

---

# WHOSE CULTURE AND WHOSE RIGHTS: BEYOND MUSEUMS LIES THE LEGAL BATTLE FOR LIVING HERITAGE

---

Dhiya Madhan, Christ (Deemed to be University), Pune Lavasa Campus

## ABSTRACT

Intangible cultural heritage the songs patterns and knowledge passed down through generation lives in the hands and voices of communities, not in museums or lists. Yet, while UNESCO'S 2003 convention Celebrates these living traditions, it feels to protect the custodians from appropriation modification and dispossession. This paper argues that recognition without enforceable rights is a hollow promise, allowing brands to profit from sacred designs (Kente, tatreez, Maasai beads, Navajo patterns) And states to claim communal heritage as their own through critical analysis of recent literatures, real world cases and communal resistances and it exposes systematic failures in international law. The study proposes bold reforms Community cultural rights, benefit-sharing fees, and prior consent to shift power back to the barriers. The safeguarding begins not with certificates, but with justice for the grandmothers who keep the culture alive.

**Keywords:** Intangible Cultural Heritage (ICH), Cultural appropriation, UNESCO 2003 Convention, community rights, intellectual property, Living Heritage.

## **INTRODUCTION**

When you see a beautiful embroidered dress on a Paris runway, have you ever wondered whose grandmother taught those stitches? Similarly, when you buy a “tribal” earring from a big brand have you ever thought about the women who sat under a tree for weeks stringing those beads together is still living a miserable and poor life?

Heritage is not only about old stones and museums. Heritage lives in hands, voices, kitchen, and villages. It lives when a Ghanaian weaver ties Kente cloth for their daughter’s wedding, it lives when a Palestinian mother teaches tatreez patterns that carry stories of lost villages, it lives when a Massai elder sings the old songs under the stars.

But today that living heritage is dying, not because people forgot it but because it is being stolen and sold without recognition. “If Prada copied the Eiffel Tower, the world would scream theft. But if Prada copies the Kolhapuri chappal or Massai beads the world calls it fashion”. That one-line hurts but its true, the law protects the buildings made of stones but leaves the people who carry culture in their hearts completely unprotected.

UNESCO’s 2003 Convention was supposed to change this. It promised to protect songs, dances, crafts, stories and the living, breathing heritage. But even after twenty years the community still raises this question “we got a certificate and tourists. Where are our rights?”

This paper is shaped by two forces: anger and love. Anger at the silence that erased these voices and love for the artisans who refuse to let their culture die and still continue with unwavering resilience. It is written for these communities to protect their rights.

## **RECENT SCHOLARLY VOICES**

In the last five years, scholars have grown louder about the failures of Intangible Cultural Heritage protection. They highlight commodification, political misuse, weak laws and fragile hopes. These works build on earlier warnings, showing the 2003 UNESCO Convention’s promises remain unfulfilled-often worsening inequalities. This review focuses on them to ground the paper’s critique in current debates.

Musapir reveals China’s policies registering Uyghur music, carpets and storytelling as “Chinese” heritage-alienating bearers and masking repression as protection, Maggs shows

state-promoted Nanjing handicrafts spawning fakes and luxury copies, sidelining authentic artisans in unfair markets.

On legal tools, Tripathi praises trademarks and GIs for authenticity and trade but highlights counterfeiting and weak enforcement in developing regions-needing blockchain and corporation. Burri sees trademarks as defensive/positive shields yet sufficient for communal, non-commercial ICH due to costs and focus on signs.

Empowerment emerges through tech (Partarakis and Zabulis 2023: ICT for European crafts, community-led), valuation (Vondolia et al. 2022: economic justification for Kente centres), and decolonization (Cheng et al. 2022: paradoxical reclaiming in fashion). Hermanova et al. 2022 critique commodified authenticity; Heersmink (2022) ties artifacts to collective memory.

Overall, these voices signal urgency: state misuse, IP selectivity, fragile successes despite UNESCO. Celebration expands; rights shrink. They echo custodians' pain, fuelling demands for equitable, enforceable laws.

## **METHODOLOGY**

This paper employs a qualitative research methodology centred on argumentative and critical analysis. The study critically examines key international instruments, including the UNESCO 2003 Convention for the safeguarding of the Intangible Cultural Heritage, provisions of intellectual property agreements (such as TRIPS), and selected national laws (e.g., the US Indian Arts and Crafts Act, Mexico's 2021 cultural appropriation law, and India's Geographical Indications Act).

Through Argumentative and Critical analysis, the paper evaluates the effectiveness and equity of these frameworks, highlighting systematic shortcomings-particularly the gap between recognition and genuine protection, and the disproportionate burden on communities in the Global South. It adopts a normative stance, asserting that current regimes prioritize commercial and state interests over the rights and dignity of cultural custodians.

The analysis is supported by illustrative case studies (e.g., Navajo v Urban Outfitters, Maasai trademark struggles, Palestinian tarteez appropriation) and a comprehensive review of scholarly literature, which helps identify persistent gaps and real-world impacts.

Overall, the approach is interdisciplinary, blending legal critique with socio-cultural and decolonial perspectives to not only expose failures but also suggest practical, community-centred reforms.

## **THE PROMISE THAT WAS BROKEN**

In 2003, UNESCO said:

“We will stop treating culture like dead objects in museums. We will protect living culture that is the songs, crafts and knowledge.”

They made lists for fulfilling this purpose

- Representative List
- Urgent safeguarding List
- Good practices

These sounds beautiful but here is the truth behind these lists which no one talks about:

- Once something is listed, governments and tourism companies try making profits or money out of it.
- But the singers, weavers, dancers rarely see that money.
- There is NO punishment if someone copies the design or song.
- There is NO rule that says that such community must give permission or get paid.

So, the certificate becomes a fancy frame around a photograph, while the real, living person behind the culture is left outside in the rain.

## **STORIES THAT BREAK THE HEART**

### **STORY 1 – Maasai Beadwork (Kenya/Tanzania)**

Maasai women beautifully bead marriage collars that talks about age, status and bravery. Louis

Vuitton and other brands were selling “Massai-inspired” collections worth millions. But not even a cent reached the Massai women. They fought back and won a trademark in 2021. This was the First victory in our history.

In Brindle and Florman (2021), “The Maasai Intellectual Property Initiative” the authors detail how luxury brands exploit Maasai iconography. Louis Vuitton’s 2012 menswear collection featured Shuka-inspired plaids and beaded accessories, selling items for thousands while artisans earned nothing. This is classic “heartbreaking” yet hopeful story. So basically, the author states that Maasai patterns, tied to identity and rites, were commodified globally, highlighting the injustice: law protects corporate brands but not communal ones.<sup>1</sup>

### **STORY 2 – Palestinian Tatreez**

Every Palestinian village once carried its own embroidery pattern, a story woven in thread and a geography stitched by hand. After 1948, in the dust of refugee camps women kept sewing the names of their lost villages onto their dresses. Their thimbles became compasses and their dresses became silent maps of home.

A key example comes from Rachel Dedman (2017) in his paper *Labour of love: New Approaches to Palestinian Embroidery*. Dedman documents how Tarteerz intricate cross stitch patterns on thobes carrying village identities, fertility symbols, and resistance motifs has been appropriated since colonial times.<sup>2</sup>

Today Israeli and Western designers sell “Palestinian-style” gowns on polished runways. Meanwhile, the women who guarded this art with their grief still survive on UN food packages. And when they speak or dare to say “This is ours”, they are dismissed with a shrug saying “its’ just inspiration”.

### **STORY 3 – Uyghur Atlas silk**

Grandmothers in Xinjiang once spent months weaving bright silks. Each thread carried a memory, each pattern was older

---

<sup>1</sup> Meg Brindle & Natalia Florman, 'The Maasai Intellectual Property Initiative: A 20th-Century Model for Turning Assets into Income', 2(2) *J. Fair Trade* 5 (2021).

<sup>2</sup> Rachel Dedman, *Labour of Love: New Approaches to Palestinian Embroidery* (Palestinian Museum, Birzeit 2018).

than the empires that tried to claim them. Now factories owned by others churn out the same motifs and market them as “Chinese traditional craft”. The very women who safeguarded this heritage cannot speak their language in public.

Musapir (2023) in his paper rightly exposes how China’s state-led ICH policies strip Uyghur communities of their own traditions. The government registers Uyghur music, dance, carpets and storytelling as “Chinese national heritage”, turning living heritage cultural expressions into state-controlled commodities. This is a perfect example of state appropriation. While UNESCO celebrates diversity, China’s use of ICH framework shoes how ‘protection’ can mask cultural genocide.<sup>3</sup>

These are not just stories or cases. These are human beings watching their soul being sold while they are told to smile for the camera.

## **WHY LAW FAILS LIVING CULTURE**

Maggs (2021) examines Nanjing’s tourism markets where state promoted ICH handicrafts (like cloud brocade or paper-cutting) are turned into three tiers: cheap mass-produced souvenirs, high end “luxury” versions, and outright counterfeits. The actual artisans face unfair competition from factories churning out fakes, they struggle to sell authentic work at fair prices, while tourists buy knock-offs. Using Boltanski and Esquerre’s “enrichment economy” Maags shows how Ich listing creates wealth but mostly for outsiders, leaving practitioners marginalized. This is a heartbreaking case of commodification gone wrong; this example proves that UNESCO style promotion boosts tourism and markets but rarely benefits the living custodians.<sup>4</sup>

Normal copyright law states that:

- Law says a work must be written down. Yet most traditions live in stories whispered at night, in stitches passed from grandmother to granddaughter, in melodies carried only by memory. They were never meant for paper’s; they were meant for people.

---

<sup>3</sup> Musapir. (2023). Whose ‘Intangible Cultural Heritage’? The dispossession of Uyghur knowledge-holders. *Inner Asia*, 25(1), 49–71.

<sup>4</sup> Christina Maags, "Common, Luxury, and Fake Commodities: Intangible Cultural Heritage Markets in China" (2021) 3 *China Perspectives* 7.

- Law says a work must have one author but traditions are created by entire communities. A village, a tribe, or a lineage. Each generation adds a thread and the final tapestry doesn't belong to one person; it belongs to everyone who keeps it alive.
- Law says a work must be new but traditions are powerful precisely because they are old. Some patterns, songs, and rituals are older than the borders on our maps. Their value comes from survival and not because of novelty.

This is the fundamental mismatch. Copyright laws were designed for individual ownership, modern markets and commercial incentives. Traditional culture was designated for collective memory, identity and continuity. And when law fails to see this difference, communities lose control over their own heritage while outsiders claim it, package it and profit from it.

Tripathi in her paper explores how trademarks and Geographical Indications (GIs) can protect cultural heritage while boosting trade. She discusses frameworks like TRIPS, EU GI systems, and India's GI Act for example Darjeeling tea or Kancheepuram silk. She says that the strengths include ensuring authenticity and economic benefits for producers. However, abuse is rampant: misuse by outsiders, weak enforcement, online counterfeiting and lack of community voice in registration. This paper highlights the IP tools Double-edged nature. Outsiders profit while artisans struggle, it further exposes the gaps in global enforcement, supporting my paper that the current laws celebrate authenticity without guaranteeing community rights or benefits.<sup>5</sup>

Geographical indications offer a tiny shield for example Darjeeling tea or Kancheepuram silk but they only protect products, not the patterns your grandmother stitched or the songs your village has sung for centuries.

M. Burri (2022) in her paper rightly discusses about the defensive trademarks and positive ones (certification marks for authenticity, e.g., for indigenous products) which are useful for communities to block appropriation and build brands, but insufficient alone as trademarks don't cover core knowledge or values, it requires resources which community lacks and fails against "inspired by" copies. This paper highlights the resource gaps poor communities face and reinforcing why UNESCO/IP regimes leave custodians unprotected.<sup>6</sup>

---

<sup>5</sup> Vaishali Tripathi, 'Analyzing the Role of Legal Protection for Trademarks and Geographical Indications in Preserving Cultural Heritage and Enhancing Global Trade', 1(1) J L & Intell Prop Rts 50 (2024).

<sup>6</sup> Mira Burri, "The Protection of Cultural Heritage by Trademarks" in Irini Stamatoudi (ed), Research Handbook

UNESCO steps in and says “We recognize your heritage. We celebrate it. But we cannot protect it.” That is like placing a shiny World heritage plaque outside a house that is already on fire and then walking away while the flames swallow everything inside. But just because of the recognition without protection is not preservation and it is a photograph taken moments before there is a loss that is seen.

## **HEARTBREAKING STORIES FROM THE COURTROOM**

These cases show the pain of cultural theft, how big companies take sacred designs, turn them into trendy items, make millions and communities fight for years just to get a quiet apology. The law helps a little, but never enough. Here are some stories which I came across –

### **NAVAJO NATION V. URBAN OUTFITTERS (USA, 2012-2016)**

Imagine sacred Navajo patterns – arrows, feathers, symbols that carry prayers and history are printed on hip flasks, underwear and cheap jewellery. In 2012, Urban Outfitters called their line “Navajo” and sold it everywhere. The Navajo Nation was infuriated and sued for trademark infringement and for breaking the Indian arts and crafts Act. After four long years of fighting it ended in a secret settlement in 2016. Products were pulled, an apology was given, some money was paid (rumours say for legal costs).<sup>7</sup>

This hurts because brands made millions while Navajo artisans struggled. Law protected the “Navajo” name a bit but not the deeper spiritual harm.

### **SEALASKA HERITAGE INSTITUTE V. NEIMAN MARCUS (USA,2020)**

Tlingit and Alaska Native weavers create Ravenstail and Chilkat robes which are sacred, hand-woven masterpieces that take months, carrying family crests and stories. In 2020, luxury store Neiman Marcus sold expensive coats copying those exact patterns, calling them “authentic Native-inspired”. The institute sued them and the case was dragged on, but quietly settled (Neiman Marcus went bankrupt too).<sup>8</sup>

---

on Intellectual Property and Cultural Heritage (Edward Elgar Publishing 2022) 55.

<sup>7</sup> "Navajo Nation and Urban Outfitters Reach Settlement Over Trademark Rights" (Columbia Journal of Law & the Arts Announcement, Aug 2, 2019)

<sup>8</sup> Liquidating Trustee’s Objection to Proof of Claim Numbers 1910 and 1952 Filed by Sealaska Heritage Institute, Inc., In re Neiman Marcus Group LTD LLC (Bankr SD Tex, Case No 20-32519 (DRJ), Doc 2362, filed Mar 26, 2021).

Again, sacred robes became fashionable coats for the rich. This shows how even in 2020, theft continues. US law helps a little with false labelling but there is no proper global rule.

### **ISABEL MARANT CASES (FRANCE/MEXICO, 2015 & 2020)**

French designer Isabel Marant was accused twice of copying Indigenous Mexican designs. In 2015 she used exact patterns from Mixe (Oaxaca) blouses-ancient, community-owned embroidery. In 2020, Purépecha designs appeared in her collections. No real lawsuit happened. After public outcry she apologised, gave credit and offered some collaboration. In 2021, Mexico passed a new law banning non-indigenous people from selling traditional designs for profit.<sup>9</sup>

These cases reveal a recurring injustice: sacred cultural elements are commodified as trends, generating substantial profits for corporations while the originating communities endure prolonged legal battles, often achieving minimal or delayed redress.

### **SMALL LIGHTS OF HOPE**

#### **1) The Maasai people - We are not your inspiration; we are the owners.**

For years, fashion magazines called Bright Red and Blue clothes “Maasai inspired”. Louis Vuitton, Calvin Klein, even small Instagram shops sold clothes worth millions of dollars. Not one shilling reached a Maasai family. In 2003, a group of Maasai elders and young educated leaders said “Baso (enough).” They created the Maasai intellectual property initiative (MIPI). They registered the word Maasai and their famous Shuka patterns as a collective trademark in Africa and Europe.

Now, any company that wants to use the name or the checked pattern must sign a legal agreement and pay a license fee. This money goes into a Community Trust that pays school fees, bills, clinics, buys water tanks and even supports old women who can no longer herd cattle.

One elder, Isaac Ole Tialal, said with tears that “When I see my pattern on a bag in London

---

<sup>9</sup> Silvia Anthea Pannella, "The (Unofficial) Verdict: Cultural Intellectual Theft in Marant vs. the Mixe Community of Oaxaca" (Cultural Intellectual Property Blog, Sep 11, 2018; updated May 6, 2020)

shop, I smile because my granddaughters school fees are inside that bag.”

## **2) The Sami people – our songs are not free for everyone**

In the freezing Arctic, the Sami have been singing Joik – a special throat –singing that carries the memory of reindeer, mountains, and ancestors. Tourists recorded them, Netflix used Joik in series and Spotify playlists. The original singers (The Sami people) received nothing.

Then the Sami people claimed that “We will control our own voice”. They later built the DigiSami Archives together with universities, but the rules are Sami rules.

- a. If any person wants to listen, they have to seek permission.
- b. If any person wants to use in film or game, they have to pay the singers family.
- c. If any person wants to study, they first need to respect it and personally learn.

A young Sami woman, Anna Katri Helander, said: “Before, they took our voice and put it in a box. Now the box belongs to us.”

## **3) Indian Handloom Weavers – Small town, Big dreams**

In villages of Madhya Pradesh, women weave Chanderi Sarees with golden threads. Before, middleman paid \$10 (Rs.800) for a saree that sold in Delhi for Rs.15000. After years of struggle, the weavers formed cooperatives and got Geographical Indication (GI) tags for Chanderi, Maheshwar, Kota, and many more. Now the saree carries a special tag that says “real handwoven” and the prices have gone up to Rs.4000 to Rs.8000. Young girls who once upon a time ran away from their homes to cities are now coming back to the loom. I along with my friends recently travelled to Chanderi to purchase their renowned Saree, over there I meet a lady who claimed that “Now my daughter says ‘Amma, I also want to weave like you’. She added that ten years ago, her daughter was ashamed of her loom, but today she is proud.”

These beautiful stories are not here just to make us feel good but it’s a pity on the laws and UNESCO who fail to protect them.

SUCCESS STORIES	WHAT THE COMMUNITY DID THEMSELVES	WHAT THE UNESCO AND INTERNATIONAL LAW FAILED TO GIVE THEM
Maasai (Kenya/Tanzania)	Created their own trademark and trust.	UNESCO listed Maasai culture but gave no legal tool or money. They had to fight alone for almost 10 years.
Sami (Arctic Europe)	Built their own digital archive with their own rules.	UNESCO celebrates Joik on its lists but never created any rule that actually protects Sami people and respects them.
Indian weavers (Chanderi and Maheshwar)	Formed cooperatives and used India's GI law.	UNESCO listed Indian textiles but the real protection came from Indian National law and not UNESCO.

On one hand Partarakis and Zabulis (2023) argues how digital tools can democratize preservation, letting artisans control representation and training. And further they add that the custodians must hold the digital keys to their heritage's future and not the outsiders.<sup>10</sup> And on the other hand, Vondolia and team (2022) in their paper shows pure hope in small lights, quantifying Kente's worth to counter commodification pain. The study argues ICH disappearance in Sub-Saharan Africa and undermines UNESCO'S 2003 Convention.<sup>11</sup>

These small victories are not happy endings rather a burning accusation. UNESCO never gave real rights to these communities. Every success happened not because of UNESCO but because communities had to become their own lawyers, own government and own banks. If poor and exhausted communities can protect their culture with their own hands then why can't the rich government and big organization do their part?

### WHAT WE MUST DO – SIMPLE SUGGESTIONS

The world has waited too long. Grandmothers are dying with their patterns unfinished; children

<sup>10</sup> Nikolaos Partarakis and Xenophon Zabulis, "Safeguarding Traditional Crafts in Europe" (2023) 3 Encyclopedia 1244.

<sup>11</sup> Godwin Kofi Vondolia et al, "Valuing Intangible Cultural Heritage in Developing Countries" (2022) 14 Sustainability 4484.

are forgetting their songs. Article 27 of the Universal Declaration of Human Rights says everyone has the right to protection of their moral and material interests in their cultural production. Why does this right magically disappear the moment the creator is indigenous or traditional?

M Hermanova, M Skey, T Thurnell – read (eds.) (2022) this book explores the authenticity across contexts – politics, social medias, branding, tourism, heritage through global case studies. Chapters show how “authentic” ICH is constructed, negotiated, commodified, and politicized in modern society. It highlights the power dynamics and supports decolonized reforms.<sup>12</sup>

It is time to stop talking and start acting. Here are some suggestions I propose

- 1) UNESCO rules must not only recognise the tradition but also protect them. A fair share of Tourism or sales money must go straight to the community.
- 2) No company, designer, film maker or government can use a traditional pattern or story without a written permission from the community. Permission must be free and, informed and in their own language.
- 3) Every community must be able to register their songs, patterns, dances, or stories in one easy office. The process must be cheap, fast and must give the communities permanent ownership of their dances, designs, songs, and knowledge.
- 4) If a company wants to use such design, song or pattern in clothes, jewellery or advertising, they must pay 1 – 2% of their sales into a community fund.
- 5) Courts should stop accepting “we were only inspired” when a big brand copies an exact traditional pattern. Copying is copying – call it misappropriation and not inspiration.
- 6) Communities must have the legal power to refuse commercial use of their culture. Some things are sacred and not for sale.
- 7) Every state must protect their cultural heritage of its communities and ensure they are

---

<sup>12</sup> Marie Heřmanová, Michael Skey & Thomas Thurnell-Read (eds.), *Cultures of Authenticity* (Emerald Publishing Limited 2023).

the first beneficiaries of its use.”

Sarah Cheang et al. (2022) propose a forward-looking call for ongoing reform in heritage-fashion intersections. Her paper aligns with my decolonised proposals by exposing how current safeguarding mirrors colonial extraction. The paper further argues that the reforms must be process oriented – embracing contradictions, prioritizing Global south voices and to prevent UNESCO style celebration from masking inequality.<sup>13</sup>

UNESCO’s own words capture the soul of what we are fighting for: ‘This intangible cultural heritage...provides them with a sense of identity and continuity. Yet as communities weave, sing, and resist alone, we must ask – where is the respect promised in Article 1 that is to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned? As Director-General Azoulay reminds us, these traditions are a ‘source of emancipation and empowerment’ and not mere lists on paper. Let these words not be echoes in empty halls, but sparks for justice. The grandmothers have kept the flame alive now, let the law rise into a fire that warms every hand that creates.’<sup>14</sup>

## **CONCLUSION**

One day the music will stop, the looms will stand empty, the stories will fall silent, not because the people stopped loving their culture, but because the world loved it too much without loving its people.

Richard Heersmink (2022) in his paper beautifully stated that artifacts aren’t passive, they actively shape and externalize memories. He explores how objects like heirlooms or monuments distribute and transmit cultural recollection.<sup>15</sup>

This paper is not the end. It is a shout from a student who refuses to stay quiet. To every Auntie weaving under a tree, every grandmother singing lullabies in a dying language, every young girl learning stitches that carries years of memories; their work is not just an “inspiration” but

---

<sup>13</sup> Sarah Cheang, Leslie Rabine & Arti Sandhu, "Decolonizing Fashion [Studies] as Process", 9(2) Int'l J. Fashion Stud. 247 (2022).

<sup>14</sup> Constitution of the United Nations Educational, Scientific and Cultural Organization (adopted 16 November 1945, entered into force 4 November 1946) 4 UNTS 275.

<sup>15</sup> Richard Heersmink, "Materialised Identities: Cultural Identity, Collective Memory, and Artifacts", 13(2) Rev Phil Psych 235 (2022).

it is identity, it is pain, it is love, it is theirs.

The law must grow a heart. Until it does, we will keep shouting, keep writing, keep fighting, so that our children's children can still sing the old songs, still weave the old patterns, still know who they are. Because when the last weaver stops, the whole world would become poorer even if the museums are full.