation to another over a long period, and by the diversity of its elements (Li and Yu 2019: 978).

On the other hand, the argument in favour of granting ICH copyright protection considers ICH elements a type of work that can be protected and views the imitation or distortion thereof as representing an attack on an intellectual property right (Lin Q, Lian Z., 2018). These proponents believe that for a work to be protected under the requirements of copyright law, it must meet three basic criteria: originality, innovation and fixation, which may be found in ICH elements in one way or another. The refutation of this opinion is based on the idea that whether IPR law can grant protection for ICH depends on the extent to which the ICH can be considered a protected work, so we must comb through the conditions for the protected work to determine the extent of its ability to enjoy the protections prescribed for artistic and literary works.

It can be assumed that ICH would benefit from the established protection of related rights. ICH is part of the IPRs of performers, which includes reciting the work, dancing, acting, singing and performing. Article 4 of the Jordanian Copyright Law links performance to the existence of a work performed by a performer. Article 3 of the same law also defines performers as 'actors, singers, musicians, dancers and other people who act, sing, recite, chant, play or perform by acting or other literary or artistic works or any other folkloric expression'. To be protected by Article 2 of the Copyright Law, ICH must be performed publicly for a specific public or recorded audience. This criterion is met if the work is shown or presented in a public place in the presence of a gathering of people, at a national celebration, or at a wedding. It may also be met if it is performed in a private place accessed through public means, such as broadcast through social media and via some websites.

However, an examination of the hypothesis of

protection according to the related rights shows that the protection offered to ICH is indirect and deficient, so if we consider ICH to be an author's right, the protection granted would be broader than the protection granted under the rules of related rights. According to Articles 8 and 23 of the Jordanian Copyright Law, performers do not enjoy protection against distortion or change unless it tarnishes their stature and reputation. Also, the right to decide to publish the work belongs to the author only, not to the performer. Moreover, in related rights, the financial rights are not transferred to the heirs of the performer, unlike in the case of the heirs of an author. The period of protection for copyright is also longer than the term of protection for the owners of related rights (Inawat 2015: 228), which is mentioned in Articles 30–32 of the Jordanian Copyright Law.

Protection under the IPR system is also deficient because it focuses on protecting the rights of performers, producers of phonograms or broadcasters of ICH. Therefore, this type of protection is less useful for the cultural heritage itself and more useful for the protection of the activities of the owners of the related rights embodied by the recording of the ICH or its transmission or dissemination to the public through recordings or broadcast organisations. The protection is based on the fact that it is a right related to copyright and not to an author.

Evaluation of the protection according to copyright law

The Jordanian Copyright Law and related rights do not contain effective protection mechanisms (Kiswani 2009: 14). This law's position on the inclusion of the established protection of IPR is unclear. Article 3 of the Copyright Law does not explicitly refer to ICH as being a protected or unprotected work, although it offers some examples. It also does not establish a special system for ICH or its ownership. This law does not determine the actions that constitute attacks on ICH. However, texts included in IPR laws criminalising violations of protected works can be used for any IPR. This law stipulates the penalties for those who imitate the rights it protects. In addition, there are no clear procedural rules in the Copyright Law for the prosecution of these elements. Other possible forms of ICH protection exist in the field of intellectual property, such as those that protect industrial designs and models, trademarks, geographical indications and patents (Liu and Gu 2011: 214).

Protecting ICH under patent law

As for the possibility of applying patent law to the protection of ICH, this hypothesis must be examined under the conditions of granting protection to patents, according to which their novelty, innovation and applicability in an industrial activity must be protected. The patent grants the inventor a monopoly right to the invention (Ashraf and Mohi-ud-din 2018: 102), and an inventor can apply for a patent to protect the creation of databases to prevent attackers with the use of novelty and creativity conditions.

ICH elements may include traditional, agricultural, scientific and medicinal knowledge, knowledge related to the science of the relationship between living organisms and the environment in which they live, and genetic resources, all of which companies can use when inventing medicines, for example. Thus, patents could be derived from traditional knowledge or genetic resources (Inawat 2015: 242). Although the application of patent law protection is ideal for ICH elements, there are still some obstacles. ICH does not represent any novelty or creativity and may not have an industrial application (Nwabueze 2013: 184) because of the specific nature of ICH and because its elements can be very ancient and its technologies might have been lost to time.

The same can be said for applications of industrial prototypes or design law to protect ICH elements, where it is required that the model be new, whether or not it is innovative. It must also be capable of industrial exploitation. These rules provide largely effective protections and apply to elements of ICH that meet the criteria contained in prototypes or industrial designs law. Some elements of ICH can be preserved as industrial models such as inscriptions, clothes, huts and tents, agricultural tools and warfare (Liu and Gu 2011: 215). However, ICH that includes traditional knowledge may not be novel and may not include an industrial application (Liu and Gu 2011: 214).

The application of trademark and geographical indications systems to ICH

It should also be noted that the rules for the protection of trademarks or a geographical indication can be applied to ICH (Neethu and Schovsbo. 2021). A trademark is a sign that can distinguish one person's goods and services from the goods or services of others and enables the consumer to identify the source of the goods or services. The trademark system is limited to what is registered as a mark at the Intellectual Property Rights Office of the Ministry of Economy, and what

is not registered is not protected. Infringement occurs when an unauthorised person uses a trademark that is identical or deceptively similar to a registered trademark. Therefore, a form of ICH can be registered as a trademark or as a geographical indication. It is possible to imagine preserving some forms of ICH as trademarks, especially since marks can be symbolic or figurative. Since a trademark may be a sound, image or symbol (Neethu and Schovsbo . 2021), this would make many forms of artistic or folk heritage valid marks. In recent years, legal protection has begun to be extended to audio and audio marks, meaning that legal protection can include folk songs as audio marks. Group marks can also be used to create a brand image for traditional goods and services such as paintings or textiles. Certification marks can also be used to protect traditional goods of cultural significance (Risang et al. 2018: 175). The trademark rules do not extend direct protection to the ICH, nor do they provide a clear and transmitted image of the direct influence of the ICH, but certification marks can be used to protect traditional goods of cultural significance (Risang et al. 2018: 175).

As for geographical indications (GI), it is a community right, and the products it covers represent the cultural expressions of the communities involved in their manufacture. As a result, traditional societies often rely on GI to protect some of their rights associated with goods that have some quality, reputation or other characteristics associated with the geographical area in which they are produced (Risang et al. 2018: 176). Thus, the products are cultural expressions of the societies involved in making them. The Jordanian Geographical Indications Law provides for the extension of the protection of traditional products, such as handicrafts, which are an inherent part of Jordanian culture. GIs are often the result of traditional knowledge passed down through generations of a community in a particular region. Likewise, GI sometimes consists of elements specific to the traditional cultural heritage of a particular country or area, especially regarding tangible products such as handicrafts for which individuals or local communities use natural resources from their geographical origin in their production. It is also possible to protect some cultural expressions as geographical indications even if they do not directly have geographical connotations. GIs are consistent with the nature of traditional knowledge (TK) and traditional cultural expression (TCE) because GIs provide unlimited time protection, and enhance the relationship between the products and their origin. GI is considered a collective

right, as there is no text regarding the right to license or waiver, and the relationship between the quality of the product and its origin, on which the protection of the GI is based, prevents the transmission of the GI to manufacturers outside of the concerned region (Torsen and Anderson 2010: 60).

Although the protection granted by the GI system does not apply directly to elements or products related to TK or TCE, which remain in the public domain with traditional regimes and are vulnerable to misuse, they sometimes ensure efficient protection in many aspects. First, the GI confirms the cultural importance of TK and TCE and preserves them for future generations (Paulus and Kelli 2023: 27). The added value of the new GI also makes producers less likely to replace traditional processes with processes that may be less expensive. GI guarantees protection for TK and TCE to combat deceptive commercial practices. It can provide indigenous communities with a valuable service by giving them opportunities to exploit their TK and TCE commercially and to enhance economic development based on traditional knowledge.

Many distinguished products have historical roots. Their distinction is attributed to the inherent practices represented in the traditions of their manufacture, whether in terms of the method of production or the selection of product components. The GI of products related to a specific region has an effective role in promoting that region, in attracting visitors and tourists to learn about the stages of production of local products by conducting tours of factories and farms, and in arousing curiosity to explore other regions. By such means can tourism flourish and stimulate villages, governorates and cities to show what they have in their heritage that deserves to be displayed locally and internationally. It adds value to the products and makes them desirable, which contributes to their export, which in turn creates a resource for the state, in addition to the contribution of GI in stimulating the production of national producers and ensuring the preservation of their efforts, and in encouraging legitimate competition by other producers incentivised to produce their own distinctive products according to best standards.

Advantages of applying trademarks and geographical indications rules to ICH

The first advantage of the protection of ICH through trademarks and geographical indications is that these two systems can be used against unfair commercial practices

to identify different products or services and thus prevent consumers from confusing service providers with the quality and reputation of the product or service (Ubertazzi 2017: 562). Since the GI system helps to distinguish between arts and crafts belonging to the realm of literature and traditional art or handicrafts originating from a particular region, it can also distinguish them from similar products or services. Trademarks protect consumers' interests, not just the economic interests of traditional craftspeople, from imitation. In turn, this may lead to a conflict between monopoly and collective rights to ICH.

Second, regarding the terms of the protection, trademarks and GI can be protected indefinitely if the application is properly renewed. Therefore, under the provisions of trademark law, elements of the ICH of a trademark will not be rejected because they arose long ago. Furthermore, the registration of trademarks can be renewed several times, which helps the extension of the protection period (Lin.,Q and Lian Z. 2018: 4370). It also enables ICH to gain international recognition. On the other hand, many problems need to be addressed, such as the absence of limitations on trademark applications. The first to register ownership of an element of ICH as a trademark for a service or product benefits from the exclusive right of the trademark and excludes anyone from its use; however, ownership of ICH is collective (Liu W. 2016: 116) and allows everyone from the same region or community to access its advantages (Unhavaithaya 2022: 2). This may create a clash over benefit sharing (Mathur 2004).

Deficiencies of trademarks and geographical indications rules

There are many problems associated with the application of trademarks and GI rules to ICH that need to be addressed. For example, the rules of trademark do not provide direct protection for ICH since it does not have a clear and transmittable image, and there is a lack of limitations on trademark applications (Lin and Zheng 2018: 4369). This contradicts the essence of ICH, in which ownership is collective and belongs to all persons from that place of origin.

The application of a GI and trademark system is an effective way to protect ICH, but in terms of its scope, they are most useful in protecting the interests of the owners of forms of ICH against counterfeit products, not against the misappropriation and unauthorised use of such forms in general (Nwabueze 2013: 186).

'Geographical indications' refers to identifying goods originating from a specific area that have natural or human characteristics belonging to that area. The definition of GI covers both natural and anthropogenic factors. Therefore, ICH can be protected through GI, especially since many elements of ICH are linked to a specific region. Due to GI's collective nature, elements of ICH must be registered in the name of the group, and rights must be extended to all group members (Kariuki 2019: 90). There are also no restrictions on the term of protection in this case, and the rights can be enjoyed indefinitely.

What distinguishes the GI system from other forms of IPR is that the issuance of the GI certificate is based on minimum levels of innovation (Nwabueze 2013: 183). In addition, the scope of the collective rights granted under GI is wider, as it offers all producers in a given geographical area who produce items of a certain type and quality the right to use and exploit the indication. The right, then, is related to the product itself, and does not belong to a specific individual. Rather, it extends to all producers located in the area specified by the GI. However, the protection of ICH under the GI system may not be appropriate because it does not include all forms of ICH. Also, its rules apply only to protect against unfair competition.

There are two main advantages of protecting ICH under the trade secrets system. First, the rights holder can obtain protection against violations by aggressors under unfair competition laws (Varadarajant. D., 2011). Merchants must adhere to the principles of honesty, sincerity, equality and fairness, and comply strictly with the code of business ethics (Liu and Gu 2011: 216). Traditional crafts can also be protected as trade secrets. As for the shortcomings of protecting ICH as trade secrets, the rights holder of the ICH must follow suitable procedures to guarantee the confidentiality of their property (Neethu and Schovsbo 2021). Although the owner might intend to – and implement measures to – maintain its confidentiality, under certain exceptional circumstances, the owner may reveal the secret. Another shortcoming is that the local population will generally lack awareness of the protection and demonstrate their experience and skills to tourists (Halder and Sarda 2021: 220). Once the trade secret has been decoded by modern technology, protection will no longer be possible. Even if the traditional skill was widely known within the group, if it was unknown to the wider public, it would still be considered secret.

Towards a specific legal system for the protection of ICH in Jordan

Although the IPR system plays an important role in protecting ICH, it can be said that it has failed to provide effective and comprehensive protection in Jordan, as some issues still pose an obstacle to the creation of an adequate regime (Cheng and Yuan 2021: 896). This system protects material expressions of literature, music and drama, and not the cultural expression in and of itself (Techera 2011: 330). Therefore, IPR protection is given to the author's rights and not to the knowledge or the traditional expression (Li and Yu 2019: 979). Given the special nature of ICH, the establishment of comprehensive legal protection with stand-alone legislation may be an appropriate option for Jordan to take. Some countries, such as Japan (Ishimura 2020: 400), Peru, South Africa, Thailand (Unhavaithaya 2022: 3), Costa Rica, Panama (Ashraf and Mohi-ud-din 2018: 103), India (Stoianoff and Roy 2015: 3), Turkey and Namibia (Ashraf and Mohi-ud-din 2018: 103) have resorted to creating and proposing a *sui generis* regime for the protection of ICH, sometimes in addition to using the IPR system. The author will discuss the content of this regime of protection and then evaluate its principles.

The content and foundations of the sui generis regime for the protection of ICH

The Latin term *sui generis*, meaning 'unique' or 'independent' (Merriam-Webster n.d.), is applied to unique or independent legislation that is not based on the protection established under the IPR system. That is, it refers to legislation specifically formulated to protect ICH or one of its elements. It is a system designed to protect rights that fall outside the copyright, patent, trademark, GI and trade secrets system. *Sui generis* protection stems from the belief that ICH is a new form of property that has a special nature and needs different legal protection because it is not fully compatible with IPR protection (OseiTutu 2011: 160) and is indicative of a representative, collective, renewable and vital heritage (Kariuki 2019: 95). In addition, ICH is a topic of debate in terms of the objectives and methods of this protection.

This special legal system must include a definition of the concept of this type of heritage and the means of its protection (Ganesan 2016: 52). In addition, the issue of the collective ownership of this heritage and the modes of its rights enforcement must be addressed. The behaviours that are considered violations must also be identified to

enable traditional societies to prosecute those who exploit their traditional cultural expressions and to set a standard of damages for lawsuits while maintaining broad public access to the country's traditional cultures and heritage.

This system should include the creation and preservation of a national list of ICH (Farah 2015: 140) by registering ICH elements and creating a database of them, asking for prior informed consent (Inawat 2015: 243), considering the possibility of sharing benefits (Hayajneh 2019: 107), offering appropriate compensation, disclosing the country of origin, regulating licensing contracts, respecting customary laws (Lin, Q., and Lian Z. 2018: 4371), and ensuring justice and sustainability to encourage its exploitation.

It should be noted that strengthening the protection of ICH under specific laws places the management of ICH in the hands of national governments (Lixinski L., 2023: 10), thus opening up the idea of the public sphere. Under this unique regime, reproducing, distributing and using forms of ICH for commercial purposes would be prohibited. The use of forms of ICH would require receiving prior permission from the competent government authority. This use would also require making payment to the government that holds the property rights. These fees would be set according to what the usual amount would be for a similar work that is copyrightable. The government's right to manage and collect royalties from forms of ICH would exist in perpetuity.

Sui generis systems contain several exceptions to licensing and ownership requirements. They do not include non-commercial or customary uses of ICH, as many laws exempt private and free performances of ICH (Ganesan 2016: 53). In addition, licensing and ownership requirements do not usually apply to educational uses of ICH, fair use in the creation of an original work or occasional use. Unique laws allow national governments to pursue civil and criminal lawsuits against prohibited and unauthorised uses of their community's ICH. A seizure order may be issued or obtained for unauthorised copies or proceeds from illegal uses of ICH. Governments may also have the power to end or suspend any performance that violates their rights to ICH. In addition, criminal penalties may be related to sales or offers of sale of forms of ICH, the intentional misrepresentation of ICH, or its intentional distortion in a way that is detrimental to the society from which it arose.

Evaluation of a sui generis system of ICH protection

Despite the advantages of a *sui generis* system, it may not offer a solution devoid of criticism or flaws (Farah 2015: 143). For example, *sui generis* laws would try to introduce ICH into the field of IPR through central administration, but government oversight of ICH and its associated royalty rights might not, in many cases, provide economic benefits for or give cultural protection to traditional communities. Managing forms of ICH through central governments under a unique system may lead to the risk of denying traditional societies access to their own ICH and the associated revenues, and laws often set ICH royalties aside for cultural development or national artistic development rather than for the development of traditional societies.

This raises concerns about who benefits from ICH royalties and who suffers. The application of this system can amount to the suppression of 'unwanted' cultures themselves, and it can be difficult to establish ownership of ICH when it likely originated hundreds or thousands of years in the past (Zhang 2018: 2). Societal revenue may also force traditional societies to compete directly in the marketplace for intellectual property, which may result in the commercialisation of traditional culture into tradable products and exacerbate inequality between different groups. Unique legislation may neither provide traditional societies with the ability to reap the economic benefits of their ICH nor to significantly reduce the use of ICH. Therefore, transferring the status of rights under unique laws to the traditional societies themselves simply exchanges these problems for new ones.

Also, a unique system is often created individually and varies from country to country. Creating a uniform system applicable to the largest number of countries is a difficult task to achieve due to the huge diversity of ICH. This approach should ensure that traditional societies have the right to prevent the harmful commercial exploitation of their ICH, that these legal rights are granted to affected communities (rather than to central governments), and that communities will have the right to exercise some measure of self-determination over the use of their ICH. On the one hand, delineating the scope of these legal rights precisely limits the ability of collective self-determination to interfere with freedom of expression and the public's broad access to traditional culture. This enhances the economic status of traditional societies without the need for a cumbersome infrastructure for

distributing property rights or a nuanced differentiation of contributions from community members. However, these laws do not adequately guarantee the benefits that traditional societies should derive from the preservation of their ICH. Traditional communities can be better served through a less centralised system that provides them with legal means to protect themselves against exploitative or harmful uses of their ICH. Protection measures should be put in place to ensure that liability for any damage done to ICH is determined, and special laws must be designed to give national governments the same rights over ICH that authors have over their works protected by IPR.

The role of IP protection of ICH in reinforcing sustainable development

As for the relationship between ICH, sustainable development and IPRs, it has been pointed out that the elements of ICH might not be amenable to the IPR system. IPRs grant exclusive rights while elements of heritage grant collective rights. Traditional heritage also conflicts with the idea of novelty on which the IP system is based. In addition, ICH is transmitted from generation to generation, while IPR protection is limited to a temporary period (Desantes 2020: 567). Recently, there has been a discussion about the need for heritage to be consistent with international agreements on human rights and sustainable development. The 2030 Sustainable Development Plan specifies a set of goals that must be achieved, including the reduction of poverty. Within the framework of ICH Convention, sustainable development is also addressed in Chapter 6 of the 'Executive Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage', which relates to 'the safeguarding of the intangible cultural heritage and sustainable development at the national level'. Under the definition in this Convention (Ubertazzi 2022: 271), ICH must be 'compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and sustainable development'. The World Intellectual Property Organization (WIPO) guarantees the protection of forms of cultural heritage, such as traditional knowledge, genetic resources and cultural expressions, under IPRs, while the UNESCO Convention guarantees the preservation of this heritage. Countries have begun to give culture an important role in their development policies, as is evident from the United Nations Conference on Sustainable Development (Rio Conference) and the Hangzhou Declaration in China, under the title 'Culture is the Key to Sustainable

Development'. It is also recognised as a key component of the international development agenda and is enshrined in the 2030 Agenda for Sustainable Development and the adoption by the United Nations of the 17 Sustainable Development Goals (SDGs) in 2015.

However, despite the variations between intellectual property and intangible cultural heritage, IPRs are among the potential protection measures for ICH. This highlights the link between conservation, sustainable development and IPRs in Chapter 6 of the Guiding Principles, which encourage the adoption of 'appropriate legal, technical, administrative and financial measures, in particular through the application of intellectual property rights ...' to support the recognition and promotion of ICH as a strategic resource to enable sustainable development (Ubertazzi 2022: 270). This link between the concepts of ICH, sustainable development and IPRs is necessary in order to develop and implement heritage conservation policies sustainably and to conduct a comprehensive assessment in terms of the positive effects and drawbacks of adopting IPRs to protect this heritage beyond purely economic concerns regarding the use of IPRs as safeguarding tools of ICH. In this context, IP laws appear to have a role to play in providing effective protection for certain elements of heritage, enhancing the capabilities of local communities and groups, enabling them to protect their heritage sustainably, and involving them in the process of preserving heritage to ensure its continuity. It also allows them the possibility of filing lawsuits to respond to attacks on this heritage and to compensate for the damage they suffer. The application of IPRs means giving commercial investment value to this heritage. It contributes to stimulating inventions from elements of ICH to increase production, provide medicines and facilitate the transfer of technology, which contributes directly to sustainable development. It was also decided to protect indigenous peoples and their rights, as was done in the UNESCO Convention, the Convention on Biological Diversity, and WIPO discussions in this framework. IP rules are essential for appreciating the importance of protecting ICH. They are a powerful tool for preserving traditional knowledge, strengthening local economies and providing consumers with authentic, high-quality products. By recognising and supporting IPRs, we can contribute to the sustainability and preservation of diverse cultural traditions around the world. IP laws play a crucial role in promoting innovation, driving economic growth and ensuring fair competition in the global market. IPRs are not only

essential for the individuals and organisations that create and invest in these assets but also for preserving ICH and promoting creativity. Intellectual property-intensive industries contribute significantly to the global economy, generating jobs, attracting investments and stimulating technological progress. Moreover, IPRs play a vital role in attracting foreign investment and enhancing international business relations, as they provide a safe environment for companies to operate and expand. Protecting ICH by IP laws is crucial in sustainable development, benefiting producers and consumers alike. By linking a product's quality, reputation and characteristics to its specific geographical origin, IP laws provide many advantages that contribute to sustainable development, economic growth and consumer confidence. Investing in sustainable practices and improving their livelihoods also protects the surrounding environment for future generations, and contributes to the preservation of traditional production methods and craftsmanship.

ICH can play an essential role in addressing the SDGs. For instance, many countries have relied on the implications of ICH in promoting sustainable development and advancing it through its use in several economic, social, environmental and tourism fields, as there is a close mutual relationship between sustainable development and ICH (Giliberto and Labadi 2022: 133–146). This appears in several aspects: protection of ICH by IPRs helps to prevent the loss of biodiversity, reduces soil degradation, mitigates the effects of climate change, and has an empowering impact on communities as they contribute to generating income, creating job opportunities and reducing poverty. The 2010 Nagoya Protocol to the 1992 Convention on Biological Diversity aims to ensure the fair and equitable sharing of benefits arising from the use of genetic resources and associated traditional knowledge, enhancing the ability of local and indigenous communities to benefit from the use of knowledge, innovations and practices, and to protect them from biopiracy. Local communities in Jordan have developed lifestyles and practices about ICH and respect the environment. Over time, a large group of traditional ecological knowledge associated with textiles has developed. Documenting elements of the ICH of the Bedouin or rural community in Jordan helps to preserve their identity and traditions and prevents them from being lost due to accelerating urbanisation. Songs, stories, music, knowledge, traditional crafts and other forms of heritage can be used to achieve economic development in these communities.

ICH also helps to reduce poverty and the unemployment rate as a result of employing individuals in projects related to one of the various elements of heritage (Lel-Filho et al. 2018: 132). Further, preserving and protecting elements of ICH by means of IP contributes to enhancing food security in Jordan. Traditional methods or recipes, local agriculture, pastoralism, water resource management, fishing, hunting, gathering and food preservation systems can effectively contribute to achieving food security (Ramli et al. 2017: 432). The knowledge, skills, traditions and practices related to the date palm are linked to SDG 2 (zero hunger) and SDG 11 (sustainable cities and communities). Popular memory preserves many distinctive foods that can be a source of livelihood for many families, especially since they have few costs, as well as its role in promoting and supporting tourism activity (Reed and Ryan 2019: 6). Involving the local community in preserving the cultural elements emanating from their community helps them to develop their quality of life and enhances the community's resilience. The connection is also clear concerning medicines derived from traditional recipes or plants and herbs. The integration of traditional medical treatments can bring great benefits to patients. Medicinal plants are traded commercially for use in the manufacture of medicines and provide a global market. Countries are beginning to look for better ways to ensure sustainable management of food production, resilient ecosystems and restoration of degraded lands. The author can here refer to some projects on food heritage and sustainability, such as the MedSnail project, which started recently in Jordan, Tunisia, Palestine and Lebanon.⁹

Preservation of elements of ICH also helps in promoting tourism (Goussous 2022: 204–209), which has an impact on economic development. Tourism constitutes an important element in Jordan's overall economy. Tourism investment represents one of the most vital and strategic sectors, given the returns it reaps if a business environment is available to complete the investment project (Kim et al. 2019: 428). Cultural tourism helps in developing the tourism sector, diversifying the tourism product, and attracting tourists through the benefits of local culture in terms of content and forms of artistic expression, as ICH contributes and plays a very important role alongside traditional cultural heritage in reviving domestic tourism. This type has several forms, including religious tourism, party tourism and festivals.

However, even if measures for the safeguarding and

sustainability of intangible cultural heritage may support the development of associated living heritage, the application of IPRs may pose challenges and hinder the achievement of sustainable development, especially when IPRs are not carefully adopted and implemented. IPRs is applied in a manner consistent with the ethical principles of UNESCO. Implementing these laws may lead to the risk of freezing or consolidating this heritage. It could also lead to property rights being granted to persons or large companies that monopolise the exploitation of this heritage. Intellectual property rights do little to stimulate invention in developing countries due to the absence of the necessary human and technical capabilities. They are ineffective in stimulating pro-poor research, because the poor would be unable to afford the products, even if they were developed. They limit the option of technological learning through imitation. They allow foreign companies to drive out domestic competition by obtaining patent protection, and to serve the market through imports rather than domestic manufacturing. Moreover, they increase the costs of essential medicines and agricultural inputs, severely affecting the poor and agricultural families. Such cases prove that adopting IPRs is not an easy task; strategies must be developed to effectively protect a society's intangible cultural heritage and a sustainable method must be carefully designed. In addition, IPRs must be formulated with the full participation of society. However, in many cases, it may be difficult for communities and individual groups to enforce those rights to protect their ICH elements.

Conclusion and recommendations

Cultural heritage reflects the identity of individuals and societies, as it is an extension of the past into the present. However, after years of neglect, intangible cultural heritage is receiving attention under the provisions of international law as a basic lever for sustainable development and cultural progress.

The problems to be resolved regarding ICH protection are connected to the failure to identify the specific nature of ICH and the lack of effective legal protections in Jordan. This paper proposes that the Jordanian legislature grant a tort-like remedy against exploitative or highly prejudicial uses of ICH. The study concludes by emphasising the need either to reform and review Jordanian IPR laws, to ensure they effectively protect ICH elements and establish a disciplined legal relationship based on sound foundations between the rights holders of ICH and their knowledge

and ecosystems, or to adopt a *sui generis* system.

Jordanian legislative initiatives have failed to complement international efforts to protect ICH. It became clear through this study that those methods used in the national legislation, which rely mainly on intellectual property rights, do not provide full protection because they protect only some elements for a specific period. The national legislation has to include a special, unique system to protect Jordan's ICH. The collective and exclusive right of communities to own their ICH and to participate in decisions related to its exploitation will be recognised, which will restore respect to the heritage system as a developmental, cultural and economic lever. Thus, dealing with ICH through a heritage-based discourse may be able to successfully emphasise the importance of addressing this type of heritage. Therefore, ICH must be precisely identified and documented by establishing a specialised archive concerned with its collection, stipulating prior authorisation, privatisation of the genetic source or relevant traditional knowledge, and fair sharing of benefits, providing criminal and civil penalties commensurate with the specificity of the ICH. Preserving heritage is a cultural responsibility that requires everyone to strive to protect the ICH elements at governmental and popular levels. The results of scientific and technological progress methods must also be taken into account. Academic institutions should play an effective role in protecting ICH, by contributing to the process of documenting and recording forms of this heritage, holding conferences and seminars, and offering training courses aimed at highlighting ICH.

To ensure a more effective level of protection under a copyright system for ICH, some modifications and improvements must be introduced in the Jordanian legislation. First, we recommend that the rights holders of ICH be identified. This can only be achieved by considering the collective, ethnic and geographic nature of heirs and common practices. However, these rights should be entrusted to the state. Second, we recommend adjusting the term of protection by extending copyright protection issued by Jordanian copyright law to these items. Third, we recommend promoting the use of ICH and providing economic compensation for this use. Compensation should be offered to the rights holder for any moral damage suffered.

We also recommend adjusting the Jordanian law of trademark protection by emphasising the need to apply

for trademark registration based on some form of ICH. We further recommend the amendment of the Jordanian geographical indications law to ensure that ICH elements apply for GI registration, since the characteristics of ICH are generally collectively owned intellectual achievements concentrated in a particular area. This would increase their economic value.

It may be necessary to amend the Jordanian patent law and to introduce new statutory provisions relating to ICH in traditional technology to close the loopholes in the existing laws, such as requiring a certificate before granting a patent for any invention involving ICH or biological resources. Moreover, institutional barriers to identifying key features of traditional medicines applicable to patents should be eliminated, the herbal medicine patent application process streamlined, and the time between application filing and patent granting shortened.

We also recommend the creation of Jordanian databases and digital libraries to document ICH. A certificate of informed consent should also be required from indigenous peoples, administrative agencies or the

benefit-sharing agreement. The scope of substantive claims in Jordanian patent law should also be limited to biological, biochemical and genetic issues, requiring patent applicants to disclose the origin of genetic resources and traditional knowledge that were useful or necessary for the invention.

Finally, ICH is very sensitive, and there are no uniform claims of interest, which makes it very difficult to build a system that fits all of the necessary elements. Furthermore, the level to which the *sui generis* system achieves its objectives is questionable, and the local nature of these unique laws prevents them from providing effective protection. Therefore, it may be better to provide efficient protection using IPR law, ordinary property law and contract law that can be applied to the protection of ICH elements. Liability rules and unfair competition laws play an important role in supporting the commercial exploitation of ICH and in preventing unfair competition. For this reason, it is extremely important to extend effective protection to heritage materials. Questions remain open as to which system is best for ensuring such protection, indicating the necessity for additional research. 🇬🇩

ENDNOTES

1. <https://unesdoc.unesco.org/ark:/48223/pf0000229034>
2. <https://ich.unesco.org/en/RL/as-samer-in-jordan-01301>
3. <https://ich.unesco.org/en/RL/date-palm-knowledge-skills-traditions-and-practices-01509>
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6. <http://www.ich.gov.jo/node/65135>
7. <https://ich.unesco.org/doc/src/07950-EN.pdf>
8. Judgment No. 5049 of 2022 Court of Cassation, 03-01-2023, existe in <http://www.qistas.com>
9. <https://www.enicbcmed.eu/projects/medsnail>

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