

DOCUMENTING TRADITIONAL CULTURAL EXPRESSIONS

Building a Model for Legal Protection Against Misappropriation
and Misuse with the Oma Ethnic Group of Laos



**Documenting Traditional Cultural Expressions:
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and Misuse with the Oma Ethnic Group of Laos**

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The icons depicted throughout this Report represent traditional cultural expressions used by the Oma ethnic group in their traditional textiles and documented in the Oma Traditional Textile Design Database©.



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EXECUTIVE SUMMARY

Securing Cultural Intellectual Property Rights for the Oma of Laos - Traditional Design Digital Library is a cultural intellectual property rights advocacy project providing a tool for the Oma ethnic group of Nanam Village in Laos (“the Oma people of Nanam Village”) to protect and promote their Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) (“the Project”).

The Project was born from the need and desire of the Oma people of Nanam Village to protect their textile cultural expressions against misuse and misappropriation, and develop a sustainable framework that ensures that their heritage is transmitted to future generations, and at the same time, generates economic opportunities for the community members. This work was catalysed by the limited legal recourse available to the Oma Community to respond to a textile design plagiarism case where an international fashion company used Oma traditional textile expressions for commercial purposes, without the consent, credit, or compensation of the community.

The Project was funded by Voice under the Laos Sudden Opportunity Grant - V-19100-LA-SO and advocates for the recognition of collective rights for custodians and transmitters of TK and TCEs, referred to as *Cultural Intellectual Property Rights*®.

Work on this Project was conducted over a period of 12 months, excluding grant preparation time, and resulted in the creation of the Oma Traditional Textile Design Database© (“the Database”) and a Traditional Design Database Template that will help other ethnic groups, local communities, and Indigenous people to benefit from the Project.

This work starts from the premise that Traditional Cultural Expressions are not in the public domain.

The Project was born from the need and desire of the Oma people of Nanam Village to protect their textile cultural expressions.

The Database was developed using a cross-disciplinary approach. Its objectives include helping to protect Oma TCEs and associated TK from misappropriation and misuse, affirming Oma collective rights over their TCEs and associated TK, and securing benefits for the Oma community by stimulating fair and equitable collaborations with textile industry stakeholders.

The digital documentation of Oma traditional textiles and associated TK (*Oma specific designs and motifs, cultural significance, and production techniques*) proves the **custodianship of the community** over their TCEs and aims to ensure that **the community has control** over how their intangible cultural heritage is managed, used and commercialised.

At national level, the Database is designed as a tool that can contribute to the development of a *sui-generis* system for the legal protection of TK and TCEs in Laos.

This Report documents the particular details of the **Oma Case**, the purpose and relevance of this **Solution**, the **Conceptual Framework** and the stages of the development **Process**, the **Impact** on the community and the craft ecosystem in Laos, as well as the long-term sustainability implications of the solution and its replicability for the benefit of Indigenous people, ethnic groups and local communities worldwide.

KEYWORDS:

TRADITIONAL CULTURAL EXPRESSIONS, TRADITIONAL KNOWLEDGE, LEGAL PROTECTION, INTELLECTUAL PROPERTY, CULTURAL INTELLECTUAL PROPERTY RIGHTS, MISAPPROPRIATION, DESIGN PLAGIARISM, #NOTPUBLICDOMAIN, CONSENT, CREDIT, COMPENSATION

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1. BACKGROUND



1.1 The Oma Case

On 2 April 2019, the Traditional Arts and Ethnology Centre (TAEC) was informed by a former employee that a Max Mara boutique in Zagreb, Croatia, was selling clothing decorated with patterns that looked identical to the traditional embroidery and appliqué designs of the Oma people.

The Oma are an ethnic minority group of about 2,800 people living in the remote mountains of northern Lao PDR (or Laos), recognised in the region for their hand-spun, indigo-dyed clothing decorated with vibrant red embroidery and appliqué. TAEC has been working with the Oma people of Nanam Village, the largest Oma community in Laos, since 2011.

Unlike the authentic Oma designs, the Max Mara replica patterns were printed on the fabric, not hand-embroidered or hand sewn. In addition, there was no garment label acknowledging the textile designs as belonging to the Oma. The garment labels referenced the Max Mara brand name and trademark to communicate the source of the products, generating a risk of confusion and cultural dilution of Oma intangible cultural heritage.

When informed of the situation, the Oma people of Nanam Village confirmed that they had no knowledge of the use of their designs and motifs by the fashion company and that they were not requested permission for digitising the designs for industrial production and sale.

Consequently, TAEC wrote numerous emails and messages to Max Mara communicating the origins of the patterns and asking the company for justification of their use. Receiving no response from the company, TAEC publicised the plagiarism issue on social media with side-by-side comparison photographs.

TAEC's social media posts of the Oma Case garnered over 1 million reactions, 6,000 shares, and hundreds of comments expressing public outrage. The story was picked up by publications in the USA, Australia, and Japan, and a petition urging Max Mara to stop commercialising Oma plagiarised designs collected over 6,000 signatures (Change.org, 2019).

Following the social media campaign, the Max Mara legal team responded to TAEC's emails with demands to remove the posts they qualified as defamatory and damaging to the reputation of the company, and threatening to take legal action without further notice in the event of non-compliance.

With reference to the use of the Oma designs and motifs, Max Mara requested TAEC to indicate the specific rights deemed violated and the legal basis of such allegations. **The position of the company was that there is no violation of rights, refusing to acknowledge misappropriation of the Oma TCEs.**

The Max Mara legal team asserted that the allegedly copied design was elaborated in an original way, and inspiration was taken from the pattern of a vintage fabric which the company considered as being in the public domain. On formal grounds, Max Mara requested TAEC to justify its legal capacity to represent the Oma ethnic group, refusing to continue communications in the absence of documentation proving legal representation powers.





Nanam Village is situated in the remote highlands of northern Laos.

1.2 The Oma of Nanam Village in Laos

The Oma are an ethnic minority group of about 2,800 people, living in eight villages in the remote mountains of northern Laos. Part of the Akha category of the Sino-Tibetan ethnolinguistic group, the Oma nevertheless consider themselves a distinct ethnic group.

Oral histories from Nanam Village, the largest Oma community in Laos, recall the Oma migrating to Laos from China in 1887 after warring with the Han Chinese and being driven out of China. For the next 80 years, the Oma traversed northern Laos settling villages for a few years before moving on. At first the Oma travelled as one, but sometime in the early 20th century splintered and different family groups spread to separate villages, though all keeping in contact with one another. Nanam Village was settled in its current location in 1962, and it has been recognized as a model cultural village for the Oma by the government of Lao PDR.

Nanam Village is made up of 505 residents that mainly subsist on upland rice cultivation and animal husbandry. They use the rice for personal consumption and can sell the surplus. Some families also grow and sell tea, a historical cash crop due



to their proximity to China. The women in the Oma community continue to stitch and embroider traditional clothing for each member of their family, to demonstrate their cultural pride and creativity, and to earn supplemental income to spend on health-care, education, and miscellaneous needs.

2. CHALLENGE

2.1 Lack of Adequate International Legal Protection

The main challenge the Project addresses is the lack of adequate international legal protection against misuse and misappropriation of TK and TCEs, and in subsidiary, the lack of tools, resources, and easy access to professional legal support for communities to respond in such cases.

At an international level, there is currently no treaty or similar international law instrument regulating the protection of TK and TCEs and establishing dispute resolution provisions and mechanisms for redress in the event of TK and TCE-related conflicts arising between nationals from different states.

The Oma people of Nanam Village were surprised to see their traditional textile designs reproduced with machines by people outside of the Oma community, and commercialised without their consent and without any compensation.

Conventional intellectual property law such as Copyright, Trademarks, Patents, Geographical Indications or Industrial Designs, are not designed to offer protection against misappropriation and misuse to custodians or transmitters of TK and TCEs (WIPO, 2017). In many countries TK and TCEs fall outside the scope of protection of conventional intellectual property law and are considered part of the *public domain*, meaning that they can be used (i.e. copied, modified) and commercialised freely, by anyone, without the consent, credit or compensation of the source communities. This can potentially lead to misusing cultural property in ways that are insensitive, inappropriate, or inconsistent with customary laws, and disenfranchise the communities from opportunities to earn income from their own crafts.

At the time the Oma textile design plagiarism was discovered, and up to the publishing date of this Report, the national legislation in Laos did not provide explicit legal protection for the TK and TCEs of Laos' ethnic groups either. The Oma people of Nanam Village were surprised to see their traditional textile designs reproduced with machines by people outside of the Oma community, and commercialised without their consent and without any compensation. When approached by the Traditional Arts and Ethnology Centre and the Cultural Intellectual Property Rights Initiative® with a proposal to pilot a model to protect their TCEs, and potentially help other communities facing the same issue in the future, the Oma of Nanam Village were keen to affirm their rights.



Three generations of Oma women in traditional dress.

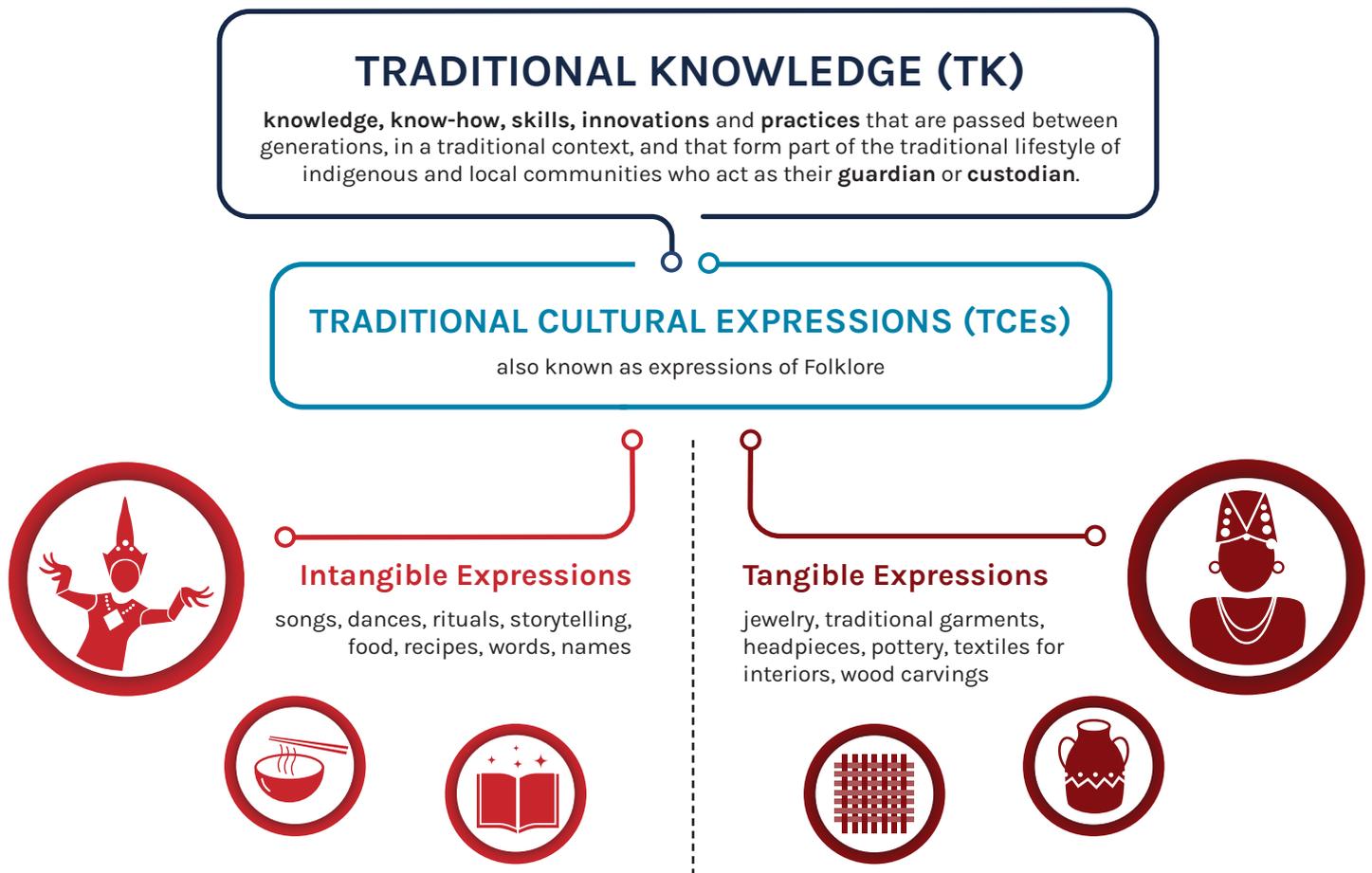


FIGURE 1. TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS

2.2 Traditional Knowledge and Traditional Cultural Expressions

Development and implementation of the Project required understanding of the specific nature of TK and TCEs and the particularities of documenting these for the purpose of securing legal protection against unauthorized copying, adaptation and use by third parties. This type of documentation differs from creating registries and inventories for safeguarding and promotion according to the 2003 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage.

Traditional Knowledge (TK) results from intellectual activity in a traditional context. This knowledge includes skills, know-how and practices related to and associated with the production of textiles. The World Intellectual Property Organization (WIPO) defines TK 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.

Traditional Cultural Expressions (TCEs) are the expressions in which this knowledge is embodied. They can be tangible or intangible, or a combination

of both. TK and intangible TCEs are also referred to as intangible cultural heritage (Boța-Moisin and Schreiber, 2021).

TK and TCEs have economic potential; for their custodians they can represent a basis for creation and development of culture-related enterprises and generate valuable revenue streams.

Traditional textiles are integral to the cultural identity of many of ethnic groups in Laos and in addition, the sale of handcrafted products represents an important source of supplementary income to them. The *Oma Case* shows how immediate and serious the threat is, and emphasises the need for tools and remedies to both defend ethnic groups in Laos against traditional textile design plagiarism and enable them to respond once it occurs - in light of the *Principle of Equality of Arms*. The *Principle of Equality of Arms* is a principle of law, part of the right to a fair trial, and refers to ensuring a fair balance between the parties in an adversarial procedure, without any substantial advantage of one party over the other.

3. SOLUTION

3.1 A Database for Traditional Designs

3.1.1 Why a Database?

The simple documentation of TCEs, in analog or digital format, is not itself an effective strategy for protecting TCEs and associated TK. However, digitally documenting collections of data *in the form of databases* can be an effective tool for Indigenous people, ethnic groups, and local communities to protect and promote their TK and TCEs, and be in control of how their knowledge is accessed, used, and commercialised.

In many countries, databases benefit from either copyright protection or *sui-generis* database rights, and the content of the database – texts, photographs, audio-visual materials – can be subject to copyright protection. By complementing the database creation process with a framework that includes obtaining the Free, Prior and Informed Consent (FPIC) of the TK and TCEs custodians, as well as terms and conditions of access and use and benefit-sharing provisions, documentation through databases has the potential to serve multiple purposes.

3.1.2 Purpose of the Oma Traditional Textile Design Database©

The driving purpose of digitally documenting the traditional textile expressions of the Oma people of Nanam Village is to develop positive intellectual property protection of Oma textile cultural expressions and knowledge related to them (i.e. *legal protection of cultural intellectual property*).

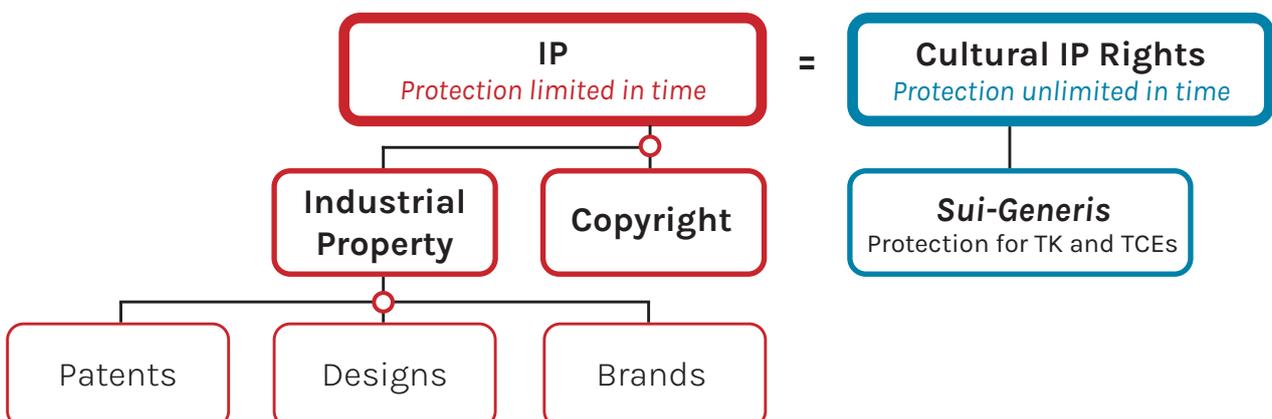
Digitally documenting collections of data in the form of databases can be an effective tool for Indigenous people, ethnic groups, and local communities to protect and promote their TK and TCEs.

From a cultural intellectual property rights® perspective, the Oma Traditional Textile Design Database© can be the basis for establishing *positive protection for TK and TCEs* in Laos (see *Section 5.3. A Sui-Generis Approach*), and at the same time it can enable the Oma community in Laos – as customary custodians of these cultural expressions and knowledge – to benefit from their knowledge and TCEs in commercial relationships with third parties.

In the particular context of this Project, the Oma Traditional Textile Design Database© serves as:

- a tool for asserting cultural intellectual property rights for the Oma people of Nanam Village in Laos;
- a defensive tool to protect against the unconsented use of Oma TCEs;

FIGURE 2. SUI-GENERIS PROTECTION - THE ARGUMENT OF EQUAL PROTECTION FOR CULTURAL INTELLECTUAL PROPERTY RIGHTS





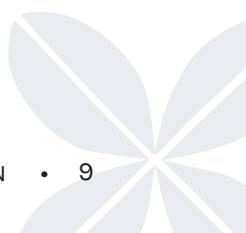
A selection of handsewn Oma headdresses.

- a defensive tool to be potentially used by intellectual property institutions to avoid erroneous granting of intellectual property rights to third parties over Oma TCEs (with particular relevance for Trademark and Industrial Design registrations);
- a means to document TCEs for the benefit of the Oma Community at large and ensure cultural continuity; and
- a source of information for research and product development to facilitate commercial collaborations between Oma artisans and fashion and textile stakeholders.
- generation of trading opportunities and sustainable economic development for the Oma of Laos, including promotion of equitable benefit-sharing from the use of their TK and TCEs.

In subsidiary, in light of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage which obliges the signatory parties to document TK and TCEs as a means to safeguard cultural heritage, ratified by the government of Lao PDR, the Database has a function of documenting Oma TCEs, organising and preserving knowledge and imagery for future generations.

The Database also functions as a knowledge center for Oma TCEs and associated TK and it can contribute to the following:

- prevention of false and misleading claims to authenticity and origin by third parties;
- prevention of misappropriation and unauthorized exploitation, illicit use and abuse, as well as other unfair and inequitable uses of TK and TCEs associated with the Oma of Laos; and





Artisans in front of the 3Cs' Rule at the Lao Handicraft Festival 2020.

3.2 Conceptual Framework: The 3Cs' Rule: Consent. Credit. Compensation©

The Oma Traditional Textile Design Database© is designed as a regulated platform through which the Oma can grant access to particular TCEs and associated knowledge to third-party users under certain conditions, on the basis of **Free, Prior and Informed Consent (FPIC)** and **fair access and benefit sharing (ABS)** mechanisms.

The Database is designed on the Framework of the **3Cs' Rule: Consent. Credit. Compensation©** – an extra-legal tool developed by The Cultural Intellectual Property Rights Initiative© to guide best practices for drawing inspiration from cultural heritage and engaging in culturally sustainable collaborations with Indigenous Peoples, local communities, tribes, and ethnic groups.

The 3Cs stand for:

- **Free, Prior and Informed Consent** of the craftsman, ethnic group, Indigenous or local community;
- **Due Credit** to the source community whose TK or TCEs are used (attribution); and
- **Monetary or non-monetary Compensation** or sharing of benefits resulting from the commercialisation of the derived work.



The 3Cs' Rule was developed on the basis of article 31 of the United Nations Declaration on the Rights of Indigenous Peoples - UNDRIP (adopted by the United Nations General Assembly in 2007), the rules of attribution applicable in case of copyright protection and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (entered into force in 2014).

This Framework was used to ensure that the Oma community has control of their heritage, is part of discussions and negotiations, is credited for their textile designs, and can benefit from the use of their designs.

The Framework also extends to collaborations with the Oma people of Nanam Village who are ready to engage in commercial relationships with fashion and textile stakeholders respecting the 3Cs (Consent, Credit, Compensation).



CONSENT . CREDIT . COMPENSATION

3.3 Cross-Disciplinary Approach

The Project strategy, development, and implementation required cross-disciplinary expertise in law, ethnographic research, community outreach, audio-visual documentation, and technology development.

3.3.1 Role of TAEC

The Traditional Arts and Ethnology Centre (TAEC) is a cultural heritage social enterprise in Luang Prabang, Laos dedicated to the celebration and safeguarding of the traditional arts and lifestyles of the country's many and diverse ethnic groups. TAEC operates a museum on the ethnic minority cultures of Laos, two fair-trade shops promoting handicrafts from village artisans, a family activity centre, and a library. TAEC has research, school outreach, livelihoods development, and advocacy programmes, reflecting its commitment to supporting living ethnic minority communities to preserve and promote their heritage while looking towards the future.

TAEC has worked with the Oma people of Nanam Village since 2011, developing and selling their handcrafted products and conducting ethnographic research on traditional Oma music and cultural beliefs. This relationship was crucial to the community's willingness to embark on the Project. Respecting the community's customary decision-making systems, and being responsive to their conditions and priorities, was a key aspect of supporting the Oma people of Nanam Village to navigate the Project.

For the Project, TAEC acted as an advocate and facilitator, alerting the community to the problem, explaining and contextualising the ramifications of the issue and the possible options for redress. TAEC maintained and managed all Project communications with the community - most of whom do not speak Lao, and none of whom speak English. TAEC coordinated the fieldwork, data collection, data processing, and supervision of data structuring and upload to the Database.

TAEC is a legal representative of the Oma people of Nanam Village for all matters related to the management and use of the Database and its content, pursuant to a Representation Agreement whereby the community grants TAEC [Legal Representation](#) powers.

3.3.2 Role of CIPRI

The Cultural Intellectual Property Rights Initiative® (CIPRI) is a global advocacy platform working towards developing specialised legislation for the protection of TK and TCEs. To address the



TAEC team mapping out the database content.

issue of misuse and misappropriation in fashion, CIPRI acts as a mediator between the interests of fashion businesses and those of artisans and traditional creative communities. CIPRI creates tools and frameworks for fostering socially and culturally sustainable collaborations between craftspeople and contemporary designers in the fashion business, based on a fair distribution of intellectual property rights and cultural intellectual property rights. CIPRI proposed the concept of *Cultural Intellectual Property Rights*® as a new generation of rights recognised to TK and TCEs guardians and custodians, to provide legal protection against misappropriation and misuse and support the transmission of traditional designs, traditional techniques and traditional cultural expressions from generation to generation. TAEC became a member of CIPRI in May 2019.

CIPRI developed and coordinated the legal strategy and cultural sustainability communication for the Project.

3.3.3 External Support

Implementing the Project required close collaboration with a web developer for the Database development, and a professional video and photography team throughout the entire implementation phase. In the case of the web developer, collaboration is also required post-implementation for Database management and maintenance. Work-for-hire agreements were concluded with professionals for web development and photo-video services to secure the transfer of the resulting intellectual property rights to the Database beneficiary. Onboarding sessions and preparatory workshops were organised to ensure alignment between all stakeholders and awareness to cultural sensitivities and restrictions dictated by the nature and scope of the Project.

4. PROCESS



4.1 Mapping Team Roles

The Project's multidisciplinary team included four TAEC staff members with skills in ethnographic research, project management, handcrafted product development, and community outreach, with Monica Boṭa-Moisin - lawyer and cultural sustainability consultant with expertise in intellectual property law and *sui-generis protection* for TK and TCEs – representing CIPRI. Additional expertise was provided by a professional video and photography team, and a web developer (“the Project Team”).

Team preparation included familiarisation workshops on:

- Legal protection for TK, TCEs, and the [Conceptual Framework](#) for the Database;
- Protocols for obtaining consent and sharing of information; and
- Oma cultural context and traditional beliefs.

The initial Project development plan involved fieldwork, immersion in the cultural context and direct interaction between the Oma people of Nanam Village and the Project Team. However, due to international travel restrictions imposed by the Covid-19 global pandemic, the CIPRI representative was unable to travel to Laos. This required an increase in the frequency of communications amongst the Project Team and full reliance on each other's competencies. The Project Team successfully adapted the development plan to minimize the impact on the quality of the Process. With domestic travel being possible between May 2020 and April 2021,

the critical aspects of the Process involving in-person meetings with the community – observance of community consultations, obtaining FPIC, interviews with the Oma of Nanam Village, photo-video documentation on site and final Database content approval – were possible.

From a cultural sustainability perspective, in-person interactions and immersion in the cultural context for all members of the project teams is imperative. In this particular case, the long collaborative relationship between TAEC and the Oma people of Nanam Village and the close relationship between TAEC and CIPRI contributed significantly to overcoming the limitations caused by travel restrictions.

4.2 Community Discussions

In July 2020, the TAEC team travelled to Nanam Village to initiate discussions with the Oma and propose the Project. This was the first time community members and TAEC had been able to meet in person since the Max Mara design plagiarism in 2019. To communicate the complexities of the case and cultural intellectual property rights in general, the team relied on photos (printed in large formats), physical props, and many simple analogies and examples. Meetings were held in the evenings, once the day's farming work was finished, and were lengthy to ensure clear explanations and translation between Oma and Lao languages as most community members are not fluent in the Lao language.

Community discussions were organised based on customary rules of decision-making. Together with the village chief, consultations were planned and held over the course of several days with separate groups: village leaders, village elders and men, artisans and all women, and finally, youth. With young people from the community attending secondary school in the sub-district town, the last meeting had to be held on a Friday evening when they returned home for the weekend. These separate meetings encouraged open discussion among peers, and an understanding of how different segments of the community may hold diverse views on the importance of traditional designs to their identity, the need to protect their TCEs and associated TK, and their willingness to pursue action and affirm their rights.



The film and photography crew documenting the steps of textile production.



One of many small group discussions to explain the Max Mara issue and cultural intellectual property.

The questions addressed during the consultations included:

- Why is the Project important?
- How will the Oma benefit from the Project?
- How does documentation relate to their everyday life and their medium-term and long-term expectations?
- How will documentation help to preserve their cultural integrity?
- Will their culture, textile designs, and associated TK be protected after the Database is established?
- How will the Oma people of Nanam Village be able to practically engage in the documentation of their TCEs and associated TK?

The overall goal of the first series of consultations with the Oma people of Nanam Village was to gauge if the community as a whole was ready to document and protect their traditional designs. The result was that:

- (i) the community considered it imperative that Oma artisans be **directly involved** in the production of their textile designs; and
- (ii) the community as a whole should be **included in discussions** of how their TCEs could be replicated and commercialised.

The community also explicitly expressed a willingness to collaborate and be able to earn additional income from their crafts.

Though time-consuming, sessions as described above are imperative to the process of understanding the community's perspective and goals for pursuing a documentation of TK and TCEs for legal protection purposes, and critical to the **Free, Prior and Informed Consent (FPIC)** process.

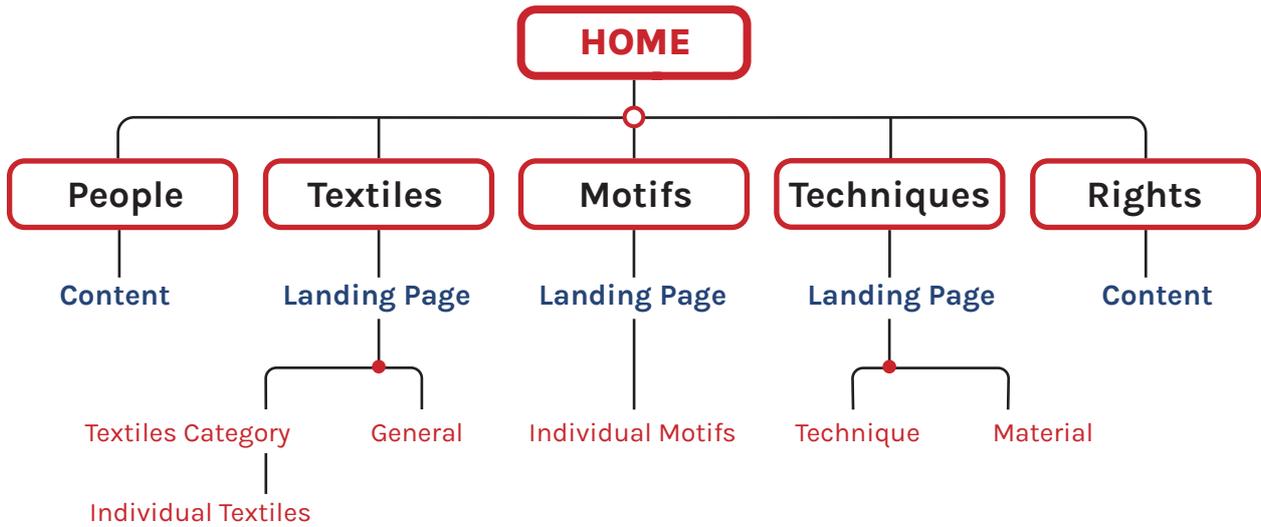
4.3 Free, Prior and Informed Consent

The consultation sessions with and amongst the different community members introduced the questions of risk and consent in general, and preliminary verbal consent was obtained from each group to ensure general support.

Following the oral acceptance, FPIC was documented through a written agreement signed between the Nanam Village leadership and TAEC. The process of signing the agreement involved a line by line review of the FPIC together with the village chief and village leadership, to ensure their complete clarity and confidence in the agreement.

In Laos, contracts and official documentation can be viewed as intimidating and thus challenging to pursue on a village level. Signing the agreement required sensitivity, patience, and mindfulness of power dynamics and proved the trust of the Oma people of Nanam Village in the Project.

FIGURE 3. STRUCTURE OF THE OMA TRADITIONAL TEXTILE DESIGN DATABASE©



4.4 Database Structure Development

The Database structure development required close collaboration with the web developer to create a model that would comply with the specificities of TK and TCE documentation for legal protection purposes.

The objectives were to:

- Demonstrate the cultural significance of the textile TCEs and their importance to Oma identity;
- Document the customary use and taboos associated with the textiles;
- Establish the custodianship relationship between the Oma of Nanam Village and their textile TCEs and associated TK (i.e. production techniques, traditional practices associated with textile production, sourcing, processing and use of materials etc.);
- Explain how the knowledge and skills to produce the textiles are passed down from generation to generation; and
- Identify key clothing items, patterns, motifs, and motif combinations, as well as craft techniques and materials used.

Additionally, one of the goals of the Project was to create a Database template that could be used and adapted for the benefit of artisan communities worldwide. The overall structure, including categories and subcategories noted in Figure 3 below, were selected to be relevant for diverse TK and TCEs of other Indigenous people, ethnic groups, and local communities.



A demonstration of indigo dyeing.





Examining textiles belonging to an artisan's personal collection.

4.5 Research and Data Collection

Research was conducted during two field trips to Nanam Village, and a core group of artisan informants travelled to Luang Prabang to work with the TAEC team.

In situ, data was collected through interviews, photographs, video footage of the Oma and their TCEs, and audio recordings in Oma language of names of motifs, names of textile garments, and traditional songs. Questionnaires guided the research team when collecting information and interviews were conducted in small groups of two to three women, together with one local person helping as a translator between Oma and Lao languages. Throughout, traditional clothing and textiles, manufacturing, equipment, the fields, and the village environment helped to contextualise the information.

It should also be acknowledged that as TAEC has worked with the Oma people of Nanam Village since 2011, including on research into their cultural beliefs, there was a great deal of background information already possessed.

4.6 Database Compilation

Work on processing and cataloguing the extensive amount of research material was conducted over a period of five months. The Database compilation process involved numbering and naming systems for text and photo files, identification and ordering of motifs, analysis of textile patterns and identification of key motif combinations, translation and transliteration Oma to Lao and English, and drafting written content for the Database.

Because the Oma language does not have a written form, the Database content is available in Lao and English languages, but key terms in Oma language are also included through English transliterations and audio recordings. Once the Database was populated, it was presented to the Oma people of Nanam Village for final review and approval.

The database establishes the custodianship relationship between the Oma of Nanam Village and their textile TCEs and associated TK.





The team showing community members the database for their approval.

4.7 Community Approval and Legal Representation

The involvement of the Oma people of Nanam Village in decision-making throughout the documentation process was ensured through continuous, informed, inclusive, facilitated, culturally empathetic and non-coercive participation. Further capacity-building efforts are required to ensure continued access and use of the Database by the community, including specialised IT training in database management.

To ensure continuity of the Project and fulfillment of the Project objectives and community goals, the Oma empowered TAEC to act as their legal representative. The representation agreement concluded for this purpose, in compliance with Lao law, provides, amongst others, that:

- (i) TAEC can legally represent the Oma of Nanam Village in relation to future and past commercialisation or unauthorised copying, adaptation and unfair commercial use of Oma TK and TCEs by people and entities outside the community;
- (ii) TAEC can represent the interests of the representee to ensure compliance with the *Conceptual Framework of the Project* and fair and equitable compensation for the Oma of Nanam Village in the event of collaborations with third parties; and
- (iii) TAEC will support the management of the Database until the representee is ready to take on full management responsibilities.

4.8 Extra Tools

In addition to the *Conceptual Framework*, the Database uses the TK Label system. TK Labels are an extra-legal tool developed by *Local Contexts* to enable Indigenous communities to add local access and use protocols to recorded cultural heritage that is digitally circulating outside community contexts, such as the collections of galleries, libraries, archives, and museums. Out of the 18 TK Labels, two were used in the Project.

The TK *Culturally Sensitive Label* was used in relation to the motifs embroidered on Oma traditional cultural expressions. The choice of motifs, combination, and placement thereof on the textile surface reflect the cultural and social identity of the Oma of Laos. Replicating these combinations of motifs, without the consent of the Oma Community, is culturally inappropriate and potentially offensive if used incorrectly. This Label indicates that there are specific permissions for use of this material required directly from the community.

The TK *Attribution Label* was used in relation to the individual garments documented in the textiles category. This Label is used to correct past exclusions of the Oma People as creators and custodians of these textile designs. This label indicates that the textile designs on these traditional cultural expressions are attributed to the Oma People, who are the custodians and transmitters of the traditional knowledge associated with these materials. For every object in this Database, the Oma People shall be mentioned as the source community from which the design derives. All Database users are being required to apply the correct attribution for any future use of Oma TCEs.

Once the content of the Database was published, the **WIPO Proof** tool was used to secure trusted digital evidence for the content and a time stamp of the publishing date.

The choice of motifs, combination, and placement thereof on the textile surface reflect the cultural and social identity of the Oma of Laos.

5. OUTCOME

5.1 The Oma Traditional Textile Design Database©

The Oma Traditional Textile Design Database© (2021) is published under the umbrella project [traditionaldesigns.la](https://oma.traditionaldesigns.la):

<https://oma.traditionaldesigns.la>

The information in the Database is owned by the Oma of Nanam Village, and was created with the support of the Traditional Arts and Ethnology Centre and Cultural Intellectual Property Rights Initiative©.

The Database qualifies as a **collection** within the meaning of Article 2(5) of the Berne Convention for the Protection of Literary and Artistic Works (as amended on 28 September, 1979), ratified by the Government of the Lao People’s Democratic Republic, on 14 December, 2011, entered into force, with respect to the Lao People’s Democratic Republic, on 14 March, 2012, and is copyright protected. A Copyright notification was submitted to the Department of Intellectual Property, Ministry of Commerce and Industry in Lao PDR on 17 May 2021.

The visual imagery in this collection depicts textile TCEs of the Oma people of Nanam Village, together with information relating to the methods of textile creation, the scope and uses of each item of dress, and the symbolism and significance associated with the motifs. The information is conveyed through photographs, video files, audio files, and written text.

The Database has a unique structure and original selection and arrangement of content.

It features six main sections: the Homepage, People, Textiles, Motifs, Techniques, and Rights. Only the

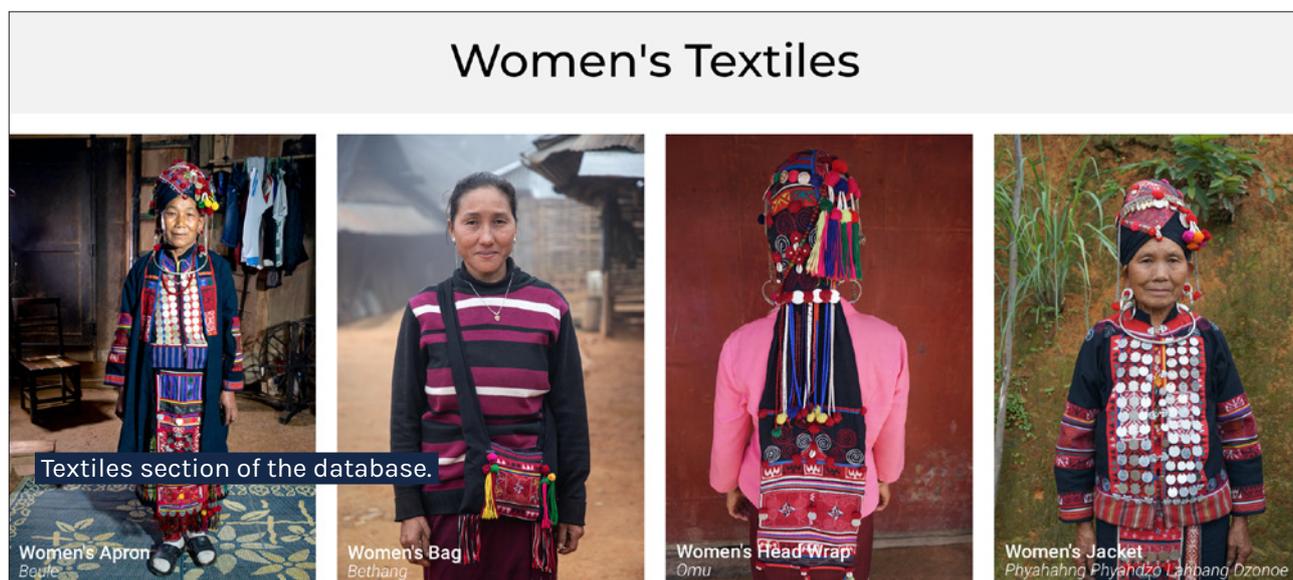
Homepage and the Rights Page are publicly accessible. Access to the other sections (*People, Textiles, Motifs, and Techniques*) is password protected and requires log-in credentials. This is to protect the cultural intellectual property of the Oma and to ensure access is controlled by the Oma and their legal representatives.

The Rights Page explains the concept of Cultural Intellectual Property Rights©, the objectives of the database, and how the **Solution** can be used. The People section gives background on the culture of the Oma – their population, language, worldview and beliefs.

The Database explains the cultural significance of Oma traditional clothing and motifs and their importance to Oma identity. The Motifs and Textiles sections document a total of 22 motifs along with 43 textile items. The Textiles section showcases types of clothing items worn by women, men, and children. When a type of clothing is selected, for example “Women’s Jacket”, an audio recording of the name of the textile in Oma can be played. There is also information on how this item is made and an identification of the motifs it features, their usual placement and significance, as well as any taboos associated with the use of the respective motif.

The Techniques section explains how the Oma create their textiles, and includes video footage of the tools and materials used.

All written content is displayed in both English and Lao languages.



5.2 Potential Revenue Streams for the Oma of Nanam

Having expressed their willingness to collaborate with fashion companies and designers for creating textiles and garments inspired by the Oma culture and aesthetic, the Oma artisans from Nanam Village are ready to create textile embroidery and appliqué for national and international commerce. The quality of their work is outstanding and their skills and aesthetic unique. **They hold knowledge to create culturally sustainable fashion.**

With the Database also having the functionality of a look-book and knowledge center, fashion and textile stakeholders can initiate and engage in commercial relationships with the Oma people of Nanam Village respecting the 3Cs' Rule: Consent. Credit. Compensation©.

On the basis of **commercial contracts** and **licensing agreements**, the Oma can engage in collaborations as co-design and sourcing partners, or teach others about their TCEs through workshops and immersive learning experiences. This will enable the Oma to valorize their textile production knowledge and skills and generate revenue streams for the community from textile production and commercialisation of Oma textile designs, knowledge and imagery.

Based on their **Legal Representation powers**, TAEC is the contact point for initiating collaborations with the Oma people of Nanam Village.

5.3 A Sui-Generis Approach

The Project was designed with the potential of being a first step in developing a *sui-generis* system for protecting the TCEs and associated TK of Laos' many ethnic groups.

A *sui-generis* system refers to the development of specialized measures or laws aimed exclusively at addressing the characteristics of this specific subject matter (WIPO, 2013). If integrated in the national legal system, Laos would be the first ASEAN member state that adopts positive protection for TK and TCEs. The **Solution** would be an element of a *positive protection system* that grants the beneficiaries rights in the TK and TCEs (*i.e. cultural intellectual property rights*), as opposed to a *defensive protection system* that does not grant the beneficiaries any rights but aims to stop such rights from being acquired by third parties (*e.g. a private company registering an Oma motif or motif combination as a trademark*). *Positive protection rights* may be used to prevent unauthorized or inappropriate uses of TCEs by third parties and may also enable active exploitation of the TCEs and associated TK by the source communities, for example to set up their own handicraft enterprises.

A Traditional Design Database is a tool through which the Indigenous people, local communities, tribes, and ethnic groups can communicate that they are custodians of their TK and TCEs and the only ones who can control the access to and use of their intangible heritage.

5.4 A Template for Traditional Design Databases

As a by-product of the Project, a Template for Traditional Design Databases was developed ("the Template"). A Traditional Design Database is a tool through which the Indigenous people, local communities, tribes, and ethnic groups can communicate that they are custodians of their TK and TCEs and the only ones who can control the access to and use of their intangible heritage.

The original structure of the Template consists of two public pages - the Homepage and the Rights page - and four private sections - *People, Textiles, Motifs* and *Techniques*.

The Template can be licensed, based on a royalty-free and non-exclusive license agreement, to any Indigenous or local community, tribe or ethnic group interested in protecting and promoting their TK and TCEs ("the Beneficiary"), or any advocacy group legally representing a Beneficiary.

Personalising the Template requires cross-disciplinary expertise, dedicated training on legal protection mechanisms, ethnographic research tools, and technical guidance for populating the database. **Preliminary consultations** amongst all relevant actors from the community interested in developing their own Traditional Design Database **are compulsory** as part of the Free, Prior, Informed Consent (FPIC) process.

6. IMPACT AND SUSTAINABILITY



6.1 Self-Determination of the Oma Community in Laos

Before 2019 and the experience with Italian fashion company Max Mara, the Oma people of Nanam Village were unaware of the risks associated with cultural intellectual property theft. Involvement in the Process, being part of a cross-disciplinary Project team, and exposure to new information contributed to raising awareness in the community and equipped the community members with useful knowledge and tools.

The Oma have a strong sense of cultural identity and much of the outward demonstration of that is through their traditional dress. This was confirmed by community members during interviews. When asked: “What makes you Oma?” the first answer to the question was the wearing of their handmade traditional clothing.

When examining pictures of the Max Mara replicas, **a major criticism by Oma representatives was that motifs that are customarily applied on women’s headdresses were placed on the bottom of dresses**, near the feet, thus diluting the cultural meaning of the motif choice and placement. The Oma of Nanam Village also expressed dismay at the fact that the clothing was being sold for hundreds of dollars, with none of the financial benefits resulting from the commercial exploitation of their TCEs going to any Oma artisans or communities.

From a socio-cultural perspective, being treated as knowledge partners, engaging in community discussions regarding the legal protection and

When asked: “What makes you Oma?” the first answer to the question was the wearing of their handmade traditional clothing.

promotion of their cultural heritage, explaining to researchers and Project partners the use and meanings of motifs, and having decision-making powers in relation to the Database, created a sense of agency and self-determination. Their cultural knowledge is important to the Oma and they were able to do something to document, interpret, legally protect it, and ensure its survival. It also instilled a feeling of pride in being the first ethnic group in Laos to pilot this model and create something that would potentially help the whole artisan sector. The Oma have often felt that their identity has been subsumed by the large and well-known Akha group, and thus, embarking on this Project helped raise awareness of their culture. Young people interviewed also described a sense of pride in how the Oma were being recognised and their heritage valued.

From an economic perspective, the international publicity and national media coverage of the Project led to an increased demand for Oma hand-crafted goods and clothing. Several local fashion



Oma representatives from Nanam Village at the workshop to introduce Traditional Design Databases to more artisan communities in Laos.



TRADITIONAL ARTS
AND ETHNOLOGY CENTRE
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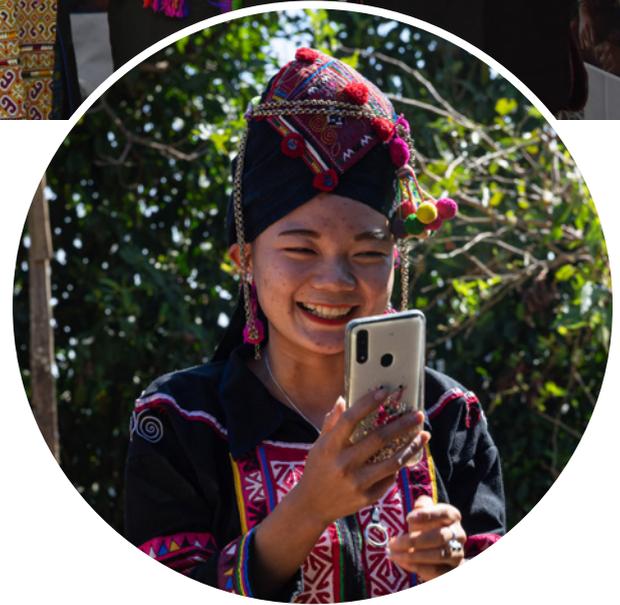
CULTURAL
INTELLECTUAL
PROPERTY RIGHTS
CENTRE



Artisans from the Yao Mun, Lu Mien, and Oma ethnic groups with their handmade textiles.

shows featured Oma pieces, and a Lao singer wore a ball gown made of Oma indigo fabric and embroidery at the Lao Handicrafts Festival in 2020.

Further, in Nanam Village, families had abandoned the growing of cotton in 2016, though many have stored raw cotton and woven rolls. It is labour-intensive and with the emergence of affordable factory-produced fabric, many felt it was no longer necessary to produce it themselves. However, with the renewed interest in their traditional crafts, the Oma people of Nanam Village began planting cotton again in 2021.



6.2 Stimulation of the Craft Ecosystem in Laos

The Project stimulated a great deal of debate and discussion within the culture and craft sector in Laos. Two panel discussions and workshops on Cultural Intellectual Property Rights were organised as part of the Project, with interest from small businesses, emerging local designers, and community organisations in how this issue affects their work, knowledge management, and incomes. At the 2020 Lao Handicrafts Festival (10-18 October 2020), there was a booth disseminating information about Cultural Intellectual Property Rights and almost 100 people attended the panel discussion organised by the Project on 14 October 2020, titled *Protecting Traditional Designs from Plagiarism*.

The Department of Intellectual Property was enthusiastic about the Database as a tool for protecting TCEs and associated TK, particularly as one of the ASEAN Intellectual Property Rights Action Plan 2019 - 2025 deliverables is the development of a network of Genetic Resources (GR) and TK databases for interested ASEAN Member States (Deliverable 19.3 of Initiative 19).

Throughout the Project implementation the partnership with the Lao Handicrafts Association (LHA) was also crucial to the sector recognising the importance of cultural intellectual property rights in Laos, particularly with Laos' strong traditional craft traditions and the number of rural artisans that rely on the sale of handcrafted products for supplemental income. A workshop for the presentation of the Database model, and its potential for replicability to other ethnic groups in Laos, was co-hosted with the Lao Handicrafts Association in Vientiane on 26 March 2021. Over 80 people from government, artisan communities, craft businesses, and NGOs attended. By a symbolic joining of hands, the Ministry of Information, Culture, and Tourism, the Ministry of Commerce and Industry (which includes the Department of Intellectual Property), LHA, and TAEC pledged to continue working on the cultural intellectual property protection for the artisans of Laos.

6.3 Alignment with the Sustainable Development Goals

This Project addresses directly seven out of the 17 SDGs, as follows:

SDG1 – NO POVERTY



Target 1.4 ensures that all men and women, particularly the poor and the vulnerable, have **equal rights to economic resources**, as well as access to basic services, ownership, and control over land and other forms of property.

The Project expressly recognises the unique and important role of ethnic groups and local communities in the global community and has obtained (and maintained) the free, prior and informed consent (FPIC) of the Oma people of Nanam Village throughout the lifecycle of the Project, holding effective and meaningful consultations in good faith and supporting the Oma in affirming their rights and custodianship of their TCEs. This has the potential to contribute to poverty alleviation in the region.

SDG8 – DECENT WORK AND ECONOMIC GROWTH



Target 8.9 implements policies to promote sustainable tourism which creates jobs, promotes local culture and products.

The Project aims at generating revenue streams for the beneficiary community by creating a tool for valorizing TK and TCEs. This will contribute to **enhancing self-sustainability for the Oma communities**.

SDG10 – REDUCED INEQUALITIES



Target 10.2 empowers and promotes the social, economic and political inclusion of all irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.

The Project advocates for the recognition of the cultural intellectual property rights of ethnic groups and supports the non-exploitation of the knowledge and cultural identity of vulnerable communities by treating them as knowledge partners. This contributes to **reducing economic inequalities and promoting meritocracy**.

SDG4 – QUALITY EDUCATION



Target 4.7 ensures that all learners acquire knowledge and skills needed to promote sustainable development, including among others through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship, and appreciation of cultural diversity and of culture's contribution to sustainable development.

The Project promotes the value of Oma culture and TCEs as a source of knowledge and equips the beneficiary community with a tool to sustain and further develop this knowledge and **ensure cultural survival of the Oma**.

SDG11 – SUSTAINABLE CITIES AND COMMUNITIES



Target 11.4 strengthens efforts to protect and safeguard the world's cultural and natural heritage.

Cultural heritage refers to both tangible and Intangible Cultural Heritage (ICH), the latter including TK and TCEs as well as the culturally-embedded sustainability practices of ethnic groups such as the Oma of Nanam Village in Laos.

The Project creates impact both at local community level and at global level by **strengthening global responsibility and enabling community resilience**.

The Oma hold knowledge to create culturally sustainable fashion.



SDG15 - LIFE ON LAND

Target 15.6 relates to fair and equitable sharing of the benefits arising from the utilization of genetic resources.

Genetic Resources (GRs) and TCEs are very closely connected. The Oma people in Nanam Village grow their own indigo and cotton plants, for a completely local and organic production of fabric.

The Project supports adopting legislative, administrative and policy frameworks to ensure fair and equitable sharing of benefits for TCEs and associated TK, contributing to **nurturing local ecosystems and biodiversity in the region.**



SDG17 - PARTNERSHIPS FOR THE GOALS

Target 17.16 enhances **global partnership for sustainable development** through multi-stakeholder partnerships that mobilize and share knowledge, expertise, technologies and financial resources to support the achievement of sustainable development goals in all countries, particularly developing countries.

The Project deploys cross-disciplinary expertise (ethnography, law, technology), inter-continental and multicultural team partnership, contributing to strengthening the craft ecosystem globally by creating a model tool with replicability for the benefit of Indigenous people, ethnic groups and local communities worldwide.

6.4 Global Reach

The premise of the advocacy work on the Project - that **Traditional Cultural Expressions are not in the public domain** - has been communicated through a global awareness campaign via social media platforms. Launched on 19 April 2021 to coincide with Fashion Revolution Week, the #NotPublicDomain campaign aimed to increase awareness, deliver tools, and engage with designers and fashion brands to stop cultural plagiarism. Over the course of the 9-day grassroots campaign on Instagram, TAEC gained 50 new followers and the campaign garnered over 6,600 impressions, 167 shares, and 40 saves (not sponsored or boosted). Shares and impressions were most notable on three distinct posts introducing the issue, why the Cultural Intellectual Property

Rights of artisans need to be recognised, and what can be done to protect those rights, Anecdotal data suggests the easy to follow campaign visuals were appreciated as a comprehensive guide for advocacy actions by artisans, educators and cultural activists.

The **Oma Case** and proposed **Solution** were publicly presented and discussed during Fashion Revolution Week 2021, in a Webinar on *Cultural Intellectual Property Rights and the Rights of Nature* organised by Fashion Revolution in collaboration with the Cultural Intellectual Property Rights Initiative®. Over 600 attendees tuned in to the live event and over 1.4K views were registered within three weeks after the event.



A panel discussion co-hosted by the Lao Handicrafts Association to discuss the importance of protecting Traditional Cultural Expressions in Laos.

7. CONCLUSIONS

The situation with the Oma and Max Mara reiterated the importance and challenge of protecting cultural intellectual property from misappropriation and plagiarism, particularly by international textile and fashion companies. International law has so far been ambiguous about rights to creative knowledge and work that is traditional and shared by a community and culture in the developing world. Thus, it is not uncommon for large international brands to harvest motifs, materials, and ideas freely from people that lack the educational, financial, and technological resources to have their custodianship recognised.

In the absence of an international legally binding framework, this Database model is a viable tool for ensuring a minimum level of legal protection of the Traditional Knowledge and Traditional Cultural Expressions of Indigenous people, ethnic groups and local communities.

It is time and resource intensive, requiring community consultations, research, legal advice, and technical support. A fundamental aspect of the approach is ensuring a community's interests are expressed and represented, that they understand the benefits and risks associated with the digital documentation, and that they receive support to manage the Database and control access to their knowledge.

A significant amount of knowledge has now been amassed through the process of conceptualising, creating, and testing the Oma Traditional Textile

The most positive scenarios will feature collaborations between designers and traditional artisans based on partnership and benefit-sharing.

Design Database©, and it is hoped that this will provide an avenue for other communities to protect their Traditional Cultural Expressions.

This collaborative model and the framework used can support communities and fashion companies to work together more equitably. The most positive scenarios will feature collaborations between designers and traditional artisans based on partnership and benefit-sharing. These produce inspiring work that invests in craftsmanship and communities, and helps keep them alive.



Oma women collaborating on a loom in Nanam Village.

FURTHER RESOURCES

Video Materials

What Happened? Oma vs. Max Mara.
ມີຫຍັງເກີດຂຶ້ນ? ເຜົ່າໂອມາ ຕໍານ ແມັກມາຣາ

The Oma of Laos and Their Traditional Textiles
ເຜົ່າໂອມາຂອງ ລາວ ແລະ ເຄື່ອງນຸ່ງແບບດັ້ງເດີມຂອງພວກເຂົາ

Why Do Traditional Designs Need Legal Protection?
ຍ້ອນຫຍັງຈຶ່ງຕ້ອງມີກົດໝາຍປ້ອງແບບລາຍດັ້ງເດີມ?

Other Resources

Local Contexts

Traditional Arts and Ethnology Centre

Intellectual Property Rights for Traditional Artisans in Laos

Cultural Intellectual Property Rights Initiative®

Fashion Revolution x Cultural Intellectual Property Rights Initiative®, 2021.
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Vilayphone Choulamany

Lao Handicrafts Association

Gabriel Kuperman

Voice Laos and Oxfam Laos

CONTACT US FOR

FURTHER INFORMATION

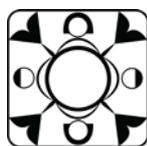
To learn more about [this solution](#) or work with CIPRI and TAEC to create a database for protecting Traditional Cultural Expressions contact:
ipadvocates@taeclaos.org

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