



**To what extent can Libyan intellectual property laws protect
traditional cultural expressions from unauthorised use?**

A thesis submitted in fulfilment of the requirement

for the award of the degree of

Doctor of Philosophy

by

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2016

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Abstract

Traditional cultural expressions (TCEs) are an integral part of the cultural heritage of every nation – they are an essential element of the social and cultural identity of each nation and particular communities within those nations. TCEs represent an important part of the TCE holders' living culture. Hence, indigenous communities in many developed and developing countries have called for effective protection of their TCEs against unauthorised use that could potentially lead to extinction of their TCEs.

Protecting such TCEs from extinction should be done by promoting them through encouraging and supporting their holders to keep practising and developing their TCEs. However, to date, there is no mechanism that has been agreed between countries to protect and promote TCEs. Some countries and intergovernmental organisations have provided various mechanisms aimed at protecting and promoting TCEs at national, regional and international levels, although these mechanisms differ from each other regarding the scope and type of protection granted to the TCEs, and in meeting the needs and expectations of the TCE holders.

This thesis investigates the extent to which Libyan intellectual property (IP) laws can protect TCEs from unauthorised use, and whether the current protection is adequate. In this regard, the thesis explores the scope and types of protection that are granted to the TCEs through various mechanisms which have been proposed at national, regional and international levels. The thesis commences with an examination of relevant international treaties, including the international treaties within the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO). It then contrasts the regional and national attempts that have been made to provide adequate mechanisms that protect and promote TCEs, by either using existing IP laws or creating *sui generis* systems. This research also compares the protection of TCEs under IP laws in Australia and New Zealand with the protection of TCEs under the *sui generis* systems in Tunis and Panama.

To this end, the thesis investigates the appropriateness of the current protection afforded to Libyan TCEs, and whether it is enough to protect such TCEs from extinction. First, the thesis

examines the protection of TCEs under the current Libyan IP laws, and then compares such protection with the protection of TCEs in other nations, including Australia and New Zealand. Following this, the thesis considers to what extent the current protection of Libyan TCEs can fulfil the needs and expectations of the indigenous peoples of Libya (the Amazigh peoples). This was achieved through conducting interviews over the phone with representatives from the Libyan Ministry of Culture and Civil Society and the Amazigh communities in the Nafusa Mountains region. The fieldwork, which was conducted by the researcher who is of Amazigh origin from the Nafusa Mountains region, indicates that Amazigh TCEs nowadays are facing extinction more so than at any time previously. It also indicates that the protection of Amazigh TCEs under Libyan IP laws is not adequate because it does not meet the needs of the Amazigh TCE holders. Therefore, there is a need to establish a stand-alone *sui generis* system that aims to promote and protect Amazigh TCEs through fulfilling the needs and expectations of the Amazigh TCE holders in Libya. This thesis therefore recommends that the current Libyan IP laws should be revised to introduce a stand-alone *sui generis* TCEs protection system.

Declaration

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name, in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name, for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide and where applicable, any partner institution responsible for the joint-award of this degree.

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Dated: 06/11/2017

Acknowledgements

I would like to express my enormous appreciation to my supervisors Professor Melissa de Zwart and Dr. Judith Bannister. This work would not have been completed without their relentless support and encouragement from the very beginning. They have inspired the completion of this research work in many significant ways especially through their brilliant comments and suggestions.

I also appreciate my colleagues in the PhD room for the collaboration and convivial atmosphere created during the course of my PhD Journey. A special appreciation to Karen Axford and Damian Etone for their jovial encouragement and support. I cannot forget the significant support I received from the Law Library staff, especially Margaret Priwer who was always available to locate the material I needed at various times.

A special thanks to my family. Words cannot express how grateful I am to parents and siblings for creating the required emotional and psychological conditions necessary for me to finish this work, despite the instability in Libya. Your prayer for me was what sustained me thus far.

Dedication

I dedicate this study to the families of the martyrs of the massacre at Almelaap in Saffitt, Libya. In June 2011, Qadahfi's army kidnapped and subsequently murdered more than forty people from Algalaa. This atrocity was part of the ethnic cleansing and genocide committed against the Amazigh peoples of Libya. Four of my uncles and more than thirty-six of my neighbours and friends lost their lives in this act of barbarism.