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# **Traditional Knowledge: International and National Aspect,**

**Egypt Case**



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# Abstract

Traditional Knowledge or TK is the unforgotten knowledge which survived the time to reach the descendants as a precious heritage and last forever. Another aspect of protection had been introduced through the thesis for one of the TK types which is the Traditional Culture Expressions or the TCEs. IP laws introduced through the TRIPs agreement had come to fail in treating the TK in the same way as the patents, copyrights, trademarks and others covered by the TRIPs agreement. The main reason behind this failure is not related to the TRIPs agreement as it obtained a great success in dealing with other IP branches but it rather says that TK is a *Sui generis* or one of its kinds. To be a *Sui generis* explains the need for having a special set of legislations meant for the TK decided by an international outline defined through a treaty.

The Traditional Culture Expressions or TCEs is one of the categories listed under the TK and strongly eligible to be protected under it. WIPO revised articles determined the main outline for the TCEs on an international level, starting from its definition and what it should be considered as one of it, going through the eligibility standards and ended with the term of protection.

The articles are broad enough to cause confusion regarding some legal issues. For instance, promotion through sharing with a third party as a concept recited in the article (1) is not limited and directly from the examples and cases introduced in the thesis is not applicable in the TCEs market. There are many debates for the TCEs protection term and whether it there should be a definite term of protection or an indefinite one which will reflect on the agreement or the contractual nature between the indigenous people and the third party in case of sharing.

The articles did not state the case for the TCEs protection on a national level, leaving the decision to the national legislation to each country.

There are several cases introduced in the thesis which represent the violation of the TK protections' right on the international level and on the national one. The former cases found under sharing benefits section which will be demonstrated as an eternal mistake while the latter face the fact that they lack the required protection to be claimed under.

In each case provided in the thesis, a fact just flows to the surface: The right holders or the legal guardian to the indigenous people should step forward to claim their right in their TK, otherwise, no one will do for them and the TK will simply transfer to another to value it. Legislated laws are the indigenous people's shield in the battle of claiming their right in their TK. In case there are no legislations to decide the rules and regulations related to the TK, the customary law should step in as an equal replacement to the legislations in the legal system.

Egypt is one of the countries which does not have a TCEs and that can be clear enough from the market and the handcrafters suffering where a lot of knock off goods intrude causing all kind of harm to them. The strategy introduced in the thesis is one of the methods of the positive protection to save the market from the severe attack on it. The main target of the strategy is to eliminate the existence of the third party from the TCEs market but gradually since the elimination at once was not successful until now.

The strategy includes several steps should be performed in sequence but with respecting with the time factor it will be efficient to be performed in parallel. The strategy is based on the WIPO articles, Egyptian constitution and observations on the market.

**Keywords:** *TK, TCEs, Turmeric, Natron, Siwa, Nubia*

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## **Abbreviations:**

CBD: Convention on Biological Diversity

IP: Intellectual property

TK: Traditional Knowledge

TCEs: Traditional Culture Expressions

TRIPs: Agreement on Trade Related Aspects of Intellectual Property

TTCEs: Tangible Traditional Culture expressions

Soft TTCEs: Soft Tangible Traditional Culture expressions

Solid TTCEs: Solid Tangible Traditional Culture expressions

UNESCO: United Nations Educational, Scientific and Cultural Organization

WIPO: World Intellectual Property Organization

WTO: World Trade Organization

# **1. Introduction:**

Traditional knowledge surrounding us everywhere more than we can imagine as it holds the secret behind our progress and creative manner. It holds the embodiment of the creativity genes transferred from generation to another. Through the next few sections will sail in a journey to discover the Traditional Knowledge field and take a look at it from the global aspect.

## **1.1 Aim and Delimitations:**

The thesis aims to examine the validity of “Sharing benefit” principle in the real world through several cases introduced on the international and the national (Egypt) level. The main legal instrument used in the thesis as a guideline is the WIPO articles which define the framework relating to the TK. Another aim had been adopted in the thesis as an extension to the rising need of having Egyptian legislations to define the way to protect and promote the TK. This aim had been introduced in a form of a strategy as an attempt to find a replacement legal effective solution in the absence of the required legislation.

A limitation will be conducted here as the cases on the national level and the strategy set based on it will be dealt with as part of the Tangible Traditional Culture Expressions or as introduced through the thesis as new terminology TTCEs. The part of the Tangible Culture Expressions or TTCEs will be more specified in the thesis as “Soft TTCEs”. The specification made in order to distinguish two subcategories under the Tangible Traditional Culture Expressions and minimize the aspect of the TK which impossible to be contained in one thesis.

The legal instruments focused on the WIPO articles as a main guideline on the international level while on the national level, the strategy set with considering the Egyptian laws for Intellectual

Property. TRIPS articles had been used to refer to the failure of TK protection in the current system. Also, many researchers pointed out to the possibility to claim the TK under the current IP classical Laws but from my aspect that the IP laws in its current form lack the flexibility and the width to confine the TK under its umbrella. Instead, it may lead the TK holder rights to more loses as the time goes.

## **1.2 Method and Materials:**

The thesis had followed a combination of two methods: the legal classical study method with the scientific one. The former includes exploring all the laws sources related to the TK field whether the international or the national (Egyptian laws) laws, related agreements, cases and their analysis. While the latter method involves collecting the data, processing analysis to introduce it in an effective strategy inspired and set based on the Egyptian market circumstances.

The study from the legal aspect will be conducted on 6 cases. Two cases are on an international level and the four cases are on the national level. The international cases are almost known to every researcher in the TK field: the Turmeric case and the Natron case while the national cases are all represent a violation of the Egyptian TK rights inside the border of the Egyptian republic (the Egyptian TK market) or outside it precisely in China, England.

The thesis had focused on providing a new analysis to the international cases to match the limitation regards “sharing benefits principle” while the other cases on the national level pulled out from the Egyptian TK market which reflected not only the absence of the “ sharing benefits principle” but also the absence of the moral right to the TK. The materials provided through the thesis for the cases on the national level collected from the market (through a survey accompanied by photos taken by me for some of the original Egyptian TK as an example for the

first case) and through the foreign and the Egyptian social media (for the second and the third case). Provided to each case an analysis including exploring the different arguments related to it.

The standard protection measures for the TK included in the thesis had considered the coexistence of both the defensive protection and the positive protection system as it will be shown through the next pages. Also, the positive protection can be seen through the Access and sharing benefits' aspect but it seems from the cases introduced on the national level as it is kind of a fact more than a choice because the nature of the Egyptian market as open markets. Another fact must be stated here that there is no Egyptian TK act and which make the defensive protection also has no place in the Egyptian IPRs Laws related to the TK. In fact, expecting to have an Act for the Egyptian TK in the near future isn't possible as drafting such act takes many years to make it enact which make the strategy more effective solution. Also, the strategy introduced in the end of the thesis is a coexistence system of both the defensive protection and the positive protection by promoting the TK Egyptian right holder and delimit the third party right. In other words, remains the balance in order to benefit all.

# Part I: Traditional Knowledge on the International Level

## 2. What is Traditional Knowledge?

According to Oxford dictionary “Traditional” is defined as being part of the beliefs, customs or way of life of a particular group of people, that have not changed for a long and “Knowledge” is defined as the information, understanding and skills that you gain through education or experience.<sup>1</sup> Traditional knowledge or as a brief TK has no definite definition as the whole expression convey the message of including more than a mere “knowledge” about a certain subject and at the same time it’s not about a forgotten or old, unused “traditional” thing which has no place in the living world now.<sup>2</sup>

That’s why “Traditional Knowledge” is worth to be defined as “A living Body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity”.<sup>3</sup> So In other words, “Traditional Knowledge proves” the existence of the ancestors and forms the everlasting fountain of knowledge left as a great inheritance.<sup>4</sup> As a matter of fact, the definitions for the Traditional Knowledge introduced

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<sup>1</sup>Stevenson, A., 2010. Oxford dictionary of English. Oxford University Press, USA.

<sup>2</sup>Drahoš, P., 2007. A networked responsive regulatory approach to protecting traditional knowledge. Intellectual Property, Trade and Development: Strategies to Optimize Economic Development in a TRIPS Plus Era.

<sup>3</sup>WIPO, 2015, Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions.

<sup>4</sup>Unfortunately, Black Law dictionary didn’t offer a definition for the “Tradition Knowledge” from the legal aspect however, recently, many authors tried to define the TK based on the definition announced by the WIPO, one of them is the “long-standing traditions and practices of indigenous peoples and communities” 2011, Public Interest IP Case Study Series, Public Interest Intellectual Property Advisors, Inc. published on: [www.piipa.org](http://www.piipa.org).

until now weren't enough or precise to limit the traditional knowledge to one or two categories which made it a fertile field to all researchers with endless challenges.

## **2.1 Categories of Traditional Knowledge:**

TK isn't limited to any field thus there is no definite definition of it. There are many categories of TK or to be specific which directly could be addressed as TK since there are many categories which are considered related to the TK but not a TK themselves which leaves the eligibility question floating over it, questioning their position's and protection method.

The TK, in general, can be divided into two main categories:<sup>5</sup> The tangible and intangible. By default, and directly from their names; the former related to any TK which can be represented by materials and the latter represents all the TK which cannot be.<sup>6</sup>

### **\*The tangible category<sup>7</sup>:**

(1) Includes: all the remains, monuments, original artworks, plants and other genetic resources; on the condition that they represent a production of a local community or indigenous people inhabited a whole land or just form a part of certain territory.

(2) They aren't subjects of modification or development or other treatment which may change their original form. In other words, they *must* remain in their original form as a source for the inspiration and an evidence of their owners' existence.

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<sup>5</sup>As TK includes many categories, most of the researchers in this field tend to include the type of the TK as its more than classify it under a tangible or intangible category, however, as classifying TK in this way will serve later for clarifying the target of protection in late sections, the classification had been suggested here.

<sup>6</sup>Dutfield, G., 2006. Protecting Traditional Knowledge: Pathways to the Future, ICTSD Issue Paper no. 16, ICTSD, Geneva.

<sup>7</sup>DL203 Intellectual Property, Traditional Knowledge and Traditional Culture Expressions. Module1

**\*The intangible category<sup>8</sup>:**

(1) Quite big compared to the tangible one as it starts from the inherited knowledge from thousands of years ago and ends with the last day for the human being on earth.

(2) Serves as the solid ground for inspiration most of the time. For an example, the historical buildings attract thousands of tourists around the world and hold at the same time the technique for architecture which makes it as living examples for this technique.

(3) Beside the technique, another type is listed under this category which is the process of making or manufacturing anything inspired from the TK or simply based on it. The process of making is wide open to include the traditional food, traditional clothes, several types of arts handicrafts, traditional medicine and etc.<sup>9</sup>

Along with the Traditional Knowledge term another term is shinning. It's the Traditional Culture Expressions. The traditional Culture Expressions is an essential part of the traditional knowledge and it cannot be listed under the tangible& intangible categories as it includes both of them. Traditional Culture Expressions or TCEs will be discussed later in more details through the third part of the thesis.<sup>10</sup>

Because of the wide range of the TK it's difficult to find one book or article contains all the branches of it in details as it may vary from country to another which make it impossible to state it all in one definition and that's why exactly it defined in the WIPO as the knowhow knowledge transferred from a generation to another.

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<sup>8</sup> id,

<sup>9</sup>Finger, J.M. and Schuler, P. eds., 2004. Poor people's knowledge: promoting intellectual property in developing countries. World Bank Publications.

<sup>10</sup>DL203 Intellectual Property, Traditional Knowledge and Traditional Culture Expressions. Module 1

### **3. Traditional Knowledge Protection:**

In order to claim Traditional Knowledge many issues should be clarified. For an instance, who benefits from this kind of protection and does really have the right to claim it or not? And under the authority of whom? Besides, the protection cannot be maintained as an absolute protection without allowing the public or a third party to share it with the TK right holder. All those questions will be answered through the following sections.

#### **3.1 TKs Parties:**

The people seen inside the circle of the Traditional Knowledge protection can be categorised in the following categories:

1. The indigenous people.<sup>11</sup>
2. The public.<sup>12</sup>
3. Third Party.<sup>13</sup>

TK share some similarities with other IP branches but for this classification, they seem totally different. For example: “The indigenous people”<sup>14</sup> in the TK case represent the people where the knowledge linked to their origin themselves and developed, inherited from one generation to another in the same territory. In the case of the Patent the “indigenous people” can be referred to

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<sup>11</sup>Anaya, S.J., 2004. indigenous peoples in international law. Oxford University Press, USA.

<sup>12</sup> The public refers to the people and society of a nation or community, or the whole of humanity.[https://en.wikipedia.org/wiki/The\\_Public](https://en.wikipedia.org/wiki/The_Public)

<sup>13</sup>Third Party refers to a person (individual) or a group(company or another country belongs another nation) or besides the two primarily (indigenous people and their custodian or legal guardian and the Public) involved in a situation, especially a dispute. OR: A person who is involved by chance or incidentally in a legal proceeding, agreement or another transaction, esp one against whom a defendant claims indemnity.  
<http://www.thefreedictionary.com/third+party>

<sup>14</sup> See the discussion about the indigenous people characteristics in: Ragavan, S., 2001. Protection of traditional knowledge. Minnesota Intellectual Property Law Review, 2(2).

the inventor (applicant)<sup>15</sup>whom the exclusive right belong to and for both whether the indigenous people<sup>16</sup>and the inventor from the legal aspect they represent the custodian of the right.<sup>17</sup>

Now for the “Public,” let’s start with the patent case this time where the public will represent anyone except the inventor (applicant) who is prohibited from using the invention subject to the patent without the consent of the inventor (applicant). However, in the case of the TK, the “Public” can be represented by anyone outside the territory of the “Indigenous People”and the public also cannot claim or use the TK without the traditional knowledge without the consent of the “Indigenous People”. So In other words, In the case of the TK the “indigenous” people usually referred to a group of people (not individual) shared know- how knowledge and also their work known to the public, their work still enjoy its authentic among the imitation work. On the other hand, in case of patents the “indigenous people” is referred to the inventor(s) or the applicant who have the exclusive right to prevent the others from using his invention subject to the patent and definitely he cannot share the knowledge behind his patent with the competitors otherwise, it will be a wasted effort.

Eventually, “Third Party” represent a part of the “Public” but not the ordinary people but who use the right intentionally to benefit from it on a large scale. So in simple words, the “third party” is the “competitors” who observe the market to find a chance to support their existence in it with

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<sup>15</sup> In the case of the “Patents” the right holder is the one who will benefits from applying the patent on the market whether the inventor will acts as individual or depend on another company represented by the applicant.

<sup>16</sup>Assembly, G., 2007. United Nations Declaration on the Rights of Indigenous Peoples.

<sup>17</sup> Until now there is no exact definition for the “indigenous people” term whether they are the original inhabitant for certain territory and their descendents or the people who lived in this territory even if they are not from apart from their community but stayed for generation and fused inside this community. However from the legal aspect there are two approaches to address the indigenous people right: (1) The first approach consider managing the indigenous people right only their own matter(in this case there must be a clear border between the original inhabitants and the tribes used to live in the same region with different identity). (2)The second approach considers managing the right a governmental task. In other words, the government should safeguard their right through legislations. WIPO/GRTKF/IC/22.

riding on the owner's right and without making any effort from their side. In the case of the TK, "Third Party" refers to any party (company, factory, etc...) use the TK to make a profit based on it without using the consent of "Indigenous People" and even try to compete with the "Indigenous People" inside and outside their market. It is also the same for the patent where the "Third Party" is anyone who tries to benefit from the patent without having consent from the inventor /applicant (or pay the royalty) and this party is easily recognised as a competitor.

The "Third Party" existence in the "Indigenous People" market is a big issue as it most of the cases "Third Party" represents a great threat to the "indigenous people" and their ability to control, distribute and maintain their own TK.

So we dare to say that the "Indigenous People" where the TK belongs to; own the right and from the legal aspect are the custodian of the TK and can claim it.

### **3.2 How about the "Third Party"?**

In order to find out about the third party right and whether it exist or not, we need to start first to recite the indigenous people right derived from the WIPO revised article no.(1) which draw the line between what the indigenous people can, should and must do through dealing with the third party.<sup>18</sup>

The indigenous people right stated through the article that they shall prevent, control, promote and encourage their own TK. The article did not prohibit the third party from using the TK but instead regulates the use of the TK by the third party. As a beginning the third party should acquire the consent from the indigenous people or their legal custodian to permit using the TK, the consent should be in a written form as an agreement or a contract contains detailed

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<sup>18</sup>Session, T.S., 2016. Intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore. WIPO/GRTKF/IC/31/4

information about the term of use, the exact type of TK subject to the agreement and the term of protection. In this sense, preventing is only for the unauthorised use for the TK.

Preventing the third party from using the TK not only about the authorised use but also extended to the misuse or the misappropriation and the unfair and the inequitable uses.<sup>19</sup> Each case represents a step as a form of treatment between the indigenous people and the third party. For instance, misuse<sup>20</sup> can happen whether the third party had acquired the permission to use the TK and in this case, it's a direct breach of contract or without acquiring the permission to use while the TK in the public domain.<sup>21</sup> Any use without having a mutual agreement or without having consent falls under the misappropriation actions.

The second right which had been given through the context to the indigenous people related to their TK is about controlling their TK. This right goes beyond "controlling" the TK as it still in their possession but even after having the agreement or the contract with a third party. For an example, the right holder of the TK can sell it in a form of a knowledge or technique used in industry but unlike the patents, the parent companies cannot pass this TK to another company in a form of a licence or any other legal form. In other words, the first sale doctrine isn't applicable to the TK case. So even if the TK passed from the right holders to a third party, it will be only bound by the third party and for a definite limit of time.

Another right given to the right holders of the TK is the right to promote their TK. The means of promoting not clear defined through the articles but it gave a hint for the way of promoting by referring to sharing the benefits should be in equal and fair manner in return for a suitable

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<sup>19</sup> The term "Use" in the TK context is extended to using it as a whole or in part or as an inspiration for manufacturing or selling course. Also extend to the commercial and the non-commercial research developments.

<sup>20</sup> Misuse: means the use of TK in a way against the territory or the national law. For an example: If the national laws forbid using any religious symbols from the TK as an ad or a trademark, any use of that type of TK considered to be a misuse.

<sup>21</sup> The intangible materials are usually which fell in the public domain where it can't be bound by the national law as it can't meet of its requirements.

compensation. This point will be discussed in several sections through the thesis to verify if this principle can be fully applicable or not on the TK field.

As a matter of fact, sharing the TK in order to promote it under fair and equal conditions is not applicable in the market without forcing the third party to pay in return for such use otherwise misuse and misappropriation will be a natural result. As mentioned in the examples in section (2) that the difference between the two cases<sup>22</sup> that the right holder stepped forward to claim their right otherwise the Turmeric case would probably turn to Natron case where all the benefits had been given to others except the right holders.

There are some debates introduced through disputes demanded countries or institutions which acquired in legal or illegal ways some of the TKs belongs to other countries to repatriate it to its original place.<sup>23</sup>

If sharing is based on fair conditions and form a win-win case for both the indigenous people and the third party and it will be automatically followed by encouraging further improvement and development to promote innovations based on TK from the indigenous people side. Encouraging is the last right stated by the article related to the indigenous people right in their TK as the fair treatment is granted and there will be no harm to the TK.

If the indigenous people have the right to prevent, control, promote and encourage/protect their TK so what else remained for the public including the third party? Can the TK's benefits be shared between the indigenous people and the public? To whom it will be benefited more: The Public or the "Indigenous People"? What are the criteria of sharing?

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<sup>22</sup> The first example was about Natron which originated from Egypt and the second example was about the Turmeric which originated from India.

<sup>23</sup> There are some debates regarded to TKs such as artefacts to repatriate it to the country of origin. Also that benefiting the TKs belong to other nations was illegal enough and going against the article, the debate goes further that the country where the TK belongs should pay in return to recover her TK as the third party claims damages. Another debate argue that without their effort of showing and spreading other country's TK no one will get to know about its existence beside a claim that it won't survive in its origin because of the poor environment.

Actually, the right given to the public in TK can be seen through the previous section in WIPO drafted article meant to demonstrate the right of the indigenous people in TK. The Article stated in (a) that the indigenous people can prevent the misappropriation and it will be explained in details in the followed section where the term misappropriation indicated as “use without consent or permission” to simply refer that the public’s right lies at the article did not “prohibit” the usage of the TK by anyone except the indigenous people but only demanded him to have the permission before using it and have an agreement to state his purposes of using someone else’s TK which sounds fair enough even from the social perspective.<sup>24</sup>

Secondly, about the “misuse” which is defined to be “using the traditional Knowledge in a manner considered to be going against the customary law/national law legislated by the indigenous people in their territory”. Going against the national policy or customary law by other nationals considered rude from the social perspective and it is a matter of sovereignty from the legal aspect. So using TK which belongs to other nation intentionally knowing that their national law prohibited that use; should have a criminal remedy. And as TK can be represented as the old, new, tangible and intangible cultural heritage, smuggling it outside the indigenous people territory/border can be considered under the “misuse” category.<sup>25</sup>

Thirdly, the term “Use” itself is not clear alone but its limits can be demonstrated through the WIPO’s Article (1) (c) which stated another right given to the indigenous people pointed as “Promoting by sharing”. So also the article provisions stated the right of the indigenous people, we can easily find traces for the third party right even it is not explicit through the Article.

Actually promoting the TK in some cases cannot be done without the help of the third party as he

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<sup>24</sup>Wong, T. and Fernandini, C., 2011. Traditional cultural expressions: Preservation and innovation. Intellectual Property and Human Development: Current Trends and Future Scenarios, pp.175-217.

<sup>25</sup> For more cases about misusing the TK, please see: Janke, T., 2003. Minding culture: case studies on intellectual property and traditional cultural expressions (No. 781). WIPO.

can contribute for opening new markets for the TK which directly led to expanding and the TK popularity area; affecting the economy of the indigenous people by enriching it. On the other hand, Third party can form a great threat to the indigenous people market because of its unlimited existence and wrong approach to the market.<sup>26</sup> For an example: If a company (C) decided to manufacture products based on one of the TK of another nation different from the nation where the company (C) belongs to. Furthermore, company (C) signed a mutual agreement between them and the indigenous people where the latter agreed to permit Company (C) to manufacture products based on their TK and “Similar” to other products they manufactured or hand-crafted themselves. Now to another view taken from the indigenous people market itself, the products made based on the TK can be classified into classes: The products belong to indigenous people and these supposed to be the original products and dare to say that they are TK themselves. The other belongs to the company (C) where they are more like imitation/knock-off of the original TK. In this case it turned to be unfair competition between the indigenous people and the third party represented by company(C) as most of the products made based on the original TK by the indigenous people are on small scale, sometimes not manufactured but hand-crafted which make it like that they can produce only a few products in a month not even can be compared by the enormous daily production for a one single factory belongs to company (C). That is also beside the quality of products as the massive production can lower the standards of the products. For instance, if the manufacturing process requires 5 steps to meet the standards requirements, the steps will be deducted to 3 or 4 steps to shorten the required time for one cycle and manufacture more products. Eventually, the price of the products, it is another factor affect the market of the TK. The products made by indigenous people will be quite expensive

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<sup>26</sup>Wong, T. and Fernandini, C., 2011. Traditional cultural expressions: Preservation and innovation. Intellectual Property and Human Development: Current Trends and Future Scenarios, pp.175-217.

comparing to the products manufactured by Company (C) as the indigenous people production will be only few numbers can be considered as a master piece which took a long time sometimes can be extended to few months. On the other side where we can see the massive production for Company (C) quite handy with a lower standards (lowering the price in through manufacturing requires also lowering the standards of the raw materials used in the manufacturing processing besides shorting the cycle required for processing).

It leads directly to that products of the indigenous people have to face unfair competition through number and price and lower standards. That is not only affecting the indigenous people or their market but on the long run affect also their TK as it make a dangerous effect: “Dilution”. TK dilution happen through distributing massive number of unqualified cheap products based on the original TK reach any area outside the indigenous people market which cause the other national to misunderstand those imitation/knock off products as real representation of the TK.

### **3.3 The term of Protection:**

Pursuant to the Article (6) Term of Protection/Safeguarding, the indigenous people or their legal guardian (the government) have the right to decide the term of protection regards her TCEs or TK and the third party had to follow their decision which documented in a contractual form as long as the TK or TCEs subject to the contract are eligible to be protected under the TK or TCEs. As a continual for the right to control the TK given to the indigenous people they may decide the invalidity of the contract if the third party caused a distortion or any type of harm to their TCEs.<sup>27</sup>

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<sup>27</sup>Session, T.S., 2016. Intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore. WIPO/GRTKF/IC/31/4.

The article did not state any mandatory term for the member states for TK protection but left it as member states' choice according to several factors:

1- As long as the TK satisfy the eligibility of protection.

2- As long as the right holder enjoy their TK (For the vanished cultures can they satisfy the standards of the TK?)

### **3.3.1 Definite or indefinite term of protection:**

As indicated before through the drafted article(1) by WIPO<sup>28</sup> for the indigenous people right in their TK that the indigenous people have the right to “ promote the TK by sharing” and the sharing should be conducted on “Fair” and “equitable” compensation which requires the legal interference later in case of violation of such contract.<sup>29</sup> In this aspect TK can be regarded as one of the follower of the IP ideal model where they receive the same legal treatment in aspect or another with considering the Know-how or other features of the TK.<sup>30</sup>

But as all the IP laws are about the limited protection term, it cannot be help but see the TK as not one of that kind. In other words, it does not fit the description or the outline of the IP ideal model. Patent, copyright and trademark are all about the term of protection which can be renewed in the case of trademark but not ultimately forever.<sup>31</sup>

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<sup>28</sup> Id,

<sup>29</sup>Gervais, D., 2005. Traditional Knowledge & (and) Intellectual Property: A TRIPS-Compatible Approach. Mich. St. L. Rev., p.137.

<sup>30</sup>Oseitutu, J.J., 2009. Traditional Knowledge: Is Perpetual Protection a Good Idea. Idea, 50, p.697.

<sup>31</sup>Cottier, T. and Panizzon, M., 2004. Legal perspectives on traditional knowledge: The case for intellectual property protection. Journal of International Economic Law, 7(2), pp.371-399.

There is no definite term of protection for the Traditional Knowledge around the world which against the general principle of IP laws but as the TK is Sui Generis (one of its kind), the indefinite term of protection is applicable for this case.<sup>32</sup>

So in this manner can the TK be offered indefinite term of protection or not?

### **3.3.1.1 Sharing Benefits:**

Sharing benefits for the traditional knowledge or the know-how behind the TK itself is the core for development for great accomplished technologies shinning nowadays.

Official recognition<sup>33</sup> or sharing the TK under an “equitable” and “Fair” compensation and conditions can be benefits to both parties; the rights holders and the third party. Sharing for several decades can be a reality but as a matter of fact it is not sharing as give and take concept but it is only a take without giving something in return. For this kind of relations between the right holders and other parties, it may cause the right holders to lose their right in their own TK as lose their grip as the time goes and the influence of the other parties increase over it.

Another issue should be considered for the shared benefit subject which is the system/rules where the sharing conducted on. In other words, the contractual form or the mutual agreement used to decide the nature of sharing and how to share.<sup>34</sup> Contracts usually between two parties and having a “definite” term (which supposed to be the term of protection of TK) and as there is

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<sup>32</sup>Muller, M.R., 2013. Protecting Shared Traditional Knowledge. Issues, Challenges and Options, Peruvian Society for Environmental Law, ICTSD Programme on Innovation, Technology and Intellectual Property, Issue Paper No. 39.

<sup>33</sup> Another form to maintain the holders’ moral right by admitting the holders’ right even compensation won’t be offered in return of sharing the TK.

<sup>34</sup> See more about sharing benefits in: Frankel, S., 2005. Third-Party Trade Marks as a Violation of Indigenous Cultural Property. The Journal of World Intellectual Property, 8(1), pp.83-98.

no term of protection for the TK, it cannot be expected that the term for the contract itself can be considered forever.<sup>35</sup>

In case of licensing a patent, the other party will have to pay royalty as mentioned on the contract for determined time stated on it and by the end of the contract the know-how included into the patent itself will become a part of a new technology where her rising star will start to shine in the market but for the case of the TK to presume the benefits arising from using the TK and to guarantee that its popularity will not drop as the time passes which will be reflected on the products based on it and lead to recession seems to be impossible.<sup>36</sup>

### **3.3.1.2Controlling TK:**

From the indigenous people perspective, TK can be put on use and have an economic impact in the case they earn an economic value which can be transformed to an investment. The direct problem arising from this treatment will be about determining the term and the scope of protection. For example, the hand-crafted products based on the traditional knowledge in Egypt (wooden and stoned statues based on the Pharaoh's culture) they earned their economic value from the popularity of the Pharaoh's culture itself and as a fact their price rock the stars as long as the Tourism in good stead state. For instance it seems impossible to determine the scope of protection based on the Pharaoh's culture (culture extended for 7000 years) and the term of protection have the same problem as it can be determined based on the economic impact to this culture which shall be vary from time to time.<sup>37</sup>

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<sup>35</sup>Milius, D., 2009. Justifying intellectual property in traditional knowledge. *Intellectual Property Quarterly*, 2, pp.185-216.

<sup>36</sup>Muller, M.R., 2013. *Protecting Shared Traditional Knowledge*.

<sup>37</sup>Milius, D., 2009. Justifying intellectual property in traditional knowledge. *Intellectual Property Quarterly*, 2, pp.185-216. Muller, M.R., 2013. *Protecting Shared Traditional Knowledge*.

In this aspect the TK similar to geographical indications since some of their fame come the same geographical origin and undetermined term of protection.

It is acceptable to authorize products based on TK but if the TK reflect another holy value earned from a religion or teachings, it is not possible to let allow the other outside the indigenous people community to use it in the commerce of trade. The same principle adopted by patent that subjects against morality and public order are ineligible subject to patents.<sup>38</sup>

The first sale doctrine adopted by USA is not applicable on the TK case as selling the TK to the first party according a mutual agreement including know-how and without a clear provision is not a subject to resale without having the right holder/indigenous people right to control the sale and manage reselling it in the market. The contractual form or the mutual agreement is a permission made only for one party so it cannot be considered as a free invitation to sell and resell the TK.

## **4. Positive and defensive protection:**

As we are going through all the way to the protection, we cannot ignore the protection's types considered in the WIPO revised Article

A prerequisite for positive protection is the national law recognition for the indigenous people/right holder and grant them the "exclusive right" based some aspects for their own TK which cut

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<sup>38</sup>Muller, M.R., 2013. Protecting Shared Traditional Knowledge.

the way for the others to obtain any legal form(patent, copyright or trademark) based on their TK.<sup>39</sup>

The positive protection of the TK is an efficient tool especially for nations or territories suffering from severe attacks on their TK using the other forms of IP and gives them the exclusive right (indirectly) to control it.

On the other hand, the defensive protection has been introduced in many aspects but the popular was the one introduced by the WIPO which define the defensive protection in case of handling patents will be based on two aspects: <sup>40</sup>

(1) Legal aspect: this aspect can be addressed also as the formalities' aspect tracing the patent subject to the suit case to verify that it fulfils the requirements needed or to meet the criteria to be a subject to certain jurisdiction.<sup>41</sup>

(2) Practical aspect: this aspect reveals the secrets behind the patent system world as simply all the information lays in the prior art section is available to the public through many of the free databases.

While the positive protection holding the keys of how the protection should be carried on or in other words, exercising the rights, the defensive protection is working as a shield for protecting

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<sup>39</sup>Munzer, S.R. and Raustiala, K., 2009. Uneasy Case for Intellectual Property Rights in Traditional Knowledge, *The. Cardozo Arts &Ent. LJ*, 27, p.37.Twarog, S. and Kapoor, P., 2004.

<sup>40</sup>Protecting and promoting traditional knowledge: systems, national experiences and international dimensions. UN.Shrivastav, V., 2014.

<sup>41</sup>Cottier, T. and Panizzon, M., 2004. Legal perspectives on traditional knowledge: The case for intellectual property protection. *Journal of International Economic Law*, 7(2), pp.371-399.

the TK from the IP side to ensure that no one can hold the right of claiming the TK under the IP system involves both the TK/TCEs and the genetic resources.<sup>42</sup>

Also, there were trials to protect the TK under the IP laws introduced through the TRIPs agreement, the defensive protection does not oppose it completely but focus on the protection strategy to set a plan to revoke claiming the TK as a personal property.

The defensive protection need arises to handle the following issues: (but not limited to it)<sup>43</sup>

1. In the patent system, claiming a subject as a modification or development or even an inspiration of another known in the prior art does not affect its creditability but in the case that inspiration or modification or development is based on the TK (the TK is the prior art) claiming the patents became groundless and cannot be valid. Even in the cases that the patent already issued; a suit had been raised by the right holders (the indigenous people or their legal guardian) to demand revoking the patent validity. Most of the cases in the patent system involves such issues are the one contains applications or uses of genetic resources which make it a problem to the right holders as they need to appeal to the local court in each country obtained the patent or at a least demand the patent office to revoke it directly.<sup>44</sup>

2. In the Trademark world, the TK is misused in many cases which cause misleading to the customers not only by linking a mere mark with a TK symbol to refer to one of the TK features' as the marks' and put on the course of trade but also causing defaming to the TK symbol through

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<sup>42</sup>Dutfield, G., 2006. Protecting Traditional Knowledge: Pathways to the Future, ICTSD Issue Paper no. 16, ICTSD, Geneva.

<sup>43</sup>Protection of Traditional Knowledge within the Existing Framework of Intellectual Property Rights: Defensive and Positive Approach. Available at SSRN 2463017.

<sup>44</sup> If the patent just issued by a patent office, a direct demand from the right holders supported with the evidence of their claim that the patent is based on their TK will be enough for the office to reconsider examining the application again according to its internal regulations and rules. But in the case that the patent become already on the market as a subject to industry, a suit case will be needed to raise in the court of the patent to perform first of all an injunction to save the patent from spreading more in the market.

underestimating it. In other words, take it lightly while it may represent a holy or mighty symbol to the local community.<sup>45</sup>

Even if the use of the TK as only to refer to one of its features as the same for the trademark goods, it leaves an impression in the customers' mind that they are similar with the features because of its known origin indicated by the TK symbol placed as its own trademark.

For the similar cases in the trademark field, acquiring a trademark based on a TK is prohibited for the indicated reasons above in the defensive protection aspect.

3. In the copyright field, the TK plays a big part of the author's life as an easy, direct and wide source of inspiration. For this kind of source, it becomes difficult to resist and many authors, painters and art workers fail in to it without knowing that they are violating the original right holders.<sup>46</sup>

Again here comes the defensive protection role where it draws the clear line of what should be maintained and protected as an original creation of someone's mind and a nation's pulse.

As we said before, the defensive protection and positive protection do not oppose each other but in fact they are complementing each other to create an ideal system to protect the TK according to the local aspects to countries.<sup>47</sup>

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<sup>45</sup>Protection of Traditional Knowledge within the Existing Framework of Intellectual Property Rights: Defensive and Positive Approach. Available at SSRN 2463017.

<sup>46</sup>Fifth Session, 2003, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GRTKF/IC/5/12, paragraph 28.

<sup>47</sup> The positive and defensive protection terms are only to refer to: how the protection should be carried so, instead of these terms in the TK act, the desirable strategy formed in enacted legislations will be found in its place while the terms will only held the theoretical outline in the books.

## 5. TRIPS related aspects of Traditional Knowledge:

TRIPS introduced an implicit way to protect the TK through its shield as one of the classic IP branches. Through this next we will go through the pros and the cons for using this system and see how much can it be effected to protect the TK.

### 5.1 Copyright:<sup>48</sup>

Copyright or the author right as commonly known is an effective field for protecting the “intangible culture expression” or what is known as “Folklore”<sup>49</sup>. The Copyright field meant to protect the intangible and original ideas which can be embodied only in for of “intangible existence” reach souls before hands and engraved in the people’s memory to remain for generations. The same description is applied on the “folklore” or the “intangible culture expressions” as it is a mind production inherited from one generation to another to mark their identity for eternity.

The approach of protecting the TK under the copyright shield has first introduced in Diplomatic Conference of Stockholm in 1967 for the revision of the Berne Convention.<sup>50</sup> It had been introduced in the Article 15.4 which demonstrated the action taken by the countries members of the unions in case that the author’s name is unknown and how the unpublished work should be maintained under the country’s authority and the work are subject to copyright protection. The

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<sup>48</sup> Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs Agreement), PartII, section: 1, Articles: 9-14.

<sup>49</sup>Folklore is the body of expressive culture shared by a particular group of people; it encompasses the traditions common to that culture, subculture or group. These include oral traditions such as tales, proverbs and jokes.<https://en.wikipedia.org/wiki/Folklore>

<sup>50</sup>Dutfield, G., 2001. TRIPS-related aspects of traditional knowledge. Case W. Res. J. Int'l L., 33, p.233

article gave the country the permission to control this work if it is only there is presumption that the original author long ago was one of its nationals.

Also, the article gave the country member of the union the absolute right to claim the work and protect it under its authority but they still have to document all the procedure they took regarding this work and send all the related information to the director general of the WIPO in a written form which will be subject to announcement from the Director general of the WIPO to all the members.<sup>51</sup>

The article did not state clearly about the required actions in the case of unpublished work with unknown author but left it as an internal issue of the state and subject to the national laws of copyright and that is may cause a confusion in the case of cross over cultures and the combined production results from it which make sounds that in the same we can find two countries claiming the same work under their authority<sup>52</sup>. The likelihood caused by the part (a) of the article cannot be easily resolved however the procedure stated in the part (b) of the article hold a part of the solution which related to the declaration. A declaration held by a country for claiming the unpublished work is similar to delimiting the borders in a war zone and shutting the door for the others countries to claim the same work as its own. On the other hand, it held a red flag as it simply means that for the case of the cross over culture, for countries who share the same origin

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<sup>51</sup> Arewa, O., 2006. TRIPS and Traditional Knowledge: Local Communities, Local Knowledge, and Global Intellectual Property Frameworks (TRIPS Symposium). Marquette Intellectual Property Law Review, 10, p.156.

<sup>52</sup> In this aspect a country can claim it as a production of one of its own national and another can claim it as a production made on its own land and inspired by a part of their own culture as there is no definition to “every ground” mentioned in the article.

and many cases the first nation who claim the works under its authority wins the battle which make it seems as First comes First served rule.<sup>53</sup>

To place TK under the Copyright umbrella, TK should follow the same procedures the copyrighted goes to be identified as it worth to be protected under the copyright.

The copyrighted work should be registered by the holder's right and prove its authentic beside of course the issue of the protection term which should be definite.

Some researchers see that no matter what the copyright can afford to be a protection shield to the TK and to go through that discussion the following question should be answered first:<sup>54</sup>

1- The author is the right's holder in the Copyright case, who is the right's holder in the TK case?

2- The author should register his work or it can be claimed through its existence in the market, what is the procedure it should be taken in the TK case?

3- The term of protection for the copyright is Author's life term +50 years, what is the proper protection term for the TK?

4- Is the doctrine of "first to sale" applicable on the TK as it can be applied on the Authors right?

The folktales can be traced to its origin (the country of origin) but not their narrator which reflects the author's right in this case to be the publisher's right. A popular case of that is the Brothers Grimm (Jacob (1785–1863) and Wilhelm Grimm (1786–1859))<sup>55</sup> who did a good job by collecting the folktales such as: Sleeping Beauty, Rapunzel, Cinderella, The frog prince. The first collection was published on 1812 under the name: "Children's and household tales".

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<sup>53</sup>The eternal problem with the laws related to the TK in general and especially to the TCEs the indefinite terms included in their context which allows only the people who owns the power to have the upper hand. For instance, if the third party has the labor and power, he will waste no time to use the TK for his favor and without violating the law and the same goes for the shared culture issue as the time will be the parameter which determines the success of declaring certain TK possession.

<sup>54</sup>Finger, J.M. and Schuler, P. eds., 2004. Poor people's knowledge: promoting intellectual property in developing countries. World Bank Publications.

<sup>55</sup>Grimm, J. and Grimm, W., 1981. The German legends of the brothers Grimm (Vol. 2). Study of Human Issues.

Also, the Brothers Grimm admitted that they did not write the tales and it is not their own creation but all the benefits went to their path.<sup>56</sup> Moreover, that the animation films which become popular decades ago based on these stories and again no one consider the right of the indigenous people of those tales.<sup>57</sup>

The indigenous people culture can be transferred in parts by transferring their thoughts articulated by their culture expressions and remained in their stories (folktales) and art. Folktales are not ordinary tales but they represent an era with people live through the events inside the story and as the stories inspired by people lived in that era they represent their principles, dreams and the life they live or earn to. Modifying the storyline should be a criminal action as it defames the original story and involve forcing no genuine ideas to represent it as original. For instance, that enforcing one of the modern western concepts in one of the eastern folktales which confuse the viewers to the films based on those stories.

Now it is time to answer the previous questions: The author as a whole in the Intangible TK is the indigenous communities and the custodian should be their legal guardian which can be represented as the responsible sector in their governments. To allow any kind of actions on this type of Intangible TK, permission should be taken from this sector or ministry. The permission should be demonstrates the way of the Intangible TK going to be used; with maintaining and assuring to maintain the original storyline without defamation. And with acknowledging that violating such permission would be subject to criminal remedy.

The term of protection of Intangible TK should be forever as it created in the land of the indigenous people as a result of their mind's creation and should be remained on their possession

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<sup>56</sup>Haase, D. ed., 1996. The reception of Grimms' fairy tales: Responses, reactions, revisions. Wayne State University Press.

<sup>57</sup>[https://en.wikipedia.org/wiki/Brothers\\_Grimm](https://en.wikipedia.org/wiki/Brothers_Grimm).

forever since it found her way to transfer from a generation to another. But it cannot be the case of the authorized term of protection as it should be defined according to each communities with considering the evaluated value of their Intangible TK and its economic impact on their and outdoor market.

The doctrine of the first sale cannot be applied on the Intangible TK field as every time at the same or different party tempt to have an action with the Intangible TK should obtain the authority permission first to do so.<sup>58</sup>

## **5.2 Patents:<sup>59</sup>**

The intangible TK cannot be directly protected under the patent's laws as patent meant for applied information which can be in the found in the industry course.

Genetic resources and know how technology may find a way to be protected under the patent's law. For the latter, the technical details recited in the patents implicitly include the know-how. In other words, without the know-how the patents only remain the empty outline frame for the transferred technology. The Know How should be accompanied in the course of industry transfer with the non-disclosure agreement to maintain its secrecy. The man mad genes are patentable but the natural genes are not patentable, How about the plant genes? Which category are they placed under?<sup>60</sup>

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<sup>58</sup> There is no deny that the Grimm brothers had made a great effort by collecting the folks' tales and published it in many books and clearly referred to the collection as a pure art related to the indigenous people(its origin). And that's was the main reason about the spreading the knowledge about them to be considered as the classical stories but the discussion is meant only to identify and recognize the right of the indigenous people and the different forms of the use of their heritage.

<sup>59</sup> Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs Agreement), Part: II, section:5, Articles: 27-34.

<sup>60</sup>Dutfield, G., 2001. TRIPS-related aspects of traditional knowledge. Case W. Res. J. Int'l L., 33, p.233.

Again we should answer some questions:<sup>61</sup>

1- Patent are about disclosure the information and the source of information, is it applicable on the Know- How traditional knowledge?

2- The owner of the patent: Inventor (Applicant), who is the owner of the right holder's for the Know-How?

3- The term of protection for patent is definite, How about the Know-How and genetic resources?

4- After the protection term comes to an end the patent become one of the prior art documents, Can the same happens to the genetic resources and Know-How?

The know-how<sup>62</sup> from TK point of view is all the intangible knowledge which inherited from a generation to another which serves as the basic knowledge to any applied technology. This kind of knowledge share the know-how branch as one of the IP categories that it is once exposed to the public (competent as a part of the public) become useless and able to be imitated in wide range. In this manner, the only safeguard for the intangible knowledge or know-how TK is having such legislation to state why and how this kind of knowledge can be only belong to a part of society- clan or tribe- and cannot be open to the public even after the contractual or agreement time is done? <sup>63</sup>

Now it is time again to answer those questions:

The know-how in the patents cannot be exposed to the public as it is represent the source of power behind licensing the patent but as a matter of fact after the time meant for the licence or the term protection for the patent as the maximum time for the licence, the patent become and the

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<sup>61</sup> Arewa, O., 2006. TRIPS and Traditional Knowledge: Local Communities, Local Knowledge, and Global Intellectual Property Frameworks (TRIPS Symposium). Marquette Intellectual Property Law Review, 10, p.156.

<sup>62</sup> Please see the discussion about managing Know-how: Hansen, M.T., Nohria, N. and Tierney, T., 1999. What's your strategy for managing knowledge?. The knowledge management yearbook 2000–2001, pp.55-69.

<sup>63</sup>Erstling, J., 2009. Using Patents to Protect Traditional Knowledge. Texas Weleyan Law Review, 15.

know-how become almost useless.<sup>64</sup> As the time goes, the licensed information become a part of the prior art as it become known to the other competent which does not make sense to pay royalties for such thing after the designated period of licensing after become exposed.<sup>65</sup>

Definitely, It is not the case for the know-how TK as the time goes the evaluated value of its rising up.

As a matter of fact the value of know-how for the intangible TK goes up because the as the time goes up it become distant from the source of knowledge which make it only exclusive to only the tribe or the clan that inherited it. Some know-how cannot be taught as it simply run in the blood of the tribe's members.

Secondly, Know-how lives as it transfer from a generation to another which make that tribe or clan the holder's right not the authority or the ministry especially in case of having diversity of cultures in the same territory. On the other hand, the genetic resources belong to the whole territory right as the land within the territory itself also they represent individual property. For instance the turmeric case; the Indian council stands for the turmeric as one of the Indian genetic resources which should be claimed as one of their TK not as it belongs to certain region.<sup>66</sup>

Thirdly, the term of protection again will be forever also the permission of use this kind of TK according an agreement or contract should be defined by time limit. Whether it is the genetic resources or the know-how they born on the land of the territory and remains there as a main

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<sup>64</sup>Hansen, S.A. and Van Fleet, J.W., 2007. Issues and options for traditional knowledge holders in protecting their intellectual property. Intellectual property management in health and agricultural innovation: a handbook of best practices. MIHR and PIPRA, Oxford and Davis, pp.1523-1538.

<sup>65</sup>Reichman, J.H., 1995. The know-how gap in the TRIPS Agreement: Why software fared badly, and what are the solutions. Hastings Communications & Entertainment Law Journal, 17, p.763.

<sup>66</sup>Ramanna, A. and Smale, M., 2004. Rights and access to plant genetic resources under India's new law. Development Policy Review, 22(4), pp.423-442.

source they indigenous people use to benefit in their trade course which entrench the concept stated in the WIPO revised articles that sharing should be “Fair” and on “equitable”.<sup>67</sup>

### **5.3 Geographical Indications:<sup>68</sup>**

Using Geographical Indication to protect TK is one of the closet approaches within the IP classical model. Also, the TK can be in tangible and intangible form but for the geographical indication has to be in tangible form, they share an essential feature related to their origin. They are both bound by their origin where their maker lives.

In the geographical indications case the place of origin is pointed out as a territory, however, in the TK case the place origin is point out as place where the indigenous people live.

The geographical indications are marks used to indicate the origin of the products and assure their qualities. The products carry the name of those marks are only meant to be sold as it is without applying any modifications on them. In other words, they are only subject to sell not to be used as a development nucleus.<sup>69</sup> Also, the IP laws are bound by territories, products covered by the Geographical Indications law are well protected more than patents and copyrights as the mark they carry not only indicating the origin but also indicates the quality standards they set as their which make it easier for the consumers to resolve their confusion between similar products.<sup>70</sup> TK did not go that far until now and unfortunately, many countries are unable to

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<sup>67</sup>Berkes, F. and Henley, T., 1997. Co-management and traditional knowledge: threat or opportunity?. POLICY OPTIONS-MONTREAL-, 18, pp.29-30.

<sup>68</sup> Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs Agreement), PartII, section 3, Articles: 22-24.

<sup>69</sup>Farah, P.D. and Tremolada, R., 2015. Conflict Between Intellectual Property Rights and Human Rights: A Case Study on Intangible Cultural Heritage.Oregon Law Review, 94(1).

<sup>70</sup> Bowers, S.A., 2003. Location, Location, Location: The Case Against Extending Geographical Indication Protection Under the TRIPs Agreement. AIPLA QJ, 31, p.129.

claim it within its borders. And of course, they cannot be considered sane if they decided to claim it outside these borders.<sup>71</sup>

## **6. Cases of Traditional Knowledge:**

As it can be concluded from the traditional knowledge wide definition that it includes the knowledge belong to the ancient people and still or not, used in the market till now whether it is developed or used in its original form on the condition of the continuity.

### **6.1 Natron:**

Natron is a natural compound originated from the Natron or Natrun valley located in Biheira governate, Egypt.<sup>72</sup>Biheira Governate is famous with its lakes which represent the source of the pure Natron. The Natron valley had been known in the history by several names, the first name was “Sekhet Hemat” which is a heliographic name means the “Salt’s field” as a refer to the plenty of salt in this area.<sup>73</sup>Natron is an important preservative which the Egyptians (3500 BC) used in their embalming process. In *The Genesis of Science* (2010), Stephen Bertman says Egyptologists use the term “Natron”<sup>74</sup> to refer to a variety of chemical compounds; specifically, sodium chloride (table salt), sodium carbonate, sodium bicarbonate, and sodium Sulphate.<sup>75</sup>

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<sup>71</sup>Shrivastav, V., 2014. Protection of Traditional Knowledge within the Existing Framework of Intellectual Property Rights: Defensive and Positive Approach. Available at SSRN 2463017.

<sup>72</sup> [https://en.wikipedia.org/wiki/Wadi\\_El\\_Natron](https://en.wikipedia.org/wiki/Wadi_El_Natron)

<sup>73</sup> <https://en.wikipedia.org/wiki/Natron>

<sup>74</sup> <http://www.touregypt.net/featurestories/salt.htm>

<sup>75</sup>Noble, J.V., 1969. The technique of Egyptian faience. *American journal of archaeology*, 73(4), pp.435-439.

Natron is known nowadays in the market with a more developed form combined by a French chemist called Nicholas Leblanc in 1787<sup>76</sup> based on it. Some refer to the “baking soda” as a “discovery” or naturally developed form based on Natron as it was already known in the market for different usage.

Baking soda is one of the essential ingredients needed for household items because of its various usage in pastries and others.<sup>77</sup>

The fact that the Natron is one of the Egyptian TKs is an undeniable fact but unfortunately, it did not have any impact on the Egyptian economy. In other words, the Natron is a direct source of the baking soda which is considered as a French invention that is more suitable to address as a “discovery”.<sup>78</sup> And also, the Natron is an Egyptian TK but the patent goes to the French chemist and after him the French bakery shops which considered the best in this field.

The question here is about “sharing the benefits”, Is it applicable on this case? And How?

## **6.2 Turmeric:**

Turmeric is a plant which belongs to the ginger family.<sup>79</sup> Originally it is planted in India and represents one of the essential ingredients in the Indian cuisine but also it is used in a wide range

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<sup>76</sup>Derry, T.K. and Williams, T.I., 1960. A short history of technology from the earliest times to AD 1900 (Vol. 231). Courier Corporation.

<sup>77</sup>Downes, D., 1997. Using intellectual property as a tool to protect traditional knowledge: Recommendations for next steps. Center for International Environmental Law, Washington, DC.

<sup>78</sup> For an invention to be granted as a patent, it had to be a development or a modification made on the prior art not a discovery to one of the original features to the same topic mentioned in the prior art as it simply violates the novelty condition.

<sup>79</sup>Scientific name is: *Curcuma longa*.

of Asia and other countries as spices and other forms of it (can be used as a powder or in its original form) in the food and other purposes (medical treatments for skin etc.).<sup>80</sup>

Also, turmeric is widely used in many countries and its usage takes various forms, it does not obliterate the fact that it is one of the Indian Traditional Knowledge and the Indian culture was generous enough to share its benefits with the other countries.

Turmeric plays a big role in the Indians life. Besides being as an essential ingredient in the Indian cuisine, it is a part of the ritual in the Bengali wedding ceremony which known as The Turmeric Ceremony or “Gaye Holud”. The ceremony is a celebration of the wedding in the Bengali region where the bride family gives the groom some gifts includes the Turmeric and both of the groom and the bride applies on each other’s forehead the turmeric paste to declare their bond. The ceremony is considered to be religious so all the Indian people in the Bengali region regardless of their religion perform it.<sup>81</sup>

In 1995, two Indians nationals at the University of Mississippi Medical Centre obtained a U.S. Patent 5,401,504 for the “use of turmeric in wound healing”.<sup>82,83</sup>

In 1996, The Council of Scientific & Industrial Research (CSIR), India, New Delhi requested the US Patent and Trademarks Office (USPTO) to revoke the patent on the grounds of existing of prior art.<sup>84</sup> The patent was revoked in 1997, after ascertaining that there was no novelty.<sup>85</sup>

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<sup>80</sup><https://en.wikipedia.org/wiki/Turmeric>.

<sup>81</sup>[https://en.wikipedia.org/wiki/Gaye\\_holud](https://en.wikipedia.org/wiki/Gaye_holud)

<sup>82</sup><http://www.lifeintellect.com/blog/2013/10/24/traditional-knowledge-and-intellectual-property-case-of-turmeric/>

<sup>83</sup>Ardhede, H., 2006. Traditional Knowledge and the Patent System—Irreconcilable differences or a simple case of mistaken identity?.

<sup>84</sup>Chouhan, V.K., 2012. Protection of traditional knowledge in India by patent: legal aspect. *J Humanit SocSci*, 3, pp.35-42.

<sup>85</sup>Downes, D., 1997. Using intellectual property as a tool to protect traditional knowledge: Recommendations for next steps. Center for International Environmental Law, Washington, DC.

### **\* Cases Analysis:**

Based on the two cases, it became clear that any patent obtained based on a traditional knowledge will be subject to refusal but apparently not because it represents a part of the traditional knowledge itself but based on the claim that the invention is itself a “Discovery” for an existed formula or compound.

Another remark here which makes all the difference for claiming the traditional knowledge issue is the stand of the motherland where the Traditional Knowledge belongs to. In other words, if the Indian Council of Scientific & Industrial Research (CSIR) did not stand to claim the turmeric as a part of its own Traditional Knowledge probably the US patent still valid until now. This assumption became a fact in the Natron case as the Egyptian Council did not claim their right on the Traditional Knowledge which makes it difficult to demand later to have any right for any economic benefit based on it. So the custodian of the Traditional Knowledge has to step forward and demand with his own right in the Traditional Knowledge otherwise it becomes like an implicit declare of free use of this traditional knowledge for the public.

In the two cases benefits had been shared for the original traditional knowledge as a generous act from the owner rights (indigenous people) with the other communities extended to countries around the world but it cannot be stated precisely as “Sharing benefits” as the owners right/indigenous people did not receive any benefits in return of allowing the others to use their traditional knowledge which violate the definition of sharing. In other words, the two cases represent the reality behind sharing benefits which mainly referring to benefits going to one side while the other not only does not receive a compensation but also loses after a while the right to claim his own traditional knowledge.

## 7. The international frame for TCEs protection:

Traditional Cultural Expressions or as known as TCEs represent the pulse of the indigenous people where their existence embodied to live in another tale or item to tell the story of the ancestors to the descendants even after a thousand years.

It is almost impossible to set a single definition for the TCEs and limit it with a single category because of its own diversity nature which declared clearly through Article (1) in the WIPO revised version that defined the TCEs as: “Any form of (artistic and literary) expression, tangible and/or intangible, or a combination” and of course on the condition that “based or inspired or a whole embodiment for the TK”. And since we are speaking about the TK an automatic condition will be add automatically to the definition which is: “transferred from a generation to another and between generations”.<sup>86</sup>

There are four main categories under the TCEs<sup>87</sup> and they are attached with the word “expression” as a remarkable mark to be listed under the TCEs category. The first two subcategories are the “verbal or phonetic expressions” and “musical or sound expressions” which both contribute to serve as a background for the third subcategory the “expressions by actions”.

The first three subcategories are intangible as we are speaking about music, novels which are elements for a play (expressions by actions).

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<sup>86</sup>Session, T.S., 2016. Intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore. WIPO/GRTKF/IC/31/4

<sup>87</sup> As a matter of fact, the knowledge itself can't be listed in the TK category without being transferred from a generation to another and between the generations themselves (to guarantee continuity) to represent a very special type of knowledge. The same goes also for the TCEs as they are originated from the same vessel.

The last subcategory is the “Tangible expressions” which carry all the common features for the TCEs but this time and directly from its definition it must be “Tangible” i.e. produced with materials. All the handicrafts products are listed under this subcategory.<sup>88</sup>

To decide about the eligibility for an item to be listed under the TCEs it must belong to one of the subcategories stated earlier and satisfy the common conditions considered for the TCEs itself whether it is inherited in its original condition (such as monuments and sculpture) or in renewal form based on a knowledge (such as a technique or a process).<sup>89</sup>

The scope of the remaining paper on this thesis will be focused on the TCEs and all the mysterious surrounding it.

TCEs did not receive the same attention which the genetic resources received for a reason or another but the protection of it especially from the third party and the third party issue is a big headache for the researcher in this part of TK.

For the first three provisions: (a), (b) and (C) including Phonetic or verbal expressions, Musical or sound expressions and Expressions by action, the indirect protection through the Copyright law can be a temporary or quick solution, however, the TK cannot be easily underestimated to be a mere creative work as it represents as we said before the identity of the local communities or the indigenous people.

In contrary to some people thinking that the tangible forms can stay forever preserved, however the intangible forms disappear as the time passes. Thoughts and beliefs stay preserved between the lines of the history books to demonstrate the incentives beyond every single move taken in a

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<sup>88</sup>Session, T.S., 2016. Intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore. WIPO/GRTKF/IC/31/4

<sup>89</sup> Id,

war or revolution descendent to us in a simple symbol where we use it today to brag about those days.

In other words, the intangible forms of TCEs last as long as the indigenous people remain and keep preserving their intangible forms of their TCEs are their own responsibility (make the TCEs alive) as simply it does not represent their identity only but it is engraved in their collective consciousness.

That is why from my perspective the Tangible TCEs need more attention and restrictive laws regard the third party issue handling them. The Tangible TCEs depend most of the time as know how based on traditional knowledge as for an example: the handicrafts items and the sculptures where their know-how mechanism is transferred from the master to the disciple and if it is become known to the public especially for skilled person in the field, nothing will hold them back from using these traditional knowledge to surpass even the original one. It will become open market anyway where no one can control the productions.

In that aspect, the Tangible traditional Knowledge appears to be seated in the corner and need to have *sui generis* laws for herself.

## Part II: TK on the national Level (Egypt)

### 8. Brief history of Egypt:

#### \* Spotlight on the Egyptian History:

1- Prehistoric era: which cannot be detected but around several thousand years ago upon the Nile river formation and after the area around it becomes a good place for human living.

2- Ancient Egypt: 3100 B.C to 332 B.C<sup>90</sup>

3. The Hellenistic and Romanian Egypt: 332 B.C to 641 AD<sup>91</sup>

4. Arabian Egypt: 641 to 1517<sup>92</sup>

5. Ottomanian Egypt: 1517 to 1801<sup>93</sup>

6. Modern Egypt: 1805 to 1954<sup>94</sup>

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<sup>90</sup>Early Dynastic Period starts from 3100 to 2868 B.C

Old Kingdom starts from 2868 to 2181 B.C

1<sup>st</sup> Intermediate Period starts from 2181 to 2055 B.C

Middle Kingdom starts from 2055 to 1650 B.C

2<sup>nd</sup> Intermediate Period starts from 1650 to 1550 B.C

New Kingdom starts from 1550 to 1069 B.C

3<sup>rd</sup> Intermediate Period starts from 1069 to 664 B.C

Late Period starts from 664 to 332 B.C

<sup>91</sup>The Ptolemaic dynasty starts from 332 to 30 B.C

Roman and Byzantine Starts from 30 B.C to 641 AD (Sasanians starts from 619 to 629 B.C)

<sup>92</sup>Islamic Egypt 641 to 969

Fatimid Egypt starts from 969 to 1171

Ayyuib Egypt starts from 1171 to 1250

Mamluk Egypt starts from 1250 to 1517

<sup>93</sup>Ottoman Egypt starts from 1517 to 1867

French Egypt starts from 1798 to 1801

<sup>94</sup>Mohamed Ali starts from 1805 to 1882

Khedatives Egypt starts from 1867 to 1914

British Egypt starts from 1882 to 1954

## 7. Egypt on trails:

- Sultanate of Egypt starts from 1882 to 1922
- Kingdom of Egypt starts from 1922 to 1952
- Republic of Egypt starts from 1952 till now.<sup>95</sup>

When it comes to Egypt, we need first to state some facts:

1- Egypt contains 30% of the monuments in the whole world.<sup>96</sup>

2- Luxor (one of Upper Egypt's cities) contains only 70% of the monuments in Egypt.<sup>97</sup>

3- As Egypt draw the attention of every dreamer from a long time; through the history we can find different faces of Egypt reflecting the governor identity and his policy. For instance we can find that the Pharaoh's era extended for seen a thousand years while Egypt was considered as the lighthouse of science and trade etc. The Pharaoh's era is known as the Ancient Egypt which followed after that by several eras where at that time it became under others (not Egyptian) govern.<sup>98</sup>

Until declaring Egypt as a republic every era left a finger print on the Egyptian people and their culture beside of course leaving traces of that era represented by any form which dared to say that it belongs to the TK in its different forms.<sup>99</sup>

Because that Egypt conquered many times by different nationalities, part of their culture transferred to Egypt and remained but not separated, it fused to become inseparable part of the

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<sup>95</sup> Some of the readers to the Egyptian history feel confused because of the overlapped periods of time in the Egyptian history. For an example: Britain had announced her forces withdrawal from the Egypt by the year 1922 but they only withdrew to settle down within the Suez Canal area to guarantee their control on the trade done by the canal. In the same period of time, you can see the rise of the Sultanate of Egypt and then the Kingdom of Egypt till announcing Egypt as a Republic. Straggling was always there for the Egyptian people but it was not a hinder for them ever to reach their dream.

<sup>96</sup>Fagan, B.M., 2004. The rape of the Nile: tomb robbers, tourists, and archaeologists in Egypt. Basic Books.

<sup>97</sup> Id.

<sup>98</sup>Sestini, G., 1989. Nile Delta: a review of depositional environments and geological history. Geological Society, London, Special Publications, 41(1), pp.99-127.

<sup>99</sup>Sayyid-Marsot, A.L., 1985. A short history of modern Egypt. Cambridge University Press.

Egyptian identity. In the same manner part of the Egyptian Culture transferred to the army forces which conquered Egypt along the history and crossed to the people in those forces affecting them, I dare to say that some of the in the military armies which came to conquer Egypt, stayed after their armies left and established families inside Egypt while being a part of the Egyptian society.<sup>100</sup>

4- It is easy to fuse in the Egyptian society because of many factors:

1. The Egyptian land is generous to the Egyptians people as it provided them in a wide range with different kinds of plants and metals to be served in the course of Agriculture or trading.<sup>101</sup>

2. Egyptian people always welcoming to the foreigners, known for being a good host and another homeland for refugees. That is explains the fact beyond the speed the foreigners and refugees adapt and later fuse to become a part of the Egyptian society.<sup>102</sup>

3. There is no specific features common between the Egyptian people whether the facial features, skin colour, length or body shape. In other words, you can be an Egyptian with rough hair, black skin and sharp facial features or with soft hair, white skin and very delicate facial features.

4. Because of that there are no specific common body features between the Egyptian people, it cannot be considered as advantage if you have white skin or a disadvantage if you have dark or black one as both can be counted as one of the beauty semblance. In other words, no discrimination based on skin colour.

As we said before because of the long history of Egypt, it becomes easy to find in every corner traces for people from different era who came, lived and died over there. For many eras in Egypt, the traces for other cultures can be seen which represented by the expression “cross over cultures”

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<sup>100</sup>Sayyid-Marsot, A.L., 1985. A short history of modern Egypt. Cambridge University Press.

<sup>101</sup>Postel, S. and Richter, B., 2012. Rivers for life: managing water for people and nature. Island Press.

<sup>102</sup>Pu, M., 2005. Enemies of civilization: attitudes toward foreigners in ancient Mesopotamia, Egypt, and China. SUNY Press.

and those types of culture we will not explore them here. Instead, we will focus on the traditional knowledge left as a heritage from the Pharaoh's era.<sup>103</sup>

## **9. Egyptian living TCEs:**

### **9.1 The Egyptian dialect:**

Just as mentioned before, the official language in Egypt is Arabic; however, the spoken Arabic by the Egyptian people is pretty different. Some foreigners refer to it as an individual language and the relation between it and the Arabic or the Modern Standard Arabic (MSA) is the same relation between the Latin and English. The Egyptian dialect is based on Arabic; still you can find the traces of history in it. In other words, every culture left a trace in Egypt, left also few words, some modified<sup>104</sup> and some remains with the same pronunciation and just embedded in the Egyptian dialect. It was mistakenly known for a while that the Egyptian language (Hieroglyphic language) is dead language without traces or hints left to help discover how to articulate (not only through the written forms). The claim was supported by researches meant to prove the root and origin of each word used in the Egyptian dialect. The result came with many words in a reflected form mixed in the Egyptian dialect and still in act until today.

Hieroglyphic Language is not the only language which has traces in the Egyptian dialect but In fact, the Egyptian dialect contain words from more than 10 languages, other in their original form or with a reflected one.<sup>105</sup> The foreign words transferred to the Egyptian dialect through the

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<sup>103</sup>Stollery, M., 1998. Review: Mass Culture and Modernism in Egypt by Walter Armbrust. FILM QUART, 51(4), pp.47-49.

<sup>104</sup> Some English and Turkish words modified. In other words, arabised to mix smoothly with the Egyptian dialect.

<sup>105</sup> The Egyptian dialect includes words from: English, French, Turkish, Persian, Spanish, Italian, Coptic, Hieroglyphic, Greek, Indian, etc. See: <http://www.coptic.org/language/georgy/common.htm>,

direct contact of the Egyptian with the other nationalities or through the other nationalities themselves as a third medium for transfer.<sup>106</sup>

The Egyptian dialect is not only reflects the history of Egypt and the diversity of cultures in this country but also reflects the political position of Egypt as the centre of the Arabic world. The diversity of terminologies mixed in harmony in the Egyptian dialect made it more appealing to a lot of foreigners as he can easily find a connection between it and his language which made it for him easy to catch it up in no time. This explain the wide spread of the Egyptian dialect through the Arabian world and its popularity among the Arabic learner from foreigners.<sup>107</sup>

As a matter of fact, the Egyptian dialect is not just one dialect but it is used to be referring to Cairo dialect , however, each governorate has its own dialect which may or may not close to Cairo dialect.<sup>108</sup>

In some of the Egyptian regions, some of the inhabitants for those regions speak other languages besides the Egyptian dialect and the MSA because of their long contact with other nationals or regards of their different origin. Siwa and Nubia are two examples of such diversity.

In Nubia, the official spoken language is Nubian which does not has a written form, inherited through from generation to another between people who inhabiting this area. And in Siwa, Siwan

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<http://blogs.transparent.com/arabic/ancient-egyptian-words-used-today/>. See also all about the structure of and the terms of the Egyptian Arabic in: [http://www.language-archives.org/language/arz#lexical\\_resources](http://www.language-archives.org/language/arz#lexical_resources)

<sup>106</sup> The Egyptian dialect has a big share from the Persian language rather than the other languages also there are almost no similarities between Egypt and Iran besides the Persian didn't stay in Egypt for long time. But through the third medium which is the Turkish people who were in a direct contact with the Persian civilization and the Persian people therefore the Persian language for a long time, many words transferred to the Turkish language and then to the Egyptian dialect during the Turkish long stay in Egypt in the Ottoman's era. See: O'Leary, D.L., 1925. *Colloquial Arabic: with notes on the vernacular speech of Egypt, Syria, and the Mesopotamia, and an appendix on the local characteristics of Algerian dialect*/by De Lacy O'Leary.

<sup>107</sup>Lehn, W. and Abboud, P.F., 1965. *Beginning Cairo Arabic*. Hemphill's Book Stores.

<sup>108</sup> Cairo dialect is the main dialect however there are many dialects which totally different from the main dialect and looks after the region. See: <https://ema.revues.org/1952>

or Amazigah language is spoken which called the Berber language but for this one, it had a written form.<sup>109</sup>

## **9.2 Egyptian modern folktales:**

The modern Egyptian folktales can be divided into two sections: the Mythology folktales and the traditional folktales. The former forms embodied the people fear from some creatures and being superstitious was all they can do to confront their unknown origin. The origin of the tales itself cannot be matched with a certain time or place, it seems that the tales had been told long ago from ancestors to descendent without a try to break the holly ritual regarding the place of the creatures' appearance or doubt the events itself.

The latter, the traditional folktales are the one the kids and the adult enjoy hearing all the time. The tales had to have a point all the time and a lesson to learn from them which make the same tale can have different narration to match with the culture diversity in Egypt.

### **9.2.1 Mythology folktales:**

#### **1- El-Naddaha:**

The word "El-Naddaha" in the Egyptian dialect means "The Caller".<sup>110</sup> El-Naddaha is one of the folktales popular in the rural areas beside the Nile where the people believe that "El-Naddaha" is an evil creature which takes a woman form and start to call men passing by the Nile in the night by their first name. The man who ever called by "El-Naddaha" is marked to be dead. El-Naddaha calls her victims twice, the first in their first encounter to her by the Nile where they start to be

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<sup>109</sup> A wide discussion about the culture diversity in both areas will be introduced in the "diversity culture" section.

<sup>110</sup> Also, the El-Naddaha is considered as a modern mythical creature but as a matter of fact, there traces of it in the Ancient Egyptian Methodology with a different name under the same description of the creature.

hypnotised once she starts to call their names and they remain in this case until the others drag them away from the side of the Nile.<sup>111</sup> The second encounter, El-Naddaha stays in front of the victim door and starts to call his name the whole night. The man who had been called starts to fight to hurry to her and jump to the water or as the people say that she drag him to it.<sup>112</sup>

People describe El-Naddaha as a beautiful woman with a long her, tall and slender body in a very beautiful dress to attract her victims. The same description goes also to the mermaid or as called in the Egyptian dialect “Aroset El-Bohor” which means “The bride of the Seas” which drag men travelling in boats in the night by the sea to the sea. But the later, has one and only one encounter with their victims before they disappear.<sup>113</sup> The later also can be seen as a direct lead with the Egyptian habit to throw a beautiful woman as a sacrifice to the Nile for his gifts in the Ancient Egyptian culture.<sup>114</sup>

## **2- Our Ghoul mother:**

Ghoul one of the myths in the Arabian and the Egyptian culture, however, they are having different description for it. In the Arabian folktales the Ghoul is described as an animal which has only one eye with bright red pupils. The Ghoul survives on eating the flesh of humans. In the

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<sup>111</sup>[https://en.wikipedia.org/wiki/El\\_Naddaha](https://en.wikipedia.org/wiki/El_Naddaha)

<sup>112</sup> In 1998, another narration for this tale under the name “Legend of El-Naddaha” written by the popular Egyptian author Dr. Ahmed Khaled had been published. Until now, the tale written by Dr. Ahmed is considered the closest narration ever to the story known in the rural areas which terrifies people until today.

See: <http://www.goodreads.com/book/show/6004838>

<sup>113</sup> El-Naddaha story was the embodied fear of the inhabitants of those areas from the unknown. In 1969, a narration was published by a famous Egyptian author called Yusef Idres with the name El-Naddah and later it became a movie. The narration and the movie discussed the fear reflected from the ignorance of the unknown and the unfamiliar especially when it strikes the principles and concepts. See: <http://www.goodreads.com/book/show/5977703>

<sup>114</sup> El-Naddaha as described in many tales can take many forms which reflect also the different reality. In other words, once she was the victim of cruel murder and back again to revenge. Another, she is the hidden fear in the dark nights waiting for the farmers to enchant their mind and hearing and finally drag them to the sea.

Egyptian folktales, the Ghoul played different roles.<sup>115</sup> In one of the tales the Ghoul had been referred to the old, ugly and creepy witch who used her magic to separate “El-Shater Hassan” and “Set El-Hosen”. In Siwa<sup>116</sup>, the Ghoul is referred to the widow who her husband died as they hold her the responsibility of her death due to her evil eye.<sup>117</sup> Also, Ghoul is supposed to be a superstition but it has a remarkable appearance in “One thousand night and night Arabian tales”<sup>118</sup> which led to different equivalent description for in each country held the Arabian culture as a dear background of their culture.<sup>119</sup>

## 9.2.2 Traditional Folktales:

### 1- Ali El-Zeabaqe:

Ali is the name of the tale’s hero and El-Zeabaqe is word from the Egyptian dialect which mean “The mercury” and it refers to the marvellous ability of the tale’s hero in disguising and running away every time, leaving no chance for anyone to catch him.<sup>120</sup> The tale’s time back to the “Mamluk era” when the Egyptian suffered under the Authority of “Mamaleek” until a hero arises and starts his duel with one of the Mamaleek who is in charge of the police force. Ali or the hero of the story is the son of another hero who won his battle against the Mamaleek in charge but in

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<sup>115</sup> Unlike the El-Naddaha the beauty evil, the mother’s ghoul represent the pure ugly evil which doesn’t have to kill with her hand as the person who encounters her die from fear and her horrible look, breath and voice.

<sup>116</sup> Siwa or Siwa oasis located in the eastern Egyptian desert.

<sup>117</sup> Another story had been told about the Mother’s Ghoul that she lives in “Betah’s temple” in Kharnak, Luxor and the people wouldn’t dare to come near the temple in the night because of her. The rumour had found her place in the people’s minds and heart especially after 7 kids disappeared and found buried later near the temple. Beside the kids’ bodies the statue of God Shekmet; the Pharaoh’s god who was responsible for punishing human who commit wrong doings. See: <http://www.dawshagya.org/vb/dawshagya147709/>

<sup>118</sup> See: <http://kenanaonline.com/users/samibatta/posts/465422>

<sup>119</sup> The creature has a very wide range in the Arabian and the Egyptian folklore with many names and many descriptions which represent the greediness and the deception which lead to your own death.

See: [http://zeozkaria.blogspot.com/2010/11/blog-post\\_2298.html](http://zeozkaria.blogspot.com/2010/11/blog-post_2298.html)

<sup>120</sup> The oldest documented tale was by published in 1880 written by Author named “Al-Kamel Al-Hafez Ahmed Ibn Abd Allah Al-Masry and later it had been studied and reviewed by Dr. Mohamed said Abd Al-Twab. The latter copy had been released the last year to include the most relevant story to the original one.

See: <http://www.goodreads.com/book/show/10802962>

the end they poisoned him by the hand of one of the slaves. The tale embodied the life of the folks in this era.<sup>121</sup>

## **2- Hassan we Nayma:**

One of the romantic modern folktales which has some similarities with “Romeo and Juliet” story. It represents the theme of the “Impossible love”.<sup>122</sup> The tale presented the difference in social levels between the woman’s and the man’s families which lead the woman’s family to oppose the marriage and force her to marry in another rich family.<sup>123</sup> Another tale believed to be the root of the story which named “Al-Amira we El-Shatter Hassan” which means in the Egyptian dialect “The princess and the good Hassan”. Another tale known in the Arabian literature told more than 1500 years ago named “Qes we Layla” which means “Qes and Layla” where Qes is the tale’s hero and Layla is his beloved one.<sup>124</sup> Different endings had been detected for the tales also there are similarities including the concept of the tale (which reflect similarity between different cultures) but the handling and the scenarios are different.<sup>125</sup>

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<sup>121</sup> Many versions of the tale had been published until now to entrain the folktales readers and reflect the fact that one tale is quite enriched to have many versions to be written over and over again even after decades. One of the introduced versions was for the popular folktales writer “Farouk Khorshed” in 2002 which not only narrated the original story but also drew with writings the picture of the Arabian countries in this era who struggled under the Mamlooks’ authority. See: <http://www.bookjuices.com/download/23380/>

In 1985, the story of Ali Zabeaqe was pretty known for everyone even kids as it had been introduced in a popular drama series under the same name and had a great impact on the viewers made it memorable until today.

<sup>122</sup> Hassan Wa Nayma is a real story which taken place in Al-Menia, Upper Egypt but the year isn’t exactly known. See: <http://www.archivegypt.com/9510-2/>. Later the story had been modified to be a cinematic movie which released on the year 1959. See: [https://en.wikipedia.org/wiki/Hassan\\_and\\_Nayima](https://en.wikipedia.org/wiki/Hassan_and_Nayima)

<sup>123</sup> The theme of the “Impossible Love” had been there from eternity as seen in the Isis and Osiris story, Isadora and Habby story and Antonio and Cleopatra story which combined many beautiful feelings and exposed the cruelty of the reality. See: <http://lite.almasryalyoum.com/lists/culture/28727/>

<sup>124</sup> The story also known as “Majnun Layla” which means “the Crazy of Layla”. The story is considered one of the epics romantic stories in the Arabian literature. See: [https://en.wikipedia.org/wiki/Layla\\_and\\_Majnun](https://en.wikipedia.org/wiki/Layla_and_Majnun)

<sup>125</sup> The story had influence on the world literature which explains the similarities between it and the later foreigner editions. See: <http://arabiccollege.com/arabic-literature-qays-and-layla/>

## 10. Culture diversity:

Egypt contains a lot of regions which has unique culture extended to include different language, tradition, and customs. Through the coming sections, you will explore three regions in Egypt you will not believe that they were there all the time.

### 10.1 Siwa Oasis:

Siwa oasis locates in the western Egyptian desert, near the western border to Libya. Being near the border made it as a gate for trade and exchanging culture between North Africa and the Nile valley.<sup>126</sup>

Siwa has her own culture which is totally different from the rest of Egypt which make it so unique. The Siwan people can speak Arabic beside their own language (the Berber language) which called Amazigh or the Siwi language which kind of written signs. For example: the word:

(ⴰⵣⵓⵍ) which pronounced as “Azul” means “Hello”.<sup>127</sup>

“Siwa” in Amazigh means “Bird of Prey”, the name refer to the history of the oasis which extend to prehistoric eras and the nature of the oasis being in the middle way between the Egyptian capital and the neighbourhood countries which made it as one of the most important gates to protect the Egyptian borders against invasions. And that is exactly why “Siwa” or “Bird of prey” refers to Amun’s protector.<sup>128</sup>

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<sup>126</sup>Barber, T., 2002. Beyond. Circulation, 86522, pp.22-23.

<sup>127</sup> [http://www.siwoasis.com/siwa\\_language.html](http://www.siwoasis.com/siwa_language.html)

<sup>128</sup> [http://www.siwoasis.com/siwa\\_his.html](http://www.siwoasis.com/siwa_his.html)

Besides having their own language<sup>129</sup>, they have their own culture including customs and traditions for wedding, birth even for death. As the oasis is totally isolated in the western desert, it helped the Siwan people to preserve their heritage as it is and prevent the hand of globalization to reach it. For the traditions and customs, it is easily to recognise some similarities between it and the traditions and customs in Libya and Morocco as some of the tribes from Morocco had been settle down ages ago in Siwa besides the direct continuous contact between the Siwan people and Libya through Borders.<sup>130</sup>

The Siwan people especially the women wear the traditional clothes until today as a part of preserving their traditional heritage. The traditional clothes for women are so unique; basically it is so wide and contains a lot of embroideries which make it a pleasant for sight.<sup>131</sup>

Like the rest of Egypt, the official religion in Siwa oasis is Islam, however, other religions and believes may exist. The law enacted in the Oasis is the traditional law<sup>132</sup> where the tribal system is valid and the leader of the council called “Sheikh” to refer to the elder or the head of the family. The council tries to solve the issues between families and maintain it as an internal issue which make the Egyptian police role easier in the oasis as they handle the main criminal issues while the simple thefts or so is handled by the council.<sup>133</sup>

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<sup>129</sup>Siwan People

<sup>130</sup> <http://www.ask-aladdin.com/Egypt-protectorates/siwa-oasis.html>

<sup>131</sup> A case will be introduced later in the cases’ section to illustrate in details the uniqueness behind the Siwan traditional clothes.

<sup>132</sup> Known in the legal system as the customary law where the customs and the traditions lead the community through a council or a committee included the elders of the tribes. The leader of the council is the one who decide the judgments after consulting the other elders and no matter the judgment be everyone has to obey. Please refer to Black dictionary for the definition of the customary law. Black, H.C., MA, Black’s Law Dictionary, (1968). St. Paul, Minn.

<sup>133</sup> [http://www.siwaoasis.com/siwa\\_culture.html](http://www.siwaoasis.com/siwa_culture.html)

Siwa is also famous of having several attraction spots; such as: Fortress of Shali, Gebel Al-Mawta<sup>134</sup>, Bir<sup>135</sup>Wahed, Temple of Oracle, Fatnas Spring<sup>136</sup>, House of Siwa museum.<sup>137,138</sup>

Siwa Oasis is not a mere oasis abandoned in the desert, it is a living example of how the culture diversity can exist and flow in harmony.

## 10.2 Nubia:

The modern Egyptian Nubia starts from Aswan and till the Egyptian borders while Nubia herself continues to form a big part of the Sudanese land. Figure (1): illustrate a map for the ancient Nubian kingdom.

The Egyptian Nubian who inhabits this area can be distinguished into three categories:

(1) The kenuz who inhabit the northern part starting with Aswan till As-Sebua. Kenuz people speak the Matouki language.

(2) The Nubi or what they are known with. They inhabit the southern part near the borders between Egypt and Sudan. Nubis speaks the Nubian language used until today.

(3) The Arabic tribes which came to this area and settled down in the 14<sup>th</sup> century between the northern and the southern part.<sup>139</sup>

Nubian people have their own heritage which includes houses, handicrafts, customs, traditions, etc.

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<sup>134</sup> In Arabic means “Mountain of the Dead”, the mountain contains a lot of ancient tombs.

<sup>135</sup> “Bir” in Arabic means “Well”.

<sup>136</sup> Nicknamed as “The Fantasy Island”.

<sup>137</sup> <http://www.lonelyplanet.com/egypt/siwa-oasis/attractions/>

<sup>138</sup> <https://egyptianstreets.com/2016/01/24/9-ways-to-enjoy-egypts-siwa-oasis/>

<sup>139</sup> Strouhal, E.U.G.E.N., 2007. Anthropology of the Egyptian Nubian men. *Anthropologie*, 45(2-3), p.105.

The Nubian houses have their own style. Mostly, consist of one floor or two as a maximum and built using clay bricks. The walls of the house are decorated with bright colourful flowers, animals, etc.

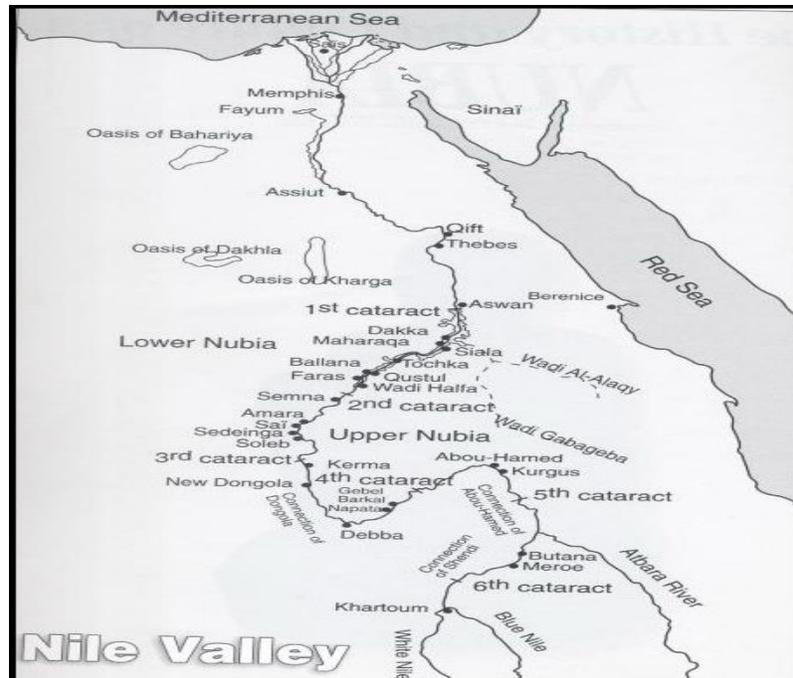


Figure (1)

Nubians have their own traditions related to marriage, birth and death. The official religion in Egyptian Nubian part is Islam. The religion for Nubian people had no conflict with their traditions as they are famous with being friendly, kindly, peacefully and generous people. Nubians prefer to marry in the same family<sup>140</sup>, between cousins. Sometime, for some families, it is kind of obligatory as they live as a clan and have some demands to maintain integrity and pure

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<sup>140</sup> Marriage between cousins in Islam is allowed as cousins unlike siblings don't share the same father or the same mother (direct bloodline)

bloodline inside the family. Also, there are some cases where Nubian people raise and learn in the capital and marry outside the family without having restriction.

Drawings, Characters and colours play a big role in the Nubian life as you can find it everywhere in clothes, houses interiors and streets. Nubian believes in magic and evil existence which reflected in some of the symbols painted on the walls of the houses or inside it. For an example: they superstitious about the black cat and consider it as a bad omen. The same goes also for the vision or the hearing of the crow and the owl sounds.<sup>141</sup>

After the High Dam had built, a lot of the Nubian monuments had been flood with water but there still a lot of them survived and stay as a witness to the glory of the Nubian kingdom.<sup>142</sup>

Nubia is famous of a combination of monuments which belongs to different eras such as Pharaoh, Roman and Nubian. Examples for those monuments: Temple Abu-Simbel<sup>143</sup>, Tomb of Aniba<sup>144</sup>, Temple of Dekka<sup>145</sup>, etc.

### **10.3 Tunis Village:**

Unlike the name seems, Tunis village is not located in Tunisia but in Fayoum Governorate, Egypt. The village is known also as the “Pottery village” because almost all the people in the village work in the pottery field. The pottery produced in this village had proven that the quality

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<sup>141</sup> The same believe shared with the all the Egyptian whenever they see or hear those animals and consider it as a very bad omen.

<sup>142</sup> Many countries had cooperated with the UNESCO to try to save the monuments from the flood as the project needed a huge fund couldn't gathered by the Egyptian government.

<sup>143</sup> The temple refers to the famous Abu-Simbel temple which built for the Pharaoh Ramses I and considered one of the most attractive sites for foreigners as the temple had been designed to let the sunlight enter the king's room two times in the whole year. The two times had been considered with respect to two dates, the day of the Pharaoh's birth and the other day corresponds the coronation day.

<sup>144</sup> Belongs to the original Nubian monuments to a Nubian governor.

<sup>145</sup> Belongs to the Roman's era and it was for worshipping “Horus”.

and the beauty of the art pieces had nothing to do with its price so anyone can easily have a master piece handmade pottery in a cheap price.

The village is known as all in one package. It is a place where you find landscape which known as a great area for stress relief because of its isolation to the urban places, however, if you want to swim and have a nice picnic or book a trip to watch birds a visit to “Bani Mazar” Island will do.<sup>146</sup> But if you are a museums’ lover, there will be your chance to find one when you pay a visit to “Wadi El-Rayan” or “Wadi- El-Hitan” which means the “valley of whales” to explore the history of the area which was once upon a time a part of the ocean where the eponymous whales remains found and transferred to the museum. Finally, if you want to see the birth of handicrafts, then you chose to come to the right place.<sup>147</sup>

May be that was the reason that made Mrs. Evelyne Porret and her husband to move to the village more than 30 years ago and build their own house and studio enchanted and inspired by the beauty of the village.<sup>148</sup> Evelyne is from Switzerland but she still until the current moment lives in the small village creating her own design and teaching children. Many of her students opened their own studios and started to create their design and style based on her school of pottery to turn the village to a living art gallery.<sup>149</sup>

The festival used to be held every year on the period from 23<sup>rd</sup> to 25<sup>th</sup> November but after 2015, the dates had been modified to be held on 3<sup>rd</sup> to 6<sup>th</sup> of December.<sup>150</sup> The festival became an attraction source for the people from all over the world who come to learn from the pottery

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<sup>146</sup><http://english.ahram.org.eg/NewsContentP/8/248540/Travel/Exploring-Egypt-Tunis-village-in-Fayoum,-the-land-.aspx>

<sup>147</sup> As a matter of fact, Whales fossil museum is opened recently besides the cartoon museum for kids but the remains of the whales had been found several years ago.

<sup>148</sup><http://english.ahram.org.eg/NewsContent/32/138/251497/Folk/Photo-Heritage/Egypt-Tunis-village-hosts-th-annual-village-potte.aspx>

<sup>149</sup><http://fayoumegypt.com/tunis-village/>

<sup>150</sup>[http://worldtouradvice.com/Fayoum\\_Tunis\\_Village\\_Pottery\\_Festival.html](http://worldtouradvice.com/Fayoum_Tunis_Village_Pottery_Festival.html)

studios and buy some of the spectacular pottery pieces. The village is inhabited today by Egyptian & foreign writers and artists who seek inspirations and mediation.<sup>151</sup>

Pottery which started with Switzerland's hands and developed by an Egyptian one to add another meaning of beauty cannot be enough to describe the village and the village inhabitants today.

Tunis village proved that the equation can be reversed so instead of waiting for fund to start running small business, small workshops can find their way to attract sponsors depending on self fund.

## **11. Cases of Egyptian TK:<sup>152</sup>**

### **11.1 The Open Market of TK:**

The Egyptian TK market is full of many sorts of TKs which attract the tourists around the world. The diversity of the TK in Egypt is quite astonishing which make the tourists feel that they somehow connected to a part of the Egyptian history. However, and no matter how many times, they visit Egypt; they cannot get enough of exploring the ancient Egypt and the Pharaohs' dynasty. The surrounded mystery around them are limitless and no matter researchers dig in their past they cannot find the whole truth about them; like a bottomless well. That made every trace left by the them not only worth to be Traditional Knowledge but a renewable fortune resource as

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<sup>151</sup>[http://thecairopost.youm7.com/news/48773/inside\\_egypt/tunis-pottery-shrank-distance-culture-money-2](http://thecairopost.youm7.com/news/48773/inside_egypt/tunis-pottery-shrank-distance-culture-money-2)

<sup>152</sup> For more study cases please see: Swiderska, K., 2006. Protecting community rights over traditional knowledge: Implications of customary laws and practices.

the most of the monuments are eternity remain; the products made inspired by those monuments and engaged in the course of trade; have a great impact on the economy.<sup>153</sup>

If we started to put down the traditional knowledge left by the Pharaoh, we will found that they are uncountable. It is fully registered as a whole. In other words, the registered part is the part bound by museums and tombs. Museums have chronicles for all of its contents and because of many of the historical chronicle which edited and published around the world with different languages, it becomes quite easy even for the tourists to reach a specific statute and trace it through museums. So for the tangible monuments which already confined inside the museum or lays there in silence (most are located in Upper Egypt), the only threat they confront is being stolen or smuggled through the borders (tombs face the same threat upon its discovery and opening which require a tight security to prevent such thing from happening, after that the tombs should be maintained as one of the site which attract the tourists because of the chronicles drawn on its wall with vivid shiny colours).<sup>154</sup>

Now the turn will be for the tangible monuments which until this moment have no record as they are sometimes a result of predetermined excavation or discovered by accident.

Till the end of the this thesis, we call the tangible monuments which are a resident of museums or tombs(the original form left as Pharaoh's traces) as the "Solid TTCEs" and for the hand-crafted products made based on it by an Egyptian's hands "Soft TTCEs".

As indicated above the "solid TTCEs" can be used as it is by shown it in the museums and only under the government authority as it is considered as national treasure.

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<sup>153</sup>Breasted, J.H., 1908. Egypt through the stereoscope: a journey through the land of the Pharaohs [Electronic Version].

<sup>154</sup>Romer, J., 2003. Ancient Lives: The Story of the Pharaohs' Tombmakers. Sterling Publishing Company.

The other type of tangible TCEs which is “Soft TTCEs” will be our issue. Who have the right to make the “Soft TTCEs”? Who can control the “Soft TTCEs”? Can the “Soft TTCEs” be shared under “fair” and “equitable” conditions?

To answer these questions: we will have to take a look on one of the Egyptian hand-crafted collections and compare it with another imitation to it:

**Figure no.2:** Represent a wooden statue for one of the Pharaoh’s king named “Ramses II” who one of the Pharaoh in the 19 dynasty and ruled Egypt 1279–1213 BC.

**Figure no.3:** Represent a wooden statue for another Pharaoh’s king named “Tut Ankh Amon” who was the third Pharaoh in the 18 dynasty and ruled Egypt 1332–1323 BC.

**Figure no.4, Figure no.5 and Figure no.6:** Represent a statue from gypsum for the mummy of the famous Pharaoh “Tut Ankh Amon” wrapped in his coffin which made originally from gold.

**Figure no. 7& Figure no. 8:** Represent plate engraved on “Mena” or “Narmer” the Pharaoh’s king who unified Egypt and his chariot. On the back of the plate, there is a map which Referred to Egypt (back then) as “Egypt and Sudan” together.

**Figure no.9:** Represent a papyrus(used as records in the ancient times especially for documenting important events) drawn on it the King’s coronation ceremony.

**Figure no.10:** Represent a cup for the daily use, drawn on it the king’s and the queen’s photo.<sup>155</sup>

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<sup>155</sup> The collection bought from Khan Al-Khaliliy and the photos had been taken by me.



**Figure 2**



**Figure 3**



**Figure 4**



**Figure 5**



**Figure 6**



Figure 7



Figure 8

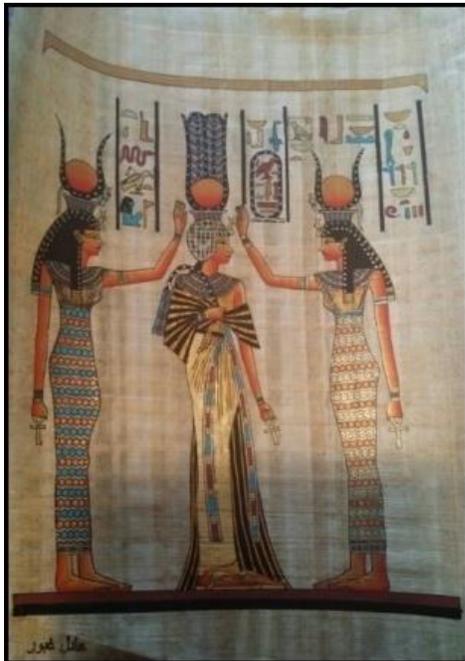


Figure 9



Figure 10

## **\*Case Analysis:**

The collection came from one of the bazaars in Egypt known in Khan Al- Kaliliyarea (the area is known for selling a lot of antiques for representing not only the Pharaoh's era but all the historical eras had been through).

By asking the buyers in this area, many interesting facts had been discovered regarding this issue:<sup>156</sup>

1-The Egyptian items represent less than 20% or sometimes 10% of the products in the market while on the other side the Chinese goods represent 80% or 90% of the market.

2- Egyptians known for using wood, stones, Granite, basalt, limestone, alabaster, marble and green granite for their statues while most of the Chinese's statues are from cheap materials like gypsum and others.<sup>157</sup>

3- The price of the Chinese's products is much cheaper than the Egyptian ones and cannot be comparable.

4- The Egyptian statues for Pharaoh having the original face known for Pharaoh which can easily recognized through the chronicles but the Chinese ones are not as simply having the faces of Chinese or Romanian.

According to the sellers and the customers for this kind of "Soft TTCEs" also the Chinese or the Taiwanese goods are much cheaper, the quality is so low beside for the metallic items, it does not last long before start to rust.

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<sup>156</sup> The information provided here gathered through interviews made between me and the sellers in the market.

<sup>157</sup>Rapp, G., 2009. Building, Monumental, and Statuary Materials. In *Archaeomineralogy* (pp. 247-280). Springer Berlin Heidelberg.

The Egyptian goods are good from the quality perspective but because it is rare and more expensive compared to the imported goods, the seller cannot afford to sell it and the customers cannot afford to buy it.

As the imported goods provide a higher income to the sellers, they start to import a lot of imitations to the market until it become dominant which made the Egyptian goods to draw back as the time goes and become nearly rare to find.

Those factors caused a big harm to the “Soft TTCEs” and made suffer from the dilution and low quality and losing the identity. The identity of the “Soft TTCEs” not only imprinted by their final shape as the crafter wanted them to end as but also with the identity of the hand-crafter himself as he(without knowing) transfer a part of his identity through his hand to the “Soft TTCEs”.<sup>158</sup>

## **11.2 The Wonderful Dress:**

On Saturday 26<sup>th</sup> June 2016, the British star singer Adele performed a spectacular performance on the pyramid stage in Glastonbury festival which made it as a new turning point in Adele’s live. The powerful and marvellous performance includes old and new songs. The latter add another success to Adele’s career as she said during her performance that she decline to perform in 2011 in this festival because her anxiety to perform in front of big audience beside she thought that her songs were very slow and not convenient to the festival.<sup>159</sup>

The Articles which covered the Adele’s performance news published side by side with her photos, the photos of her dress or gown as the articles describe it. The dress had drawn the attention and spotlighted in many photos which pushed a lot of reporters to ask about the secret of the unordinary dress. The dress according to the articles descriptions was a long black dress

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<sup>158</sup>Hull, G., 1998. Between Handicraft Exporters/Manufacturers and Small Producers.

<sup>159</sup><http://www.telegraph.co.uk/fashion/people/adele-is-beautiful-in-a-bespoke-chloe-dress-at-glastonbury/>

with long sleeves. Shells and buttons were embroidered on the middle to the front side and on both sides of the dress only to the lowest part.<sup>160</sup>The dress matched the festival spirit and attracted the audience's eye till the point that made the reporters ask mostly during interviews about the dress's designer and when will it be on the market.<sup>161</sup> The answer came disappointing all the dress's lovers as it cannot be on the shops' shelves as it is only one handmade item took over 200 hundreds hours to be made and the design and the credits goes to the Parisian fashion house Chloe.<sup>162</sup> Another question had been directed from the reporter about a comparison between the dress's style and other dresses from another eras or as it said "a tribute from Ramadan"<sup>163</sup> but the answer again came that Adele and her stylist turned to the director of the Persian house fashion Clare Waight-Keller to make a dress "inspired the festival culture over the years" while the director herself explained that Adele's dress "was inspired by the 60's and 70's era"<sup>164</sup>

### **\*Analysis of the Case:**

There was no doubt that the singer's performance was marvellous which silenced all the criticisms that night and left no space other than the compliment to her. But another factor participated in the success achieved that night and draws the attention of the reporters and the audience which was the dress. The dress which lost his moral rights and even its value in the time it had been ordered to be a bespoke dress.<sup>165</sup> In fact, the dress will inspire the festival

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<sup>160</sup><http://www.harpersbazaar.co.uk/fashion/fashion-news/news/a37488/adeles-glastonbury-dress-chloe/>

<sup>161</sup><http://www.dailymail.co.uk/femail/article-3661755/Adele-s-Glastonbury-dress-took-200-HOURS-hand-make.html>

<sup>162</sup><http://www.dailymail.co.uk/femail/article-3661755/Adele-s-Glastonbury-dress-took-200-HOURS-hand-make.html>

<sup>163</sup><http://www.telegraph.co.uk/fashion/people/adele-is-beautiful-in-a-bespoke-chloe-dress-at-glastonbury/>

<sup>164</sup><http://style.nine.com.au/2016/06/27/08/51/adele-wears-chloe-at-glastonbury-2016>

<sup>165</sup><http://www.telegraph.co.uk/fashion/people/adele-is-beautiful-in-a-bespoke-chloe-dress-at-glastonbury/>

culture over the next years but it was not a personal design to the director of the fashion house as it said. The design for the dress is a popular design for a dress originated from Siwa or Siwa Oasis which located in the Western desert of Egypt.<sup>166</sup> The dress designed and made by the Persian fashion house was not just inspired by the Siwan dress but it was identically the same even with the embroidery choice (button and shells sewed on the same place meant on the Siwan dress).

The dress caused a storm hit the Egyptian social media where a lot of articles in Arabic and English had been published to demonstrate the truth behind the dress and its long history.<sup>167</sup> The dress turned to be a traditional Siwan dress used by the brides to wear in their wedding ceremony which usually last for several days (As a part of the tradition, the bride wear the dress in the seventh day from the starting day of the wedding ceremony).<sup>168</sup> The dress is known in Siwa by the name “Nashereh Nazetaf”<sup>169</sup> or “asherah hawak azdhaf”<sup>170</sup>. Recently, it becomes difficult for the women from Siwa to made such dresses for wedding and they rather pass it from generation to another because of the long hours they take to made one dress as they need to embroider each shell and button one by one by hands on the dress, no sewing machine can be used for that matter. There was no declaration until now from the fashion house regarding the dress design except that “it is their own”.<sup>171</sup> Until now, there is no evidence about a fair agreement between the Siwan people to use their traditional knowledge in return of a proper compensation.<sup>172</sup>

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<sup>166</sup>[http://www.huffingtonpost.com/egyptian-streets/adeles-egypt-inspired-dre\\_b\\_10777082.html](http://www.huffingtonpost.com/egyptian-streets/adeles-egypt-inspired-dre_b_10777082.html)

<sup>167</sup><https://egyptianstreets.com/2016/07/01/adeles-egypt-inspired-dress-sparks-cultural-appropriation-controversy/>

<sup>168</sup>[http://www.huffingtonpost.com/egyptian-streets/adeles-egypt-inspired-dre\\_b\\_10777082.html](http://www.huffingtonpost.com/egyptian-streets/adeles-egypt-inspired-dre_b_10777082.html)

<sup>169</sup>[https://www.facebook.com/permalink.php?story\\_fbid=1385822931444120&id=281600505199707](https://www.facebook.com/permalink.php?story_fbid=1385822931444120&id=281600505199707)

<sup>170</sup><http://levant.tv/index.php/videos/adeles-chloe-design-dress-at-glastonbury-is-of-egyptian-heritage/>

<sup>171</sup>[http://www.huffingtonpost.com/egyptian-streets/adeles-egypt-inspired-dre\\_b\\_10777082.html](http://www.huffingtonpost.com/egyptian-streets/adeles-egypt-inspired-dre_b_10777082.html)

<sup>172</sup> <http://english.ahram.org.eg/NewsContent/7/47/232330/Life--Style/Style/Adeles-dress-by-Chlo%C3%A9-sparks-Siwa-comparisons-on-s.aspx>

It had been noticed also in on the ads on the Esty website that another photo for a traditional dress with the same design posted on there and referred to its origin as “Siwa Oasis in Egypt”.<sup>173</sup>

Figure no.11& 12: The dress made by the fashion House.<sup>174</sup>

Figure no.13: One of the designs for the traditional Siwan dresses.<sup>175</sup>

Figure no.14: The dress posted on Esty.<sup>176</sup>

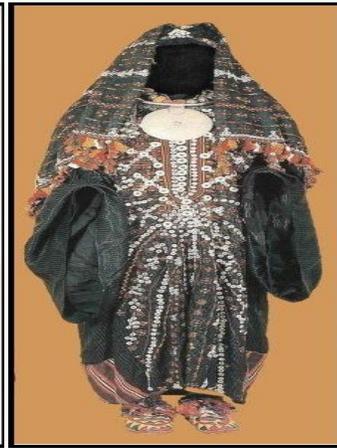
Figure no.15: Siwan girls clad in traditional white and black Siwan wedding dresses.<sup>177</sup>



**Figure 11**



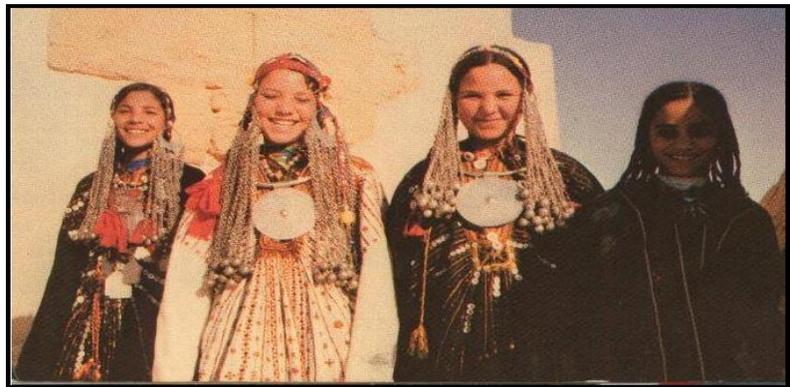
**Figure 12**



**Figure 13**



**Figure 14**



**Figure 15**

<sup>173</sup><https://www.etsy.com/listing/201962307/sale-now-325-outrageous-handmade-siwa>

<sup>174</sup> All the credits for the photos go to the site.

<sup>175</sup> <http://egyptianstreets.com/2016/07/01/adeles-egypt-inspired-dress-sparks-cultural-appropriation-controversy/>

<sup>176</sup> All the credits for the photos go to the site.

<sup>177</sup>(Credit unknown)

## 11.3 Around the world in 80 days, not anymore, one day is only enough:

Window of the World a theme park located in the western part of the city of Shenzhen city in China. It has about 130 reproductions of some of the most famous tourist attractions in the world. The theme park is mainly divided to the following sections (not limited to following subsections):

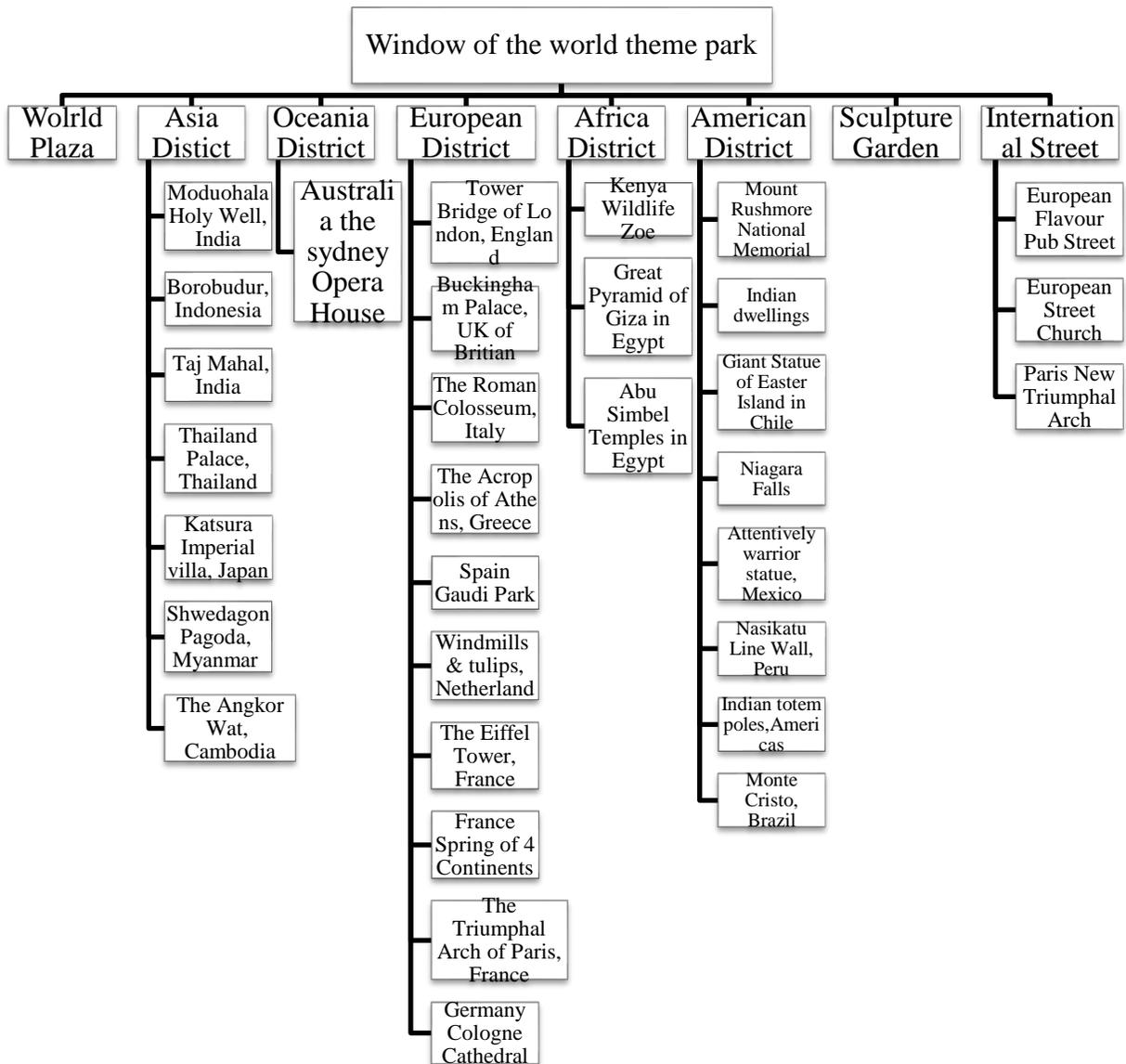


Figure 16

The marvellous theme park contains miniatures from all over the world to simulate every almost all the places which attract the tourists around the world. As a matter of fact beside that the park supposed to promote the tourism in those areas and spread the knowledge about the tourist's attraction places but no one can deny on the other side that it is not the main reason to build this massive edifice.<sup>178</sup>

### **\*Case Analysis:**

For only the pyramids' area in the theme park the number of visitors become more than the number of visitors who come to Egypt the last year to visit the pyramids' area in Giza more than that, there was no permission gave from the Egyptian government to built this part to simulate the pyramids' area or any follow up to guarantee the standard of that simulation (even if it is miniature but still contains the details which attach to the visitor mind as an original mark for the pyramids).<sup>179</sup>

Just as mentioned before in the Egyptian statues case, the customer's eye will start to be adapted on the face engraved on the statues on the fake imported goods and see it as the "Default" one, unknown it is far beyond being so.

The question here how come sharing the benefits can be done in "fair" and "equitable" way and where is the compensation?

As far as I see there are no shared benefits here and I would dare to say it a direct harm to the "Solid TTCEs" by causing dilution and confusion to the people about it, moreover, it done without a permission or consent which should be subject to criminal remedy.

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<sup>178</sup> See the Park's sections on the official website: <http://en.szwwco.com/>

<sup>179</sup> <http://www.dailymail.co.uk/news/peoplesdaily/article-3621429/Double-New-theme-park-China-builds-Great-Sphinx-Giza-Parthenon.html>

## 11.4 Fanoos Ramadan:

Fanoos Ramadan is one of the manifestations to celebrate Ramadan. Ramadan is a month the Muslim people worship in it and celebrate the whole month. In Egypt Ramadan cannot be there without the “Fanoos”. Every child has to have his own and every year they go in the evening to play with the other kids to play in the street with it and sing a special song where the entire streets are decorated with beautiful decoration and fully lighted.

Fanoos is a special design of lantern where it is attached in the Egyptian people mind with Ramadan so every year they improve it to be more durable to the kids.

There are different stories about the origin of the “Fanoos” but most of it related to the Fatmeen era. The first story says that the Fanoos used by the Egyptian people to welcome the Fatmi Khalifa when he came to Egypt in the night on the 5th of Ramadan<sup>358</sup> Hijri.

The second story is that the governor of Egypt “Al Hakem Bamer Allah” prohibited the women from going out to the street except on Ramadan to visit their friends and families and they were using the “Fanoos” to light the way to able to see.

Since then Fanoos become an essential item for the Egyptian people to celebrate Ramadan and welcome it. Before Ramadan start with a month; the markets start to flood with the “Fanoos” with its different colours and sizes.<sup>180</sup>

More than 10 years now and the Egyptian is suffering from the intruding of the Chinese “Fanoos” which confused the kids and almost made them forget about the original design of the “Fanoos” and turn it from a very special precious item to a mere toy can be obtained anytime.

The material used for the original “Fanoos” by the Egyptian hand-crafter was tin, colourful glasses and candles. Now it’s only a mere toy from plastic.<sup>181</sup>

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<sup>180</sup><http://egyptianstreets.com/2015/06/25/ramadan-fanoos-the-brief-history-of-a-thousand-year-old-tradition/>

## 12. Domestic frame of the Egyptian law for TCEs' protection:

Egypt is a member of (62) treaties classified as: <sup>182</sup>

1- Thirteen treaties are WIPO-Administrated Treaties. <sup>183</sup>

2- Thirty Four treaties are IP-related Multilateral Treaties. <sup>184</sup>

3- One treaty is IP Regional Treaties. <sup>185</sup>

4- Five treaties are Regional Economic Integration treaties. <sup>186</sup>

5- Nine treaties are IP-relevant Bilateral Treaties. <sup>187</sup>

The treaties which are related to the TK in general are around two and the same goes for the TCEs however, there are around five treaties to demonstrate the regulations and the measures which should be taken regards the genetic resources.

On the other hand, there is no individual treaty to represent the international outline for the required measures for the Tangible Traditional culture expressions which means that the Tangible TCEs are still unsecured. The good news are that because of the other TK branches

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<sup>181</sup> <http://weekly.ahram.org.eg/News/12552/-/-.aspx>

<sup>182</sup> <http://www.wipo.int/wipolex/en/profile.jsp?code=EG>

<sup>183</sup> Most of the treaties referred in this section related to the regulations and the frame of the IP types work on the international level.

<sup>184</sup> The treaties in this section took the second level in the IP field. After the frame of work had been defined through the treaties in the previous section, different cases and situations had arisen involves various factors which demanded the need for other treaties demonstrate the procedures should be taken in those cases.

<sup>185</sup> This section includes only one treaty which involves the cultural charter of Egypt as a part of Africa.

<sup>186</sup> Treaties in this section have an economic nature which describes the market and the various treatments in the regional countries (African countries).

<sup>187</sup> By default and directly from its name "Bilateral", the treaties in this section involves two parties: Egypt and another party who could be a country or a union represent a number of countries. The focus of those treaties is the investment's rules and regulations for both parties in case they exchange investments between themselves.

found their way before the TTCEs, they hold the lamp for her to light the dark way in front of her and make it easy for choosing the best option to live. It does not really matter for her not having a path at all as long as she can make one.

Furthermore, on the national level Egypt does not have a special act for the TK. TK is protected under the Copyright and Related right laws as one of provisions. The provision didn't state clearly it as the "Traditional Knowledge" neither "Traditional heritage" but it referred to it as "National folklore"<sup>188</sup> which definitely does not equal to the broad definition meant for the "Traditional Knowledge" but as it stated as a part from the copyright and related laws, it only meant for the same categories listed under the copyright laws *on the condition* that they are based on a traditional folklore or as it recited "National folklore".<sup>189</sup> The definition provided by the provision and its place and the copyright law explained why all the list under it are attached with only word which is: Expression. The provision did not refer to the "Expression" as a speech or part of a special phrase but refer to it as an articulation to the people daily life whether it is "oral expressions" used to express their minds and thoughts or dreams and agony<sup>190</sup> or "musical expressions" which side by side walk with the folktales as a background in form of songs and together they go to the next level to be represented as a dance or plays and other forms of motions and that expressed by the "motion expressions".

The last type of expressions is different in nature comparing with the other three types. The last type is the "Tangible motion" and derived from its name it must be in a tangible form regardless

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<sup>188</sup> It is not a generalized matter but many countries do not have any act to provide the protection for the national folklore or any other type of the TK because simply they believe in its eternity. In other words, the national folklore from their aspect survived until now and it will continue to infinity on its own; like its existence itself is the main defensive plan for protection. That is may be an explanation for the ambiguous article related to the frame of protection for the national folklore.

<sup>189</sup> Egyptian Law No. 82 for the year 2002 on the Protection of Intellectual Property Rights, Book Three, Copyright and Related rights, Article 138, provision 7.

<sup>190</sup> For instances, the folktales aren't novels for entertaining or pure art work but also contain symbols reflect the economic and the political issues in the time of the tales.

of the materials *on the condition that* it must be based on the national heritage. The latter can be in either form: tangible or intangible however the former must be only in the tangible form. The tangible forms can be referred to any sculptures or drawings etc.<sup>191</sup>

In the same book for the copyright laws and related laws another article exist to further define the outline for protecting the “national folklore” by considering it a property in the public domain which means that no one allowed to own it as a private property even in case it had been discovered in his own property(ex. Some national treasures had been discovered during regular digging for constructions).<sup>192</sup> The article also stated that the ministry is the only absolute authority over this heritage and recommended that the ministry should take the proper procedure for protecting it.

The legislated laws are responsible for drawing the outline or the frame but it doesn't really indicates how it should be carried on and here comes the turn for the Implementing regulations and rules to demonstrate the whole process.

Unfortunately, for the sake of demonstrating the protection process stated in the articles under the copyright law related to the “National Folklore” only one article is provided in the Implementing Regulations. The article should be in her turn describes how should the protection carried on but unexpectedly again it is a mix of recommendations and shifting duties to the ministry in charge.<sup>193</sup>

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<sup>191</sup> There is no definite limit for the “tangible motions” category as long as it a form or art using any kind of materials to represent one or two concepts in a directed or inspired way from the national heritage or the traditional knowledge.

<sup>192</sup> Egyptian Law No. 82 for the year 2002 on the Protection of Intellectual Property Rights, Book Three, Copyright and Related rights, Article 142.

<sup>193</sup> Unfortunately because of the ambiguous nature of the articles it caused conflictions as it will be demonstrated later in section 13.1 between what it may be considered under the TK category and what it may be considered as antiques. The antiques as defined using Oxford dictionary is an object which gained its value because of its age and

The article referred to the preliminary procedures which automatically should be followed for setting a protection plan to protect the “national folklore” such as initiating a database for the national folklore, registering and promoting it. The article also demanded the ministry to issue a decree to demonstrate how the process will go but as matter of fact neither the ministry has issued a decree nor there a database to gather all the types of the national folklore.<sup>194</sup>

The Egyptian law for the TCEs protection is following the same outline recited in the WIPO drafted revised provisions however what stated in the latter are only the “outline” and recommendations for how should be the protection looks like on the national scale.

On the other hand, the Egyptian articles should provide this information focusing on how the protection should be carried on but again it does not.

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quality and may belong to ancient times. The description of antiques as mentioned here is the same description offered in the thesis for the “Solid TTCEs” which cause confusion regarding the type of protection which should be offered to this category and if the national folklore is part of this category why the article didn’t say so?

<sup>194</sup> Implementing Regulations for Law No. 82 for the year 2002 on the Protection of Intellectual Property Rights, Books Three, Article no.3

### **13. Strategy for “Soft TTCEs” protection:**

The WIPO drafted articles and the UN declaration for the TCEs draw the frame and stated the guidelines which should be considered and maintained while observing and dealing with this issue. And since the protection of the TK leans to the Customary law as its own reference, it is an explicit declaration about the responsibility for each country to put her own law to maintain and promote and control the TK in general and the “Soft TTCEs” in specific.

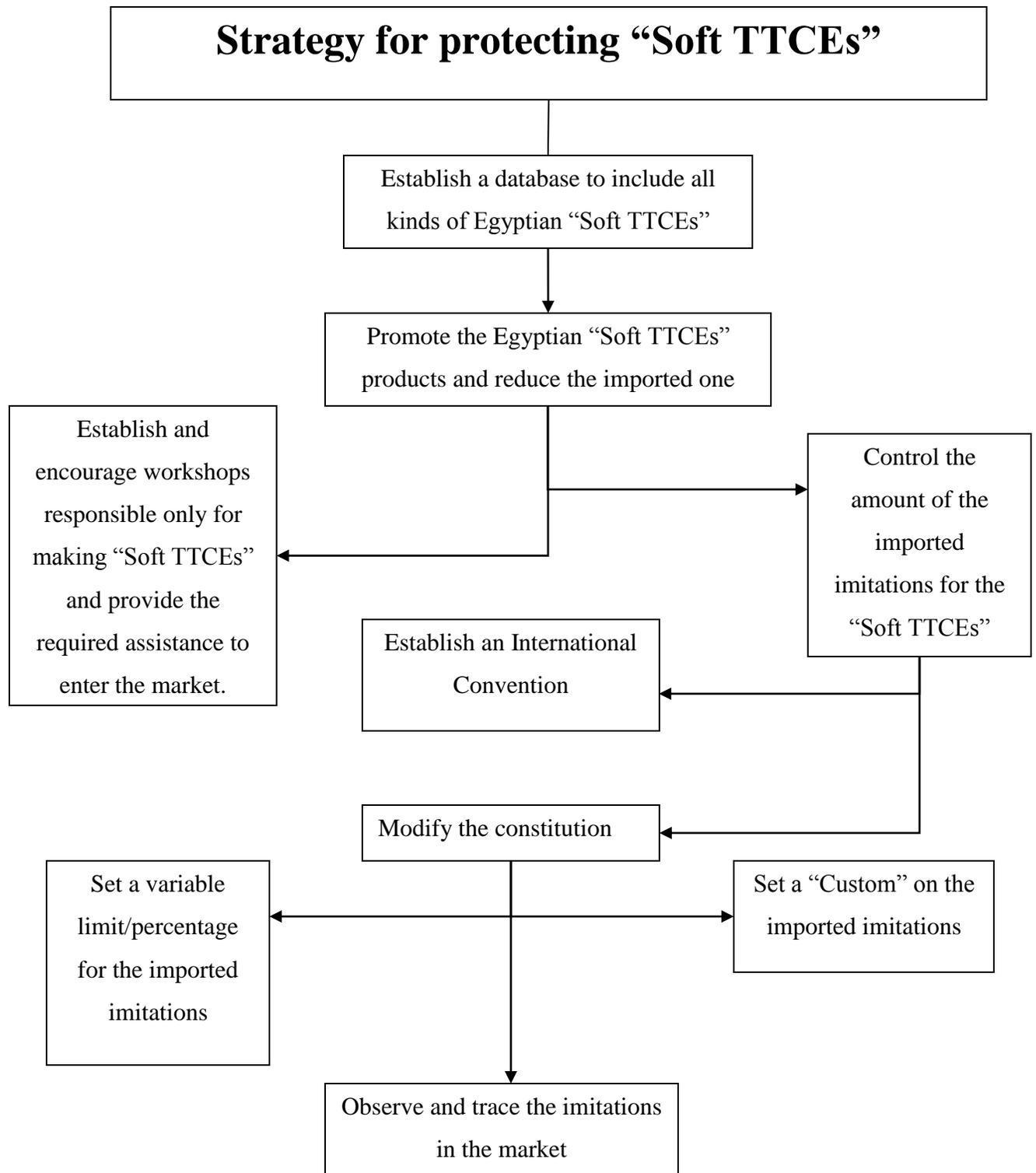
The strategy which will be introduced here<sup>195</sup> will focus on the “Soft TTCEs” as the other TK branches already introduced through many debates and some of them succeeded to be recognised on the international scale through the conventions such as the Convention on Biological diversity or CBD<sup>196</sup> as the “Genetic resources”.<sup>197</sup>

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<sup>195</sup> The strategy introduced in this section had been set after a deep observation to the Egyptian TCEs market and the Egyptian in general and with considering the laws and legislations for trade, etc.

<sup>196</sup>[http://portal.unesco.org/en/ev.phpURL\\_ID=31038&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.phpURL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>197</sup>Wekundah, J.M., 2012. Why Protect Traditional Knowledge? Special Paper series No. 44, African Technology Policy Studies, Network Biotechnology Trust Africa, Nairobi, Kenya.



**Figure 17**

The strategy begins with Establishing a database to include all the kind of Egyptian “Soft TTCEs”, this step is too complicated as we said before that Egypt one of the countries which rich with a diversity of TTCEs which left enormous heritage more than can be included in one database. So it will be more reasonable to register the “Solid TTCEs” first in a database starting with the museums records and the historical places and then comes the turn for the “Soft TTCEs” which the museums contents will help to serve as a ground to it with providing the basis of the “Soft TTCEs” or the master pieces and determine their developments.

Market is another battle field where we can find scouts moving around observe every single movement, search for the people’s most favoured products and priorities which differ from time to another. Scouts have a strong existence in the “Soft TTCEs” market and they work very hard to analyse the tourism movements, the tourists’ numbers and nationalities which reflect the type they search to get from the “Soft TTCEs”. During their search, the scouts collect the information not only about the type of the popular “Soft TTCEs” among the tourists but also “How” to copy it on a large scale? As there is no penalty to copy the “Soft TTCEs”, the scouts did not find any problem until now with collecting the required information; starting from copying till marketing as the cheap materials can easily find their way in the market even if it is with low quality.

Scouts are not secret agents or spies who lead their life without someone knowing about their existence but they are ordinary people work as mobile sellers. Mobile sellers are those kind of sellers who do not have shops and move around to reach the Egyptian people even in their homes, knocking on their doors and asking about their needs and why the need and even about their buying power abilities(which reflect on the price and how much they can afford to buy). The Egyptian people are friendly and social so they are always welcoming to talk to the foreigners

without paying much attention to the consequences which may be as a result from the chit-chat talk.

Reversing their method and use it as a ground for the strategy plan will be like a double edged sword. In other words, making use of the gathered information the scouts collect and send it to the market back as copied “Soft TTCEs” goods by marking those copied goods as the most popular required “Soft TTCEs” in the market and get it to be in the Egyptian hand-crafters’ side.

Marking the copied “Soft TTCEs” and get in the Egyptian hand-crafters’ side can be achieved through the second step in the strategy which about Promote the Egyptian “Soft TTCEs” products and reduce the imported one. This step is divided into two steps should be carried in parallel: (1) establishing and encourage workshops responsible only for making “Soft TTCEs” and provide the required assistance to enter the market and (2) Control the amount of the imported imitations for the “Soft TTCEs”. The marked copied “Soft TTCEs” goods will be the priority for the workshops as they will serve them well by providing the quick money because of the high demand on them. So besides having the governmental power in the side of the Egyptian hand-crafters (to provide funds and pave the way to enter the market by taming the obstacles they may confront), they will have a quick source for funding by just sticking to the information gathered by the scouts.

The second part relating to Control the amount of the imported imitations for the “Soft TTCEs” can be achieved through working on the national scale and the international one. The international scale is provided through working on frame of a convention meant only to state how the “Soft TTCEs” can be protected on an international scale. For instance: to define the arbitration should be carried out in case of disputes whether the parties are two countries or a

country and an individual who belong to another nation. On the other side, on the national scale, the constitution should contain direct and clear articles to serve as a reference in legislations.

Modifying the constitution should aims to adding some limitations on the imported goods by:

(1) Bound the number of the imported goods to be 30% of the market.

(2) Adding a custom on the imported goods.<sup>198</sup>

(3) inspect the quality of the goods and in case they do not meet the requirements or the quality standards they should prohibited.

(4) For the prohibited goods' owners a warning should be delivered for the first time and they should write a covenant that the quality of the good should be their responsibility and pursuant they are subject to pay a penalty. And in case that happened again their name will be placed in the blacklist where they are panned to import any copies of "Soft TTCEs" anymore.

The inspection should be done on two stages:

(1) A team should be initiated to inspect the imported copies of the "Soft TTCEs" and verify whether they meet the requirements or not. In case they are not, the inspection team should

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<sup>198</sup> As a matter of fact the imported products which categorised under TCEs category are no different than the other products and can be found according to its type. For an example: if the products are some statues for pyramids and other monuments it may be treated as "Original sculptures and statuary, in any material" and be subject to custom rate about 30% or it may looks like a "toy" such as Fanoos Ramadan and treated with a custom rate (5-10%). Please refer to the Ministry of Finance website for more details:

<http://www.mof.gov.eg/mofgallerysource/english/new-tariff/customs.htm>

From my opinion the custom percentage even in its high rate 30% is not enough to face this unreasonable attack on the Egyptian TCEs' market especially that there is no specified category to rate the customs for TCEs which make it variable according to its description so it be subject to 5% or 30% and that is not even close enough to cover the damage caused by it in the Egyptian market.

Recently, Sultanate of Oman and Saudi Arabia had implemented a law to increase the custom on the imported tobacco to reach 100 percentages which is a very daring step and meant for regulating the market and save their citizens from consuming all this amount of tobacco and protect their health. The step has a great impact on the market and definitely had a noticeable result on the draw of the tobacco sales. Please see:<http://www.muscatdaily.com/Archive/Oman/100-increase-in-tobacco-tax-4tc9>,

<http://english.alarabiya.net/en/business/economy/2017/06/10/Saudi-Arabia-introduces-new-tax-on-tobacco-raise-prices-by-100-percent.html>

decide the penalty according to the amount of the goods and on a scale from one to ten how much they lack the standards.<sup>199</sup>

(2) A team should be initiated to carry out inspection by tracing the imported “Soft TTCEs” goods and analyse the price put on the market for them and compare it with the price of the Egyptian hand-crafted one. In case that imported “Soft TTCEs” meet the requirements they should be at least represent 75% of the price of the Egyptian one where they should have the same standards. If the imported “Soft TTCEs” are sold with a price represent 50% or less for the price meant for the Egyptian “Soft TTCEs” the seller will be a subject to pay a penalty determined by the inspection team.<sup>200</sup>

Setting price for the Egyptian hand-crafted “Soft TTCEs” will be unfair to them as every single piece represents a master piece itself and that is undeniable fact. Only the hand-crafter can determine the price with considering the time, material and efforts. But for the Egyptian “Soft TTCEs” which can be produced in massive amounts as a production of manufacture line. That one can be easily compared with the imported “Soft TTCEs” as they can be in the same level with considering many aspects.

The strategy aims to limit the existence of the third party inside the market and benefits of his existence in the same time.

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<sup>199</sup> The main task for this team is to verify first the nature of the products in order to make sure that it belong to the TCEs category or not and hence will be a subject to the custom defined for it. The regular products have a custom rate from 5 to 40%. It should be at least around 70% to retrieve the market back and limit the imported products existence. In case of Oman and Saudi mentioned before for limiting the Tobacco in their market 100% was so much behind control but it show a great success. The second task for this team is the quality inspection and this task will have a direct impact on the second team’s task as the quality will be assumed standard and meet the requirements from the moment it released to the market which make it easier for the second team to decide the value of it and maintain the balance between it and its similar in the Egyptian market.

<sup>200</sup> The second team has a bigger task comparing to the first one as they have to observe the market and ensure the desirable balance between the foreign imported goods and the Egyptian one from the quantity aspect. The same goes also for the price aspect.

The strategy is totally applicable and does not harm any investor but it is aiming to preserving the dignity of the Egyptian hand-crafter and maintains the identity of the Egyptian hand-crafting.

Pursuant to the WIPO drafted articles: indigenous people can have the authority to limit the third party usage for their local TK. There is no clear definition to “limit” or “Prevent” which means that the “limits” itself is not clear for “limiting” the third party. In other words, if the third party usage for the TK is against the “constitution” of the country, going against it will be violating the one of the constitution provision which will be a matter of the country sovereignty and in this case the international cannot be applied on it.<sup>201</sup>

And since there is nothing in the provision or in fact any provision denies any country right to change their constitution to serve the nation so in pursuant there is no legal issue for changing it to limit the third party product existing in the local market.<sup>202</sup>

### **13.1 Obstacles in the strategy’s path:**

1. Pursuant to the law no. 117 of 1983 as amended by law no.3 of 2010 “Promulgating the Antiquities’ Protection Law” Article (1):<sup>203</sup>

According to the Egyptian law the “Soft TTCEs” have another old form protection under the Antiquities’ Protection Law which seems somehow conflict with the traditional knowledge protection law.

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<sup>201</sup> From the WIPO provisions there are no clear procedures for any country to follow in order to save, maintain and promote their TKs and TCEs which make it more convenient for each country to put their own vision in a form of a plan or a strategy and promote it to a law or legislation.

<sup>202</sup>GATT convention stated that: Article VI Anti-dumping and Countervailing Duties 1 (article no. (6))

<sup>203</sup>Hawass, Z., 2010. Law No. 117 of 1983 as Amended by Law No. 3 of 2010 Promulgating the Antiquities' Protection Law (Egypt). *International Journal of Cultural Property*, 17(4), p.613.

The Traditional Knowledge is considered an essential part of the antiquities and accordingly falls under the protection of the antiquities' law. Some would say it is good news since there another form of protection of the Traditional Knowledge in the Egyptian law which provide her a pavement to walk on with the giants (IPs). But the truth is another thing as the provisions included all the forms of the traditional knowledge especially the type target of the demonstrated strategy and claimed that it a part of antiquities category. In other words, any piece of work made based on or inspired by the whole Egyptian history, on the Egyptian land and by an Egyptian hand has to be treated as the original piece made in the real time. So according to the Antiquities' Protection Law pyramids and the miniature copy made upon it on must have the same protection and the same rights.<sup>204</sup>

Theoretically, it does make sense as both are made upon the Egyptians minds creation but in the real world the modern piece of art cannot justify itself and be head to head with the original item from the aspect of protection.

2. On 19 April 2015, the minister of the Industry and trade has issued a decision "Banning the Chinese goods which carry any kind of the Egyptian traditional knowledge on it from entering the Egyptian borders". The decision was back then welcomed from the Egyptian hand-crafter as they feel like the Egyptian handcrafting is rising again to regain its position in the market but that was not the case for the sellers. The sellers complained that the decision will hinder their work and lead them to bankrupt as they cannot find a replacement for the Chinese goods available for

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<sup>204</sup> The conflict represented here is between the antiques category and the Traditional Knowledge different categories as the Traditional Knowledge overlaps with the antiques which make it easier to introduce a protection aspect related to it from the antiques side, however, the issue is that the antiques do not have the same description of the traditional knowledge which make it does not completely fit to this aspect. Simply, it represents the same trial of enforcing the traditional knowledge as a part of the intellectual property categories and offers a protection aspect using the TRIPs agreement. The intersected part of the TCEs with the antiques is the tangible part especially the "Solid TTCEs" as illustrated and introduced before since directly from the antiques definition that it is any art work related to any historical or before historic era happened to be on the Egyptian land. The definition is wide enough to include the entire "Solid TTCEs" category or as matter of fact to be it itself.

them in the market. As a matter of fact, the replacement was there in the market but a lower number and high quality which directly reflected on price which sometimes reached double or triple the price of the Chinese goods which make them lose the profits they used to gain from selling the low and cheap goods as high and expensive one.

3. The decision in the end was not even partly applicable as the Chinese goods found their way again to the market by smuggling and other illegal ways which did not enhance the position of the Egyptian hand-crafters. It becomes a fact now that the number of the Egyptian hand-crafters is decreasing while the number of the Chinese “Soft TTCEs” increasing in the Egyptian market.<sup>205</sup>

4. The nature of the tangible TCEs is different from the genetic resources as the latter cannot claim their origin on their own but the Tangible TCEs can by declaring their origin attached or engraved or marked by any mean so claiming them outside the state of origin does not involve further complications.<sup>206</sup>

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<sup>205</sup> Chinese goods represent to traders the easy earning. It gain popularity between them because they do not have to handle a lot of issues if they start to deal with it especially the issue relating to the cost and hence the price. So gaining without paying is the most relevant concept related to the Chinese goods. After the decision many traders started to fight against prohibiting these goods and tried to find another path to make it easy for it to enter the country border. Another method was followed by the traders which involved the customs by identifying the goods as goods from different origin than China after pulling the disguising proper cover over them.

<sup>206</sup> The violation of the Egyptian TCEs right had proven that it takes place inside and outside the Egyptian border so where the protection should starts inside or outside first? As a matter of fact, the protection should be claimed inside the Egyptian border first in order for the other parties to notice that their actions of violation will be subject to criminal remedy if they start to go against the protection scope.

## 13.2 Modified Articles:

As it's shown from the previous sections that the TK protection still have a long way to go. And since we choose the TCEs as one of the TK branches which still in the shadows and did not attract the same attraction got to the "genetic resources", I believe that it up to every country to state their laws related to it.

1- Establish a local database for the tangible TCEs will be difficult but registering the original handcraft (Ancient one) will authorize any recent handcraft made by the indigenous people.

2- It's always difficult to handle the issue with the third party benefiting from the products made based on the Tangible TCEs "Soft TTCEs" but there are two parallel ways to handle the third party:

To limit the third party existence in the market by handling the surroundings which lead to his existence presented by withdrawal of the Egyptian handicrafts and the traders who seeks fast money. The latter can be handled by raising the "duty customs" and tighten the borders which leads automatically to the return of the Egyptian handicrafts to the market. The other way involves controlling the market itself and ensuring the balance between goods from different origins.<sup>207</sup>

This step need a direct clear change in the constitution of each country suffering from the unfair trade done by the third party for selling imitation products based on their local tangible TCEs.

So the change in the constitution will include adding two provisions related to the third party who wants to sell or import any kind of products based on the local tangible TCEs:

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<sup>207</sup> The main idea behind the strategy is to use all the surroundings in the Egyptian TCEs market to push out the third party existence gradually on one hand. While on the other hand, promote the Egyptian handicrafts to invite it back to the market to it claim its own place without affecting the economic state of the market by finding a natural replacement.

1. For whom represent the Third Party who “sell” or “import” any products represent an imitation for original Tangible TCEs where there similar ones exist already in the local market made by the indigenous people should be aware that importing more than (specified no. of products) for the same item of the tangible TCEs will make him a subject to payment a penalty.....

2- For whom represent the Third Party who “sell” or “import” any products represent an imitation for original Tangible TCEs where there similar ones exist already in the local market made by the indigenous people should maintain the standard quality for the products and in case that the products subject to “sell” or “Import” through the territory failed to satisfy the standard requirements for quality examined by the panel instituted by the local authorities, the third party should pay penalty.....

3- For whom represent the Third Party who “sell” or “import” any products represent an imitation for original Tangible TCEs where there similar ones exist already in the local market made by the indigenous people should pay a “custom” which will be evaluated with considering the quantity and the price of the products intended to “sell” or “Import” inside the territory by the third part decided after passing the examination by the panel.

4- For whom represent the Third Party who “sell” or “import” any products represent an imitation for original Tangible TCEs where there similar ones exist already in the local market made by the indigenous people should state the price which intended to sell on the market and be aware as a part of unwritten contract between him and the state that any intention for “selling”

the imitation product made based on the original tangible TCEs product with a lower price than the price known in the market for it will be a breach of contract and will be a subject for penalty payment decided by the “Inspection panel” .

As tracking down the price for an imported goods through the market is difficult to handle a panel will be formed to track down those imported goods and their main task will be about observing the market for insuring the balance between the “imported” and the “local” hand crafts.

## **Conclusion:**

The TK field attracts many researchers because of its special nature and its growing need to have his own laws apart from the IP laws after the introduced aspect of claiming the TK under its umbrella had come to fail.

On the other hand, there is no deny that the protection's trials introduced by the IP laws under the TRIPs agreement represent for some countries the best solutions in case of the absence of the legislations required to protect the TK. For countries who still do not have such legislation can use the customary law as an equal replacement to the legislated laws in the legal system on the national level as long as the customary law prove its efficiency in handling the TK cases inside the local communities. Taking the customary law as a whole to work as a replacement to the legislated laws or just refer to it as the reference in the constitution's articles is a national choice to adapt the new articles with the legal system and make in act as soon as possible.

In the case of genetic resources, many conventions had drawn the outline and stated the regulations for use on a national and international level beside that there are many supportive articles under the patent act in many countries works in favour of the genetic resources protection. However, It is not the case for the Traditional Culture Expression which still fighting to make its own path.

The Traditional Culture Expressions or the TCEs have a very special nature since it form a combination between two categories: the tangible and intangible culture expressions. The tangible category is divided into two subcategories which had been introduced in the thesis as the "Solid Tangible Traditional Culture Expressions" or "Solid TTCEs" and the "Soft Tangible Traditional Culture Expressions" or "Soft TTCEs".

The “Solid TTCEs” are the original national heritage which under the direct authority of the government like the museum’s content, however, the “Soft TTCEs” is the reproduced creation based on the “Solid TTCEs” by the indigenous people hand. The market of the “Soft TTCEs” should represent an income for the indigenous people where it supposed that they do not have competitors but since the market is of the TK in general like any other market attract investors and feed on money, the hand-crafters from the indigenous people suffer from the attacks by others manufacturers who attracted to their market and looking forward to make huge profits from it.

Under the WIPO revised articles related to the TCEs (Article 1), the indigenous people have the right to maintain, use and promote their TCEs. The promotion can be through sharing with a third party and under “Fair” and “equitable” terms guarantee a proper compensation. And as a matter of fact, that cannot be done without having consent from the indigenous people to permit the use of the TCEs. The consent refers to an agreement or a contract contains all the detailed information about the terms of use. In this sense, sharing the TCEs will not harm the indigenous people culture or work which reflected on their income.

Unfortunately, In most of the cases sharing the TCEs is not applicable but rather it is kind of misused of the TCEs by the third party besides it cannot be called “Violation to laws” in the absence of the legislated laws related to the indigenous people right on the national level.

The Egyptian law until the present moment doesn’t have a clear aspect for protecting the TK under the absence of the TK act and the enacted legislations to protect it using positive defence strategies’.

As a result of this the TK's market suffers the most beside the Egyptian hand-crafters from lacking the required legal protection to shield them from the foreign goods attack on the market and help them maintain their identity.

Also the "Soft TTCEs" are theoretically claimed under the Traditional law No. 82 of 2002 on the Protection of Intellectual Property Rights, Copyright and Related rights, Article 138, clause no (7) and the law no. 117 of 1983 as amended by law no.3 of 2010 "Promulgating the Antiquities' Protection Law" Article (1), the Egyptian market for the "Soft TTCEs" still suffering and yearning to be saved. Banning the imported goods was not a solution and could not be applied because of many factors but definitely it did not resolve the problem but rather it aggravated the market's situation.

Banning should be accompanied by the replacement to satisfy the market need. Limiting the third party in the Egyptian market should be done by limiting his benefits first then push him to retreat from the market. As long as the third party can benefit from the Egyptian market the borders will be remained threatened; no matter how the government tightens the security on it which makes the strategy more efficient by enforcing the third party to leave on his own.

The strategy will be useless if there is no promotion to the Egyptian "Soft TTCEs" as the step should be done on parallel with limiting the third party existence in the market by making him a subject to several inspections.

## **Recommendations:**

1. Applying the strategy as demonstrated through the previous sections will help during the transition state before passing a permanent TK act to set the outlines and state the ideal treatment for the TK including the all its types.
2. The new TK act should be in harmony with the other laws related to the antiques' law by drawing a clear line between the categories which belong to the TK and allowed to share with a third party in return of a proper compensation under a contract or an agreement and the categories which cannot be shared with the third party as it fall in the public domain and consider as a national heritage and follow the antiques' law.
3. Guarding the borders through taxation on the imports will be a temporary solution to reduce the amount of the imported goods for the TK market but it will not work without increase the people awareness about the importance of this procedure and ask them to support it otherwise people who seek making quick profits will find another ways to smuggle these goods through the borders.
4. Tunis village had shown a good example of how the TK can be self protected through its existence in the market and fund itself without needing the governmental financial support or supervision. But as a matter of fact, it needs more than a sponsor. Supporting this project for more than three decades need to believe in the people abilities and work to support it. In other words, promote the people awareness of their TK values and how they can benefit it while spreading the word about it. Egypt is need of such projects leaded by enlightened people.

## Bibliography:

1. Adler, N.J., 2003. Communicating across cultural barriers. *Interkulturelle Kommunikation: Texte und Übungen zum interkulturellen Handeln*. Sternenfels: Wissenschaft & Praxis, pp.247-276.
2. Andrews, C. and Wasserman, J., 2008. *The Egyptian Book of the Dead: The Book of Going Forth by Day-The Complete Papyrus of Ani Featuring Integrated Text and Full-Color Images*. Chronicle Books.
3. Anthes, R., 1961. *Mythology in ancient Egypt*. Doubleday.
4. Assembly, U.G., 2007. Declaration on the rights of Indigenous peoples. Resolution, 61(295).
5. Assmann, J., 1989. *Death and initiation in the funerary religion of Ancient Egypt*.
6. Baines, J., 1995. CHAPTER ONE KINGSHIP, DEFINITION OF CULTURE, AND LEGITIMATION. D. O'Connor/DP Silverman (Hrg.): *Ancient Egyptian Kingship*, Leiden/New York/Köln. P. 3-47.
7. Baines, J., Lesko, L.H. and Silverman, D.P., 1991. *Religion in Ancient Egypt: Gods, Myths, and Personal Practice*. Cornell University Press.
8. Benson, B.L., 1990. Customary law with private means of resolving disputes and dispensing justice: A description of a modern system of law and order without state coercion. *Journal of Libertarian Studies*, 9(2): p. 25-42
9. Bercovitch, J., 1992. The structure and diversity of mediation in international relations. In *Mediation in international relations*. Palgrave Macmillan UK. p. 1-29.

10. Bradley, C.A. and Goldsmith, J.L., 1997. Customary international law as federal common law: A critique of the modern position. *Harvard Law Review*. P. 815-876.
11. Brewer, D.J. and Teeter, E., 1999. *Egypt and the Egyptians*. Cambridge University Press.
12. Budge, E.A.W. ed., 1898. *Book of the Dead: The Chapters of Coming Forth by Day; the Egyptian Text According to the ban Recension in Hieroglyphic (Vol. 2)*. Paul.
13. Budge, E.W., 2012. *The Egyptian book of the dead*. Courier Corporation.
14. Byers, M., 1999. *Custom, power and the power of rules: international relations and customary international law*. Cambridge University Press.
15. Cooley, J.W., 1985. Arbitration vs. mediation-explaining the differences. *Judicature*, 69, p.263.
16. Correa, C., 2007. *Trade related aspects of intellectual property rights: a commentary on the TRIPS agreement*. OUP Catalogue.
17. David, A.R., 1999. *Handbook to life in ancient Egypt*. Oxford University Press, USA.
18. Del Vesco, P., 2014. *Forming and Performing Material Egypt. Archaeological knowledge production and presentation*. In *Forming Material Egypt (Vol. 4)*. Pontremoli Editore.
19. Donadoni, S. ed., 1997. *The Egyptians*. University of Chicago Press.
20. Gervais, D., 2003. *The TRIPS Agreement: Drafting History and Interpretation*.
21. Graber, C.B. and Girsberger, M.A., 2006. *Traditional Knowledge at the International Level: Current Approaches and Proposals for a Bigger Picture that Include Cultural Diversity*.

22. Hallemeier, J., Beyond Folklore: The Sirat Bani Hilal in Modern Egypt. Unpublished report). Available at: <http://www.siratbanihilal.ucsb.edu/sites/default/files/Beyond%20Folklore.pdf>.
23. Hawass, Z., 2010. Law No. 117 of 1983 as Amended by Law No. 3 of 2010 Promulgating the Antiquities' Protection Law (Egypt). *International Journal of Cultural Property*, 17(4), p.613.
24. Hyder, A.S., 2008, September. Understanding international networks through relationships: A cultural perspective. In The 24th IMP Conference, Uppsala, Sweden.
25. Illes, b.J., Egypt: Beauty Salts. Tour Egypt. Available at: <http://www.touregypt.net/featurestories/salt.htm>
26. Ishak, S. and Nassuruddin, M.G., 2014. Traditional Malay Healing Practices: Expressions of Cultural And Local Knowledge. *Procedia-Social and Behavioral Sciences*, 140, pp.291-294.
27. James, T.G.H., 2007. *Pharaoh's People: Scenes from Life in Imperial Egypt*. Harvard Common Press.
28. Kamau, E.C., Fedder, B. and Winter, G., 2010. The Nagoya Protocol on access to genetic resources and benefit sharing: what is new and what are the implications for provider and user countries and the scientific community?.
29. Kamau, E.C. and Winter, G. eds., 2009. *Genetic resources, traditional knowledge and the law: Solutions for access and benefit sharing*. Routledge.
30. Kesumahayati, A., *Regulating Access and the Use of Genetic Resources and Associated Traditional Knowledge in Indonesia*.

31. Lanjouw, J.O. and Lerner, J., 1997. The enforcement of intellectual property rights: a survey of the empirical literature (No. w6296). National bureau of economic research.
32. Leahy, A., 1995. Ethnic diversity in ancient Egypt. *Civilizations of the Ancient Near East*, 1(Part 3), pp.225-234.
33. Leat, M. and El-Kot, G., 2007. HRM practices in Egypt: the influence of national context?. *The International Journal of Human Resource Management*, 18(1), pp.147-158.
34. Lew, J.D., Mistelis, L.A. and Kröll, S., 2003. *Comparative international commercial arbitration*. Kluwer Law International.
35. Lewis, R.D. and Gates, M., 2005. *Leading Across Cultures*. Nicholas Brealey.
36. Lipika, 2013. Traditional knowledge and Intellectual property: Case of Turmeric, in *The Lifeintellect Blog*. Available at: <http://lifeintellect.com/blog/2013/10/24/traditional-knowledge-and-intellectual-property-case-of-turmeric/>
37. Manal, A.S. and El-Ela, A., 2003. Cultural Globalization and Changes in the Urban Form of Metropolis Cities,(The Case of Cairo). In 39th ISoCaRP Congress.
38. McGuirk, R.H., 1986. *Colloquial Arabic of Egypt*. Psychology Press.
39. McManis, C. and Terán, Y., 2011. Trends and scenarios in the legal protection of traditional knowledge.
40. McManis, C.R., 2003. INTELLECTUAL PROPERTY, GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE PROTECTION: THINKING GLOBALLY, ACTING LOCALLY. *Cardozo J. Int'l & Comp. L.*, 11, pp.547-1127.
41. Meltzer, E.S., 1988. *Ancient Egypt through Three Windows*.
42. United Nations (UN), 1992, *Convention on Biological Diversity (CBD)*.

43. NO, T.D.H., 2006. ARAB CULTURAL AWARENESS: 58 FACTSHEETS.
44. Petrie, W.F., 1999. Egyptian tales. Courier Corporation.
45. Pocock, J.G.A., 1987. The ancient constitution and the feudal law: A study of English historical thought in the seventeenth century (Vol. 276). Cambridge University Press.
46. Pratt, N., 2005. Identity, culture and democratization: the case of Egypt. *New Political Science*, 27(1), pp.69-86.
47. International Commission for the Study of Communication Problems and Hussein, S.M., 1978. Main Forms of Traditional Communication: Egypt.
48. Rawlinson, G., 1886. History of ancient Egypt (Vol. 2). John B. Alden.
49. Roth, A.M., 2002. Ancient Egypt in America. *Archaeology Under Fire* will be essential reading for archaeology students and professionals and all those interested in the impact of the past on current political debate. Lynn Meskell is Research Fellow at New College, Oxford. She has written extensively on Egyptian and Mediterranean archaeologies and the application of, p.217.
50. SAX, B., 1996. Alternative Dispute Resolution (ADR) (No. DODD-5145.5). DEPARTMENT OF DEFENSE WASHINGTON DC.
51. Hassan, F., de Trafford, A. and Youssef, M., 2008. Cultural heritage and development in the Arab world. *Bibliotheca Alexandrina*.
52. Serour, A. ed., 2012. *Writing Egypt: History, Culture, and Literature*. American University in Cairo Press.
53. Session, F., 2016. Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

54. Session, T.-S., 2014. Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
55. Sheleff, L.S., 2013. The future of tradition: Customary law, common law and legal pluralism. Routledge.
56. Stone, C., 2001. 'Anistuuna: Egyptian Colloquial, by 'AwnīNāhid. 141 pages, appendices, glossary. Cairo: Dār gharīb li'l-tibā 'a, 1999.(Paper) ISBN 977-19-7930-2. Review of Middle East Studies, 35(1), pp.133-133.
57. Tait, J. ed., 2012. Never Had the Liked Occurred'. UCL Press.
58. Trigger, B., 1997. Ancient Egypt in Cross-cultural perspective. Anthropology and Egyptology. A developing dialogue. United Kingdom, Sheffield.
59. Twarog, S. and Kapoor, P., 2004. Protecting and promoting traditional knowledge: systems, national experiences and international dimensions. UN.
60. Von Lewinski, S., 2008. Indigenous heritage and intellectual property: genetic resources, traditional knowledge and folklore. Kluwer Law International.
61. WTO, 1994. Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs Agreement).

## 요약문

Traditional Knowledge 또는 TK는 소중한 유산으로서 마지막으로 영원히 계속 자라날 때까지 살아남은 잊혀지지 않는 지식이다. 보호의 또 다른 측면은 전통 문화 표현 (Traditional Culture Expression: TCE) 이 TK 유형 중 하나로서 소개되었다.

WTO/TRIPs 협정을 통해 도입된 지적재산권 법은 특허, 저작권, 상표 및 TRIPs 협정이 적용되는 다른 지재권과 마찬가지로 TK를 보호하는 데에도 실패했다고 판단된다. 이 실패의 주된 이유는 TRIPs 협정과 관련이 없기 때문에 다른 IP 권리들을 다루는데 큰 성공을 거두었지만 TK는 Sui generis 또는 유사한 유형의 권리의 하나라고 말하기 쉽다. Sui generis는 조약을 통해 정의 된 국제규범에 따라 TK를위한 특별한 일련의 입법 조치를 취할 필요성을 잘 보여준다.

전통문화표현(TCE)는 TK에 나열된 범주 중 하나이며 그 밑에 보호받을 수 있을 만큼 중요한 TK의 하나에 해당된다. 세계지적재산권기구 (WIPO) 조약은 TCE의 정의에서 시작하여 보호기준 및 보호기간에 이르기까지 국제 수준에서 TCE의 주요 보호체계를 정하고 있다. 그러나 여러가지 혼란스러운 법률 문제가 지적되고 있다. 예를 들어, 제 1 조에 언급 된 개념으로서 제 3 자와의 공유를 통한 보호 내지 육성은 제한적이지 않으며, 논문에서 소개 된 사례는 TCE 시장에는 적용되기 어렵다. TCEs 보호 기간에 대한 많은 논란과 확실한 보호 기간이 있어야 하는지 또는 공유의 경우 원주민과 제 3 자 간의 계약 또는 계약적 성격을 반영 할 것인지 여부에 대한 많은 논쟁이 있다.

이 논문은 국가 차원의 TCEs 보호에 대한 국가별 사례를 언급하지 않았고, 각 국가에 대한 국내법의 특수성을 전제로 해서 논의를 전개했다. 논문에는 국제 수준과 국가

차원에서 TK 보호의 권리를 침해하는 사례가 몇 가지 있다. 이전 사례는 이익 공유 섹션에서 발견되었으며 영원한 실수로 입증될 것이다. 후자는 필요한 보호가 부족하다는 사실을 잘 보여준다.

논문에 제공된 각각의 경우에 사실은 단지 표면으로 흘러간다. 토착민의 권리자 또는 법적 후견인은 TK에서 자신의 권리를 주장하기 위해 앞으로 해야 할 일이 많을 것이다. 그렇지 않으면 아무도 그들을 위해 도움을 주려고 않으며 TK는 단순히 다른 사람에게 경제적 가치를 전달하게 될 것이다. 입법은 TK에서 자신의 권리를 주장하는 전투에서 토착민의 무기요 방패다. TK와 관련된 규칙 및 규정을 결정할 입법이 없는 경우, 관습법은 법률 제도의 입법부를 대체하는 동등한 조치로 들어가야 한다. 관습법은 입법이 있는 경우 법 체계에서 필수적인 법적 수단으로 함께 작동 할 수 있지만 관습법이 제공되는 경우 보호 방법에 대한 구체적인 내용이 명확히 제시되어 있지 못한 한계가 있다.

이집트는 TCEs가 없는 나라 중 하나이며 시장에서 손을 씻을 수 있을 만큼 충분히 분명할 수 있다. 논문에 소개된 전략은 시장을 심각한 공격으로부터 보호하기 위한 긍정적인 보호 방법 중 하나다. 전략의 주된 목표는 TCE 시장에서 제 3 자의 존재를 제거하는 것이지만, 지금까지는 제거가 성공적이지 못했기 때문에 점차적으로 사라져야 한다고 주장한다.

이 전략에는 여러 단계가 순서대로 수행되어야 하지만 시간 요소를 고려하여 병렬로 수행하는 것이 효율적이다. 이 전략은 WIPO 조약, 이집트 헌법 및 시장 상황에 크게 좌우된다.