

THE ROLE OF LEGISLATION IN PROTECTING CULTURAL HERITAGE IN JORDAN

Sata 'Masa 'dah

Abstract

This study aims to investigate the strength of Jordanian antiquities law in protecting cultural heritage by analyzing the judgments of selected cases. Access to these cases was gained by means of www.qistas.com.

Jordan is famous for the diversity, uniqueness and depth of its cultural heritage starting from the Palaeolithic to the end of the Ottoman period. Because of this richness and the location of Jordan near the Holy Land the archaeological interest in Jordan began in approximately 1878. Christian missionary or individual archaeologists played a major role in documenting and protecting many archaeological sites in Jordan and Palestine (Alawneh *et al.* 2012).

During the Ottoman rule, the authorities recognized European interest in the cultural heritage of the Ottoman Empire, especially in the Levant. Antiquities law was improved to organize and protect antiquities within the Ottoman heartland, although few if any steps were taken to protect the cultural heritage of the Arab area. Indeed, and the façade of al-Mushattā palace was gifted to the German emperor during his visit to the area (Maafi 2009). During the British Mandate, all archaeological work was managed and held by foreigners. The director of the Department of Antiquities (DoA) was British and many of the schools working in the area had a biblical background, without any interest in the history of the indigenous people (Maafi 2009). Jordanian cultural heritage is the main components of Jordanian tourism, in recognition of the economic potential these archaeological assets hold (Strategy 2014-2018). The Ministry of Tourism and Antiquities (MoTA), by its Law No. 22 for the year 1988, plays an

important role in developing and presenting this legacy for tourists. Integration between stakeholders and the existence of an appropriate and applicable legislative system is an essential aspect of cultural- heritage management. The importance of legislation (Ababneh *et al.* 2016). Demas (2002) has emphasized administrative structures for heritage management. This article is the first study to examine real cases after the judgments were announced by the court. It aims, (1) to discover how the implementation of antiquities law can prevent violations and attacks against cultural heritage, (2) to examine the gaps and the weak points in the current law to avoid them so that these can be closed, and (3) also to consider the importance of stakeholder integration in the protection of cultural heritage.

Methodology

In order to conduct this study, twelve archaeological cases from across Jordan are reviewed and examined, in order to assess the extent to which judgments are with the antiquities law. Access to these cases was gained through the Qistas database (<https://qistas.com>), a huge data base of Arabic legislations and judgments.

we want that heritage is available for future research, education and public interpretation, we need laws to preserve it. Until the beginning of the twentieth century, Jordan was under the Ottoman rule. In 1923, the subsequent British Mandate Ottomans recognized the European established the department of Antiquities in order to protect ancient sites and to conduct excavation and conservation work in the country at that time (Harding 1967). A second legislation for protecting antiquities was issued in 1925 (Alawneh *et al.* 2012).

After independence, excavations were conducted by Jordanian archaeologists, with the Annual of the Department of Antiquities of Jordan being launched in 1950. Following the Arabization movement started by the late King Hussein, by which British officials were dismissed from government, the first Jordanian director for of the Department of Antiquities was assigned. After 1967, biblical and foreign institutions started to move to Jordan (Alawneh *et al.* 2012).

After 1970, national archaeologists started to work in Jordan and a Jordanian school of antiquities was established. These archaeological work was led by local archaeologists, and constituted a national narrative counter Israeli discourse concerning the biblical history of the region (Maafi 2009). Antiquities Law No. 21 for the year 1988 identifies antiquities as any moveable or immovable objects that date from before 1750AD and any part added to that object or rebuilt after that date, in addition to moveable or immovable objects that date after 1750AD and which the Minister requests to be considered an antiquity as published in the Official Gazette, as defined in the Law of Antiquities. Also, Article 3 of the law gives the Department the rights of execution, appraisal, administration, protection, maintenance, repair, preservation, beautification and display.

In the case of Iraq and Syria, antiquities and heritage are unified in one law with anything more than 200 years old being considered an antiquity, which is thus is managed according to antiquities and heritage law. According to MEGA- Jordan (the national heritage - documentation and management system [(www.megajordan.org)], that is to say a GIS-based inventory and management system for antiquities in Jordan there are more than 14,429 archaeological sites in the country. This huge number of a sites all over the country places more pressure and responsibilities on the department, as it the only responsible body for managing and protectin this huge legacy with its limited human and financial resources (Fakhoury 2014). The tourism law gives the Ministry of Tourism the authority to designate tourism sites, a designation which may overlap with antiquities sites (USAID Jordan Tourism Development Project). Strategic objective no. 3 of the 2014-18 strategy

for the management of Jordan's archaeological heritage focuses on the presence and enabling of an institutional and legal environment for archaeological heritage management. In this context, there should be redistribution in of roles between the DoA and MoTA which gives the former the right to control archaeological heritage resources and to coordinate with different government institutions regarding development planning (*e.g.* the USAID-funded) economic growth through sustainable tourism project).

The 2007-10 strategy for the management of archaeological heritage in Jordan highlights the need to improve the legislations governing heritage management in order to remove gaps, overlaps or ambiguity, and notes that the Department of Antiquities regulations should cover planning and development (JTDP -SI-YAHA).

Jordanian cultural heritage has been divided into two parts, in the recent part being termed 'heritage' and the distant past 'archaeology' (Abu Khafajah 2012). The is separation has been attributed to many reasons, including colonization (Ottoman; British) neglected the contemporary history (Abu Khafajah 2012). Another interpretation is that the separation served the interests of political elites in government. Furthermore, there hasn't been any pressure placed on the government from the Members of Parliament or academics to amend the antiquities law to include the material post-dating 1750AD, and in any case it's not a government priority. evidence the elimination of archaeology from the lives of present-day the Jordanian citizens is the subordination of the Department of Antiquities to the Ministry of Tourism and not, for example, to the Ministries of Education or Culture (Abu Khafajah 2012).

Abu Khafajah top-down system, considering local contexts and the intellectual and emotional interaction between local people and archaeological sites in Jordan. SWOT analysis of the management of the Jordan heritage demonstrates that there are many weaknesses facing the antiquities' management in Jordan, such as like: The overlaps, gaps and ambiguities in legislations, the lack of an integrated heritage site management system, and heritage conservation not being a national economic priority (SWOT ANALYSIS. YARMOUK).

Uzomoka (2014) concluded that colonized countries such as Australia and Czechoslovakia were late in protecting their cultural heritage, but in the case of - for example - Sweden and Denmark this process began as early as the 17th and 18th centuries, withy cultural- heritage legislation becoming nationally recognized. , He also emphasizes the importance of public education to regarding cultural heritage. Increasing of investments in Jordan has put a great deal of pressure on high urban cultural heritage, especially that which is post- dates 1750AD. not protected by the antiquities law owing to the absence of an effective and integrated legislative on frame work to: (1) prevent the violation of archaeological sites, (2)to protect the traditional urban fabric, and (3) stop the demolition of the traditional building's (MoTA legal frame work).

Discussion

According to Antiquities Law No. 21 for the year 1988, antiquities are defined as:

“Any movable or immovable object which was made, written, inscribed, built, discovered or modified by a human being before the year AD 1750 including caves, sculpture, coins, pottery, manuscripts and other kinds of manufactured products which indicate the beginning and development of science, arts, handicrafts, religions, traditions of previous civilizations, or any part added to that thing or rebuilt after that date.”

In this definition we can see that that cultural heritage is divided between antiquities and heritage, while in the other Arab countries like (e.g. Syria; or Iraq) any object more than 200 years old is considered an antiquities'. In order to deal with the shortcomings arising from this separation, the ministry of MoTA issued the Law for the Protection of Urban and Architectural Heritage No. 5 for the year 2005 in order to protect historical buildings and the urban fabric post-dating 1750AD.

In practice, it has been difficult to use these laws there was difficulty to movable cultural heritage more recent dating 1750AD, especially when it is difficult to prove that the object is older than in the aforementioned case of the two copies of the holy Quran.

The establishment of the Department of Antiquities was coeval with the establishment of the Emirate of Transjordan in 1921. However, the fact that the first law wasn't issued until 1925 suggests that t protection of the cultural heritage wasn't a national priority. Indeed, it should be developed to face the economic and urban development that the kingdom has witnessed.

Reviewing the antiquities law shows that in Article 26 there is no gradation of punishment's All the violations and attacks against antiquities and cultural heritage face a single penalty, to the law. “A punishment of not less than one year and not more than three years imprisonment and a fine not less than three thousand dinars, in proportion to the value of the antiquities, shall be imposed.” In the contrast, under Syrian antiquities law some punishments reaches 20 years in prison.

There is a lack of seriousness and sympathy with transgressor in the implementation of the penalties stipulated in the Jordanian antiquities law. This may relate to weaknesses and gaps in the current law that don't reflect the importance or value of cultural heritage.

Managing archaeological sites and world heritage sites is another important issue. The guide lines for managing world cultural heritage advises that the management of these sites should involve the local community in order to meet their needs - with the participation of all stake holders in the governance of these sites (ICCROM2014). In the case of Petra, a Jordanian icon and national treasure, the law should ensure that the needs of the local community are met and that education is offered to help with site protection and to reduce negative activities within the site.

The law designates the Department of Antiquities as the responsible body to protect and manage cultural heritage and to spread archaeological and cultural awareness between local communities support of that objective (ARTICLE 3). However, it doesn't explain how the spread of awareness might be achieved. Furthermore, there aren't any written regulations that reflect a national policy for cultural- heritage restoration and conservation except the 2015 regulations for archaeological projects in Jordan (DoA 2015).

List of Antiquities Cases with Associated Court Judgments

The case	Date and area	Court judgment	Antiquities law
Destroy or disfigure antiquities. The owner of Hala restaurants in Jerash moved antiquities and built it on another place	30/4/2014 Irbid	Irresponsibility Innocent was charged for violation against antiquity and not for destroying ,disfiguring or separating antiquities and the expert in his report proves the destroying of antiquities.	Article 26 » 22 « a- A punishment that is not less than one year and is not more than three years imprisonment and a fine that is `1` not less than three thousand dinners. And for the cost of the antiquities, shall be imposed on anyone who: Destroys, ruins or disfigures any antiquities including any change of their features, separating a part thereof, or transforming them.
Trade in antiquities 2 persons were having ancient Ottoman copies of the holly Quran	9/4/2006 `Ammān	Not guilty The expert cannot prove that its dated between 1500-1700 to consider it as archaeological object even its very important and precious. This is because of the gap and the separation of the law between antiquities and heritage.	- Trades in antiquities, assists, participates in, interferes with or incites others to do so.
Prospects for antiquities	19/1/2018 At-Ṭafilah	Irresponsibility	Prospects for antiquities without obtaining a license by virtue of this Law.
Handing antiquities to the department	24/9/2017 at-Ṭafilah	Irresponsibility The expert said that the objects are not with high archaeological value and they can be found on the roadside and in wades near archaeological sites or inside them without any need for digging or excavating	Refrains from or is in default of handing over the antiquities which he discovered or came across to the Department, whether or not he holds license, within the prescribed period of time.
Trade in antiquities Archaeological objects` were found in a yellow taxi in `Amman	29/6/2005 `Ammān	Innocent They department experts` report did not prove that the driver was trading in antiquities. And the judge didn`t charge him for acquisition antiquities	Trades in antiquities, assists, participates in, interferes with or incites others to do so , - Moves or disposes of any antiquities in violation of this Law including hiding or smuggling them.
Violation against antiquities The owner of hala restaurant destroy and moves antiquities from its original place	23/3/2014 Jarash	Innocent Even though the department expert and the witness proves that he moved and destroy the antiquities but the court did not charge him for destroying or disfiguring antiquities	- Destroys, ruins or disfigures any antiquities including any change of their features, separating a part thereof, or transforming them.
Prospects for antiquities. 17 persons were caught by the site`s guard excavating in archeological site	13/9/2006 al-Karak	Innocent The guard had changed what he said that he didn`t saw them working inside the site.	The Directorate of Archaeology should not be asked for permission for their activities.

Stealing Antiquities The suspect an iron digger from Irbid museum	28/3/2012 Irbid	Innocent The witnesses heard but didn't see the suspect doing it	Article 26-8 - Steals pieces of antiquities.
Prospects for antiquities Two persons were caught excavating and digging inside one house	9/1/2018	Irresponsible The place where they were caught is not considered as an archaeological site according to the Jordanian antiquities law Without depending on a report from an expert person in the department.	Article 26 -1 The Directorate of Archaeology should not be asked for permission for their activities.
Pay compensation for land using	3/6/2015	Agreed	Article 5 d- The ownership of the land will not entitle the landlord to own the antiquities present on its surface or in its subsurface or dispose thereof nor shall it entitle him to prospect for antiquities therein. e- It is permissible to appropriate or purchase any real estate or antiquities which the Department's interest requires the appropriation or purchase thereof
Destroys, ruins or disfigures any antiquities including any change of their features in the case a young man from Petra was caught by Petra park guard fixing a metal door and window in the entrance of one of the caves inside Petra archaeological site. The bedouin people believes that they own these caves and they have the right to use them as they were born there even though the government ask them to leave the site and gave them a land outside Petra to build houses	Petra 2017	The person admitted that he was guilty and he was punished according to the antiquities law - A punishment that is not less than one year and is not more than three years imprisonment and a fine that is not less than three thousand dinners. But the judge stopped the implementation according to the case conditions and the history of the person.	Article 26_ » 22 « a- A punishment of not less than one year and not more than three years imprisonment and a fine not less than three thousand dinners, in proportion to the value of the antiquities, shall be imposed on anyone who: Destroys, ruins or disfigures any antiquities including any change of their features, separating a part thereof, or transforming them
Two persons were caught trying to steal antiquities from Petra archaeological museum, according to the case the two boys were seen by the museum employee near on show case and they were hiding something inside their clothes, but when he checked nothing was stolen from the museum.	Petra 2018	They were punished according to Principles of criminal trials and not to the antiquities law .the antiquities law talks about who steal antiquities and there is nothing about trying to steel antiquities.	Article 26 » 22 « a- A punishment of not less than one year and not more than three years imprisonment and a fine not less than three thousand dinners for whom who steal antiquities

Conclusion

From the above discussion we can observe that there is a lack of seriousness in implementing the law to protect the antiquities, the despite cultural heritage being a national priority at the highest level. The Department of Antiquities with its limited human and financial resources can't manage and protect this vast legacy alone. It should be raised to Ministry level, so that antiquities and the heritage can be brought under one umbrella and one law. The law should be revised in light of court judgments to remove any drawbacks, fail points of failure or, weaknesses, and to ensure holistic site management that is integrated with the local community meets their needs. The law should include the national polices to spread cultural awareness, as well as the procedures and guide lines for restoration and conservation of heritage sites. The law must require that any building permission issued at the governorate levels is signed off and approved by the relevant antiquities directorates, to ensure the protection of the archaeological sites and the establishment of proper buffer zones around them.

Bibliography

- Abaneh, A. Darabseh, Fakhrieh M. Aloudat, Areej Shabib.
2016 The Management of Natural and Cultural Heritage: a Comparative Study from Jordan. *The Historic Environment: Policy and Practice* 7 (1): 3-24.
- Abu Khafajah, S. Konwest, Elizabeth. McGil, Dru.
2012 Approches to Material of the Past in Jordan: Highlighting the Seventh World Archaeological Congress. *Anthropology News* 53: 22-23. From Archaeological Sites to Cultural Heritage in Jordan :Toward a Sustainable Approach. https://www.researchgate.net/profile/Shatha_Abu-Khafajah.
- Alawneh, F., Alghazawi, R. and Balaawi, F.
2012 Culture Heritage in the Idea of Jordan Museums. *Asian Social Science* Vol. 8, No. 7: 104-109. Analysis of jurisdictions of MOTA and DOA in management of Antiques and Tourist sites /USAID – Jordan tourism Development Project . http://pdf.usaid.gov/pdf_docs/PNADL794.pdf. access date 15/3/2018.
- Demas, M.
2000 Planning for Conservation and Management of Ar-

chaeological Sites: A Values-based Approach. Pp. 27-54. Management Planning for Archaeological Sites. Los Angeles: Getty Conservation Institute. <https://www.bcin.ca/bcin/detail.app?id=394317>.

Department of Antiquities of Jordan

The Strategy for Management of Jordan's Archaeological Heritage 2014-2018, Jordan Tourism Development Project, USAID Economic Growth Through Sustainable Tourism Projects.

Department of Antiquities of Jordan.

Law of Antiquities-Jordan ,<http://publication.doa.gov.jo/Publications/ViewPublic/203> access date 5/3/2018.

Iraqi Antiquities and Heritage law

www.iraqi-ig-law.org. access date 27/2/2018.

Maffi, I.

2009 The Emergence of Cultural Heritage in Jordan: The Itinerary of a Colonial Invention. *Journal of Social Archaeology* 9(1): 5-34.

Mega Jordan

The National Heritage Documentation and Management System. <http://www.megajordan.org/Media/images/mega-banner-left.gif>.

Protection of Architectural and Urban Heritage Law

No. 5 of the year 2005. www.wipo.int/edocs/lex-docs/laws/ar/jo/jo051ar.

Uzomaka, P.

2014 Archaeology and Heritage Legislation: A Comparative Study, Research on Humanities and Social Sciences. www.iiste.org. ISSN (Paper) 2224-5766. ISSN (Online) 2225-0484. (Online) Vol.4, No.8.

Fakhoury, L.

2014 Unimed Cultural Heritage: The Cultural Heritage Legislation in Jordan. A Strategy for the Management of the Archaeological Heritage in Jordan 2007-2010. Jordan Tourism Development Project (SIYAHA), http://www.doa.gov.jo/uploads/Editor_attach_1384082766_5385.

Swot Analysis

Yarmouk - archeomedproject.eu.
www.archeomedproject.eu/.../swot-analysis-yarmouk.

Syrian Antiquities law.

www.dgam.gov.sy/index.php. access date 1/3/2018.

المراجع العربية

- <https://www.mota.gov.jo/Ar/List>
نظام رقم 23 لسنة 2014 نظام ادارة المواقع السياحية لسنة 2014
تاريخ الدخول 15/3/2020 .
قسطاس محرك البحث القانوني
<https://qistas.com/legisla-tions/jor/view>
تاريخ الدخول 25/2/2018