

Sultan Qaboos University  
Journal of Arts & Social Sciences



جامعة السلطان قابوس  
مجلة الآداب والعلوم الاجتماعية

## Safeguarding Oman's Cultural Heritage: Legislative Perspective

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Date received: 05/01/2023

Date of acceptance: 29/06/2023

Volume (14) Issue (2), August 2023

# Safeguarding Oman's Cultural Heritage: Legislative Perspective

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## Abstract

Oman's cultural heritage is protected by a number of laws, the most important of which is the Cultural Heritage Law which was issued in 2019 as a replacement for the National Heritage Protection Law that was in force since 1980. This paper reviews the protection and management of various types of cultural heritage under both these laws and other relevant national legislative tools. It discusses the aptness and adequacy of these laws to manage this heritage in light of the unprecedented development that the country has been witnessing since 1970. The study concludes that there are a number of aspects that need to be considered for the refinement and reformation of extant laws. For example, the legal and practical challenges that can arise from having a single law must be considered to manage and protect all types of cultural heritage. Also, the practicability of having two different organizations to manage both tangible and intangible heritage must be assessed. Finally, the study proposes to include the protection of cultural heritage in laws that have a direct and indirect relationship. Finally, it suggests the reconsideration of the separation of the bodies concerned with heritage from those concerned with culture.

Keywords: Sultanate of Oman; cultural heritage; tangible heritage; intangible heritage; law.

## صون التراث الثقافي العماني: منظور تشريعي

محمد البلوشي، نوال الهوتي

### الملخص

يحمى التراث الثقافي العماني بواسطة عدد من القوانين أهمها قانون التراث الثقافي الذي صدر عام ٢٠١٩م كبديل لقانون حماية التراث القومي الذي كان سارياً منذ عام ١٩٨٠م. تستعرض هذه الورقة الكيفية التي يحمى بها ويدار مختلف أنواع التراث الثقافي بموجب هذين القانونين والأدوات التشريعية الوطنية الأخرى ذات الصلة، وتناقش مدى ملاءمة وكفاية هذه القوانين لإدارة هذا التراث في ظل التطور غير المسبوق الذي تشهده البلاد منذ عام ١٩٧٠م. خلصت الدراسة إلى أن هناك عدداً من الجوانب التي يجب مراعاتها في هذا الجانب. على سبيل المثال، أهمية النظر في التحديات القانونية والعملية التي يمكن أن تنشأ من وجود قانون واحد فقط لإدارة وحماية جميع أنواع التراث الثقافي، وتقييم الجدوى من وجود هيئتين حكوميتين مختلفتين لإدارة كل من التراث المادي والتراث غير المادي. وأخيراً، توصي الدراسة بإدراج حماية التراث الثقافي في كافة التشريعات ذات العلاقة المباشرة أو غير المباشرة بهذا التراث، والنظر في موضوع الفصل القائم بين الهيئات المعنية بالتراث وتلك المعنية بالثقافة.

الكلمات المفتاحية: سلطنة عُمان؛ التراث الثقافي؛ التراث المادي؛ التراث غير المادي؛ القانون.

## Introduction

The Sultanate of Oman has a rich cultural heritage that extends from the Stone Age to the present time. This cultural richness reflects the country's environmental diversity that includes plains, mountains, deserts and coasts, each of which has formed a different cultural pattern. This cultural heritage, both in its tangible and intangible forms, has demonstrated man's adaptation to his environment for decades, in addition to his interaction with the cultures that surround him, such as those of ancient Iraq, Persia, Dilmun, the Indus Valley and Africa. Between the mid-17th and mid-20th centuries, Oman was a major commercial and maritime power that extended across the coasts of Asia and Africa. However, it later declined, and witnessed isolation from the world (Bhacker, 2002). Throughout that period, the country lacked institutions dedicated to the preservation of cultural heritage. After Sultan Qaboos came into power in 1970, Oman witnessed an unprecedented development and openness to the world.

This was fuelled by the large revenues received from the export of crude oil, which led to a major transformation in all aspects of life in Oman. For example, the acceleration of the development projects, especially those related to infrastructure such as paved roads and airports, led to the destruction of considerable parts of the tangible heritage in urban and rural areas alike (Al-Belushi, 2008; 2014). This heritage has become vulnerable to other risks such as urban encroachment and its associated construction activities, the uncontrolled reutilization of old structures and buildings, and risks that result from modern agricultural practices. These risks have led to the exposure of parts of the heritage to total or partial destruction, disappearance or weakening. An example of such risks is the urban encroachment of the archaeological sites of Bawshar (Hesein & Al-Belushi, 2023), and several others related to the construction of highways, such as the highway linking Muscat with Ad Dakhiliyah (El-Mahi & Ibrahim, 2003).

The risks have also affected several elements of intangible cultural heritage such as oral traditions and expressions, social practices, performing arts, and traditional knowledge and craftsmanship (examples of these risks can be seen in: Chatty, 2016; Damlujji, 1998; ElMahi & Ibrahim, 2003). These elements

have primarily been affected by the lack of traditional knowledge and skills being passed down to new generations. This situation was fuelled by the migration of people (especially youth) in search of work from rural areas to Muscat and other major cities.

These risks led the government to promulgate the National Heritage Protection Law (NHPL) in 1980 (Royal Decree, 6/1980)—the first law devoted entirely to the protection of cultural heritage. This law lasted nearly 40 years until it was replaced in 2019 by the Cultural Heritage Law (CHL) (Royal Decree, 35/2019)<sup>1</sup>. In addition to these two laws, a number of royal decrees that indirectly concerned cultural heritage were issued over the past 50 years.

This paper reviews the most important cultural heritage laws which were issued from 1970 until the end of March 2022 in Oman. It focuses on the CHL; the cultural heritage protection it offers; how it handles the registration, survey, and excavation of cultural heritage; and, the offences it prohibits and penalties it prescribes. It also discusses some of the issues that Omani cultural heritage management may face as a result of their reliance on the CHL—this is expected to provide legal protection for all types of the diverse cultural heritage of the country. The paper also reviews other laws that have direct and indirect relationships with Omani cultural heritage. Only a few studies have examined cultural heritage legislation in Oman thus far. Gugolz (1996) reviewed the NHPL and its role in protecting Oman's cultural heritage. He concluded that its scope is very broad and that it 'differs from the legislation of the other Gulf States regarding the detailed and distinct mechanisms of protection' (p. 297). Al-Belushi (2014) assessed the Omani archaeological resource legislation. He found that 'Issuing the NHPL in 1980 reflects the Omani Government's early awareness of the importance of protecting the country's national heritage' (p. 48). He has also found that the NHPL has not been amended since its promulgation and the issue of archaeology protection is absent from relevant national laws, especially those related to the environment, municipalities, mining and tourism. Finally, he proposed an assessment of all legislative instruments governing archaeological practice in Oman and called for a review of the NHPL. Khalil and Nasr (2021) studied the development of the legal framework for the management of the Bahla Oasis, a

World Heritage Site. They aimed to study the development of heritage legislation in Oman over the past five decades. They analysed the CHL against the UNESCO WHC recommendations as well as the requirements of the World Heritage Operational Guidelines (WHC-OGs), in order to identify the impact of this development on the management of Bahla Fort and its surrounding oasis. They concluded that recent developments of this legislation 'shifted from a "protection approach" to a "management approach" by adapting WHC-OGs along with the WHC' (p. 18). They also concluded that the Bahla Management Regulation along with the CHL facilitated the approval and implementation of the management plan of Bahla Fort Site, and that the issuance of such a special regulation 'allows customizing the national legislations to deal with local problems of the site more effectively' (p. 18). Thus, the current study is significant, in that it is the first to provide a comprehensive review of the legal framework that protects the various components of cultural heritage in Oman. Its significance also stems from the fact that it discusses the aptness and adequacy of these laws to manage this heritage in light of the unprecedented development that the country has been witnessing since the beginning of its developmental growth in 1970.

It surveyed and reviewed the laws, regulations, and ministerial decisions pertaining to cultural heritage as published in the *Official Gazette* between 1970 and July 2022. It also surveyed related documents, such as the international conventions signed by the Sultanate with regard to cultural heritage protection in order to identify the points of convergence and divergence between them and Omani national law.

### **The National Heritage Protection Law (NHPL)**

The promulgation of the NHPL—issued by a Royal Decree (1980/6) in 1980—highlights the government's early awareness of the importance of protecting the country's cultural heritage from the unprecedented threats of the modern development that began in the 1970s (Al-Belushi, 2008; 2014). The NHPL protected tangible heritage. It did not address intangible heritage (except for a reference to some movable cultural properties that belonged in one way or another to intangible heritage under Article 2, Clause d). This may have been due to international concerns that surrounded the protection of intangible heri-

tage emerged rather late. The NHPL was issued 23 years before the 2003 UNESCO Paris Convention for the Protection of the World Intangible Heritage, to which Oman became a party in 2005 (Royal Decree, 56/2005).

The NHPL addressed the registration of immovable and movable cultural properties. It included chapters bearing the following titles: 'Registered Antiquities' (Articles 5-14), 'Preservation, Conservation, Restoration and Visiting of Registered Antiquities' (15-19), 'Registration of Movable Cultural Properties' (Articles 31-36), 'Protection of Clusters of Buildings and Sites' (Articles 42-48). However, this law did not define registered property; it only stated in Article (5) that the Minister may decide, on his own or at the request of the owner, that any cultural property of extraordinary significance from the point of view of history, art or science is considered registered cultural property. Article (8) stipulated that the ministry should prepare an official list of registered properties, which would be constantly updated.

Article (9) also stipulates that any person who destroys, demolishes, moves, alters, distorts, or performs any act that results in the loss of any registered cultural property or damage to it shall be fined or imprisoned. The NHPL stipulated that the registration process is not limited to public cultural property, but also included private properties. The NHPL requires every owner of a registered property to take the necessary measures to preserve and conserve it (Article 15).

With regard to movable cultural property, the NHPL offered the Ministry the right to consider "every movable cultural property of great historical, artistic or scientific importance and whose loss constitutes a great loss to the national heritage" as a registered movable cultural property (Article 31). The NHPL also stipulates that the Ministry shall prepare a constantly updated list for each registered unit of cultural property (Article 32). It considers movable cultural property owned by the state non-negotiable, and the right to own it is not subject to prescription or otherwise. What is owned by individuals may be sold, but only after the owner informs the Ministry of this at least two months before the sale. The Ministry may use its right to pre-emption during that period (Article 36).

Despite this, the Ministry has not established a "registration system" for the cultural properties—whether

movable or immovable —nor did it issue explanatory guidelines about the registration process. All cultural items and sites were treated equally<sup>2</sup>. There was no such entity as a ‘registered property’—the NHPL did not provide a specific and clear definition of the term ‘registry’, and did not specify the criteria for the selection of registered items. The lack of an executive regulation that explains this law also contributed to this situation. The NHPL remained in force for about 40 years until it was replaced by the CHL. It was never amended since its promulgation despite the rapid social and economic changes that the country witnessed in that period (Al-Belushi, 2014). However, this law was appropriate for Oman in the 1980s. During that decade, Oman witnessed the continuity of basic infrastructure projects; such as roads, airports, schools and hospitals; that had begun in the seventies and were distributed in various urban and rural areas of the country. These projects did not have a significant negative impact on the country’s cultural heritage, given that they are limited in terms of size and geographical distribution.

In the 1990s, substantial changes in the country encouraged the amendment of the law. The Sultanate sought to overcome the global crisis of low oil prices that occurred in the 1980s by diversifying its economy and not relying entirely on oil revenues. Thus, in 1995 the government set the future vision for the Omani economy (Oman Vision, 2020)—some basic productive sectors such as fishing, agriculture and tourism would be developed. Activities related to these sectors, as well as extensive development projects that have occupied large areas of land, have threatened the country’s cultural heritage.

### **The Cultural Heritage Law (CHL)**

The CHL was issued by Royal Decree 35/2019, which also repealed the NHPL (Article 3). The decree stipulated that the executive regulations of the CHL will be issued by the Ministry of Heritage and Tourism (MHT) within a year of the law’s promulgation. The CHL states that the MHT is responsible for the implementation of its provisions and for the management and development of all archaeological, historical, and cultural sites and/or projects (Article 6 of Royal Decree, 41/2020). When it was issued in 2019, the decree stated that the MHC is responsible for the country’s cultural heritage; following this, changes were made

to the Omani Ministries’ names and responsibilities. Accordingly, the MHC was renamed the MHT (Royal Decree, 91/2020), and the ‘Culture Sector’ moved from the MHC to the Ministry of Culture, Sports and Youth (MCSY) (Royal Decree, 87/2020).

Thus, the heritage and culture sectors were administratively affiliated with two different ministries. Whereas the MHT handles tangible cultural heritage, the MCSY handles intangible cultural heritage. Prior to that, the Royal Decree 41/2020 repealed Article 6 of the CHL, which stated that the ‘The Office of His Majesty the Sultan’s Adviser for Cultural Affairs (OHMSA-CA) undertakes the management and development of archaeological, historical, and cultural sites and projects that it supervises’, replaced it with the following statement: ‘The Ministry<sup>3</sup> [MHT and its predecessors] undertakes the management and development of all archaeological, historical, and cultural sites, and projects’ (Royal Decree, 41/2020)<sup>4</sup>. An overview of this law and its provisions is presented below.

### ***Definitions and geographic and chronological scope***

The CHL defines cultural heritage as ‘everything of cultural heritage significance, tangible or intangible, including monuments, historical cities, traditional villages, old *harat* [historic building groups], literature, and languages’ (Article 1 Part g). Although it does not define cultural heritage, it exemplifies its two types; tangible and intangible. The CHL specifies a chronological scope of 100 years or more for any monument or building to be considered a part of Oman’s cultural heritage (parts r and s of Article 1). The NHPL prescribed a chronological scope of 60 years (Article 2 parts c and d). The widening of this scope can be justified by the increase in the volume of archaeological explorations with regard to tangible heritage, and the increased institutional and societal awareness of the importance of preserving intangible heritage; this was especially after the Sultanate’s ratification of the UNESCO Convention on Intangible Cultural Heritage (Royal Decree, 56/2005) in 2005.

CHL applies to both the Omani and non-Omani cultural heritage present on the territory of the Sultanate (Article 2). This is the first time that Omani law referred to the non-Omani cultural heritage present in Oman. This confirms the Sultanate’s intention to align its laws with the UNESCO Conventions. However, the allusion is fleeting and offers no details, especially



considering the associated legal, political, and cultural complications. Among the most important of these is with regard to the processes of the export and import of that heritage, and the related claims by the countries, entities or individuals to whom it belongs. Additionally, there are also other complications related to the determination of who is responsible for the preservation, preservation and use of that heritage—executive regulations that include further details are expected to be issued later.

Some of the provisions of CHL have been developed to protect certain types of natural heritage, such as minerals and geological objects, in addition to animal and plant specimens. This is exemplified under Article 8 of the CHL, which enumerates the categories that can be considered movable cultural heritage. Among them are 'rare collections and models from the animal and plant kingdoms, minerals or anatomy, and other important objects related to palaeontology' (Part a), and 'any part or piece of a meteorite' (Part e). Moreover, the Royal Decree (37/2019) transferred the jurisdiction over the preservation of geological heritage to the MHC from the Public Authority for Mining. Despite the inevitable interconnection between the cultural heritage and the natural heritage, a large part of the latter, specifically geological heritage, is distinct from the former—it was neither created modified by man. Furthermore, the CHL defines cultural heritage as 'everything of cultural heritage importance, whether tangible or intangible, including archaeological and historical cities, traditional villages, ancient settlements, literature and languages.' On the other hand, CHL did not define 'natural heritage'.

The CHL's condition is that the elements of natural heritage mentioned above must have 'cultural heritage importance'. However, this raises a concern about the natural heritage that is unrelated to humans, such as fossils (e.g., dinosaur bones). The law does not define 'cultural heritage importance'. Therefore, its interpretation is unclear, especially as the Sultanate has other laws to protect the natural environment, such as the 2001 Law Protecting the Environment and Controlling Pollution (Royal Decree, 114/2001). Will this overlap in responsibilities affect the management of 'natural heritage', which is managed by other governmental institutions like the Ministry of Agricultural and Fisheries Wealth and Water Resources (MAFWWR), and

the Environment Authority? The traditional irrigation system of *aflaj*<sup>5</sup> in Oman is, for example, managed by the MAFWWR (Royal Decree, 39/2017), which has included five such irrigation systems on the UNESCO World Heritage List in 2006 (UNESCO, 2022).

### **Ownership of cultural heritage**

The CHL includes articles related to the state ownership of cultural heritage and regulation of the legal and procedural aspects related to the assimilation of public and private ownership over different types of cultural property (Articles 11, 12). Article 11 states that 'Omani cultural heritage is the public property of the state, unless its ownership is proven by another person'. The CHL allows for the private ownership of heritage. Article 12 stipulates that 'the immovable cultural heritage existing on the surface of the land is considered the property of the owner of the land, provided that the land is registered in his name in the Land Registry,' and that 'the movable cultural heritage existing on the surface of the land is public property of the state, unless its ownership is proven by someone else.' Thus, in the event that cultural property is discovered in lands and sites owned by individuals and non-governmental entities, such individuals and non-governmental entities are entitled to own such property when they prove their ownership over the land on which these properties are located. However, the CHL also states that 'the tangible cultural heritage found below the surface of the earth is the public property of the state' and does not make any exceptions, as is the case with immovable and movable heritage found on the surface of the earth.

CHL sells, buys, borrows, lends, exports, imports, and invests in both tangible and intangible cultural heritage. It states that these activities cannot be practised without Ministry permit, that private cultural heritage must be managed by the owner under the supervision of the Ministry, and that it may not be operated or invested in except after obtaining the approval of the Ministry (Article 20). Thus, any practice pertaining to all categories of cultural heritage must be approved by the Ministry despite private.

### **Registration**

CHL includes provisions for the creation of a 'Registry' of Omani tangible cultural heritage where all cultural heritage that meets the criteria concerning its histori-

cal, aesthetic, scientific, social, symbolic, informational, and/or rare value is recorded (Article 34).

The current registry differs from the old 'Inventory' under the NHPL; the CHL divides the heritage into public and private, and the registered heritage into three classes according to the values associated with it. The NHPL treated it as a single unit, and a registration system was not in place for the entire period that the law was in force. All that existed in that period were databases in which sites and objects were documented in a traditional manner; it lacked consistency and a capacity to retrieve information easily (Al-Belushi, 2011; 2014). The NHPL term 'registration', which was expected to provide special protection and treatment for registered objects, was not implemented; a list of registered sites, monuments, and plots was not established. Rather, all sites and monuments were treated equally except for some cultural properties that received special attention due to their artistic, political, and/or cultural values (Al-Belushi 2012; 2014), as is the case with castles, forts, and historical buildings in Muscat and the Omani world heritage sites.

CHL does not indicate the purpose of dividing cultural heritage into three classes, nor does it highlight the differences among these classes. It states that this issue will be determined by the executive regulations of the law. Articles 36 to 38 explain how individuals may record their cultural properties in the 'private part' of the Registry. The Ministry may amend or cancel the entry of properties from the Registry on its own or at the request of the property owner (Article 37). No action may be taken on the registered cultural heritage without the approval of the Ministry (Article 38). The CHL attends more to registered heritage. The activities of the owners of registered private heritage are governed by the approval of the Ministry. Private owners of cultural heritage must apply for its inclusion in the Registry; however, the benefits and incentives that they may get from registering their properties are not spelled out by the CHL.

The CHL requires the Ministry to conduct a general survey of all intangible Omani cultural heritage in order to identify, document, and disseminate the information. The Ministry should create a 'List' to maintain an inventory of the elements of the intangible heritage in partnership with concerned individuals, groups, practitioners, and others interested in intangible cul-

tural heritage (Article 31). The CHL pays attention to the participation of bearers of intangible heritage and those interested in it in the process of documentation and creation of the List. However, it did not refer to this type of participation vis-à-vis tangible heritage.

### ***Archaeology survey and excavation***

The CHL regulates archaeological survey and excavation activities and the resulting movable cultural heritage. Like the NHPL, it states that 'the Ministry has the exclusive right to survey and excavate antiquities in the Sultanate,' and that 'no survey and excavation work may be carried out without obtaining a permit from the Ministry' (Article 39). Article 40 states that 'the Ministry has the right to conduct surveys and excavations for antiquities in privately owned lands after notifying the owner of such antiquities,' 'provided that it commits to returning the land to its original condition' after excavation.

The Ministry has 'the right to expropriate any immovable cultural heritage or land containing cultural heritage for the public benefit in return for fair compensation' (Article 41). To implement this, the government has used the Law on Expropriation for the Public Benefit (Royal Decree, 64/1978) since the late 1970s. It facilitates the implementation of development and rehabilitation projects for historical and archaeological sites, especially those located in urban centres of cities and villages crowded with old buildings. These projects include those that aim to rehabilitate and develop the Muttrah Fort (Royal Decree, 4/2009) and the archaeological site of Salut Fort in the Wilayat of Bahla (Royal Decree, 8/2016).

Articles 43 to 52 of the CHL empower the Ministry to expropriate any movable cultural heritage for public benefit in exchange for fair monetary compensation. The CHL regulates movable cultural heritage collected during surveys and excavations. It abolished Part (b) of Article 22 of the NHPL, which allowed the archaeological excavators to have a limited number of objects obtained from excavations if they are identical to 'other objects found at the same excavation and may be considered dispensable' (Royal Decree, 6/1980).

### ***Protection of cultural heritage***

The CHL does not differentiate between individual sites and monuments, and groupings of buildings or

artefacts, as was the case with the NHPL. This may be because of the broad nature of the CHL. The CHL protects cultural heritage (registered and unregistered) from various forms of damage, mutilation, alteration, illegal sale and purchase, theft, and smuggling (Article 53). It does not protect the visual field of the sites, as was the case in the NHPL (see Articles 45 and 47 of the NHPL). However, Article 53 of the CHL prohibits the damage of any cultural monument, its site, or surrounding areas.

The CHL addresses the protective roles that owners of private heritage must perform with respect to the cultural property in their possession; Article 15 states: 'The Ministry may provide material and moral incentives to anyone who contributes to a work that would preserve cultural heritage.' The CHL states that owners of heritage buildings must maintain and preserve them without changing their basic features (Article 56), provided that the Ministry shall bear tangible cultural heritage restoration costs in whole or in part at its discretion, or at the request of its owner or possessor (Article 57). Protection is also jointly undertaken by the Ministry and private owners of the heritage.

The CHL protects cultural heritage discovered during construction projects. It requires that 'anyone who undertakes any construction works, shall in case of finding any antiquities or any signs of the existence of cultural heritage, immediately cease work, and notify the Ministry of this within a maximum period of 48 hours' (Article 55). Thus, the Ministry must take necessary measures to preserve this cultural heritage, within 60 days from the date of its notification. If this period lapses without intervention from the Ministry, the person concerned may continue the construction work, and shall be compensated for any damages if he is entitled (Article 55).

The importance of this protection stems from the fact that Oman is one of the most rapidly developing countries in the world (UN, 2019). Many archaeological and historical sites risk degradation and decay due to accelerated development projects and urbanisation. The archaeological sites of Bawshar, located at the heart of Muscat are among those that have been exposed to such risk (Al-Belushi & ElMahi, 2008).

Finally, the CHL protects all Omani cultural heritage (both public and private) that has been illegally ex-

ported outside the country. It requires the Ministry to take necessary legal measures to retrieve the public cultural heritage that has been exported illegally (Article 59). It also requires the Ministry to assist the owner or possessor of any private Omani cultural heritage in order to retrieve ownership or possession; this demonstrates that legal export and import is possible. The CHL is thus compatible with the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which the Sultanate acceded to in 1977 (Royal Decree, 69/1977).

### ***Offences control and administrative penalties***

Chapter 6 of the CHL focuses on controlling offences and identifies ways to deal with them administratively and judicially (Articles 64-68). It permits 'the Ministry's employees who have enforcement status to enter heritage buildings or cultural heritage sites after obtaining permission to inspect them from the competent authority' (Article 65). It also requires the owner or possessor of cultural heritage to enable Ministry employees with enforcement status to exercise their competences (Article 65). Conferring enforcement status on some of the Ministry's employees has given the Ministry flexibility in terms of controlling offences that threaten cultural heritage. For example, if the Ministry is made aware of a person's illegal possession of cultural heritage, it must obtain permission to seize it and follow related legally prescribed procedures (Article 67).

### ***Penalties***

The CHL lists the penalties that should be imposed on those who commit crimes and offences against Omani cultural heritage. Article 69 states: 'Without prejudice to any more severe penalty in the Penal Procedure Law or any other law, the crimes set forth in this law shall be punished with the penalties stipulated therein.' The penalties under the CHL are more severe in terms of imprisonment and fines when compared to those under the NHPL. Whereas the maximum punishment under the NHPL was imprisonment for 1 year and a fine of 200 Omani Rials, that under the CHL is imprisonment for 3 years and a fine of 50,000 Omani Rials. This reflects the increasing concerns regarding the protection of Omani cultural heritage.



### **Cultural heritage under other national laws and regulations**

Oman's cultural heritage is protected by a number of other laws and regulations, primarily by the Basic Statute of the State (Royal Decree, 6/2021), which represents the Constitution and basic legislative framework from which all other national laws and policies originate. Article 16 of the Statute emphasises the importance of preserving identity, consolidating cultural and spiritual values, and promoting arts and literature. It affirms that the state is committed to 'protecting and preserving its tangible and intangible national heritage. It shall also be committed to maintaining and restoring its tangible heritage, and shall recover what has been seized of them.' It stresses that 'assault on the heritage and trafficking in it shall be a crime in the manner prescribed by the law.'

In addition to the Status, there is a number of laws and regulations manage and protect particular elements of cultural heritage, such as the Law Regulating and Protecting *Aflaj* sites inscribed on the World Heritage List (Royal Decree, 39/2017); the Law on Art Works Control (Royal Decree, 65/1997); The Records and Archives Law (Royal Decree, 60/2007); the Executive Regulations for Managing the Site of Bahla Fort (Royal Decree, 81/2019); and the Regulation of the Private Museums and Heritage Houses (Ministerial Decision, 262/2010). These legislative tools support the CHL, in that they are concerned with the protection, preservation and management of certain types of cultural heritage such as the Omani world heritage sites of both the *afalj* traditional irrigation system and the site of Bahla Fort. Apart from executive regulations of Bahla Fort, all of these legal instruments were issued prior to the promulgation of the CHL, which is consistent with most of what is stated in these instruments.

Other laws and regulations contain brief allusions to the importance of preserving and protecting cultural heritage, although the domains covered by them are connected to certain elements of cultural heritage. Examples include the Oil and Gas Law (Royal Decree, 8/2011); the Law Protecting the Environment and Controlling Pollution (Royal Decree, 114/2001); the Law on Mineral Resources (Royal Decree, 19/2019); the Law on Tourism (Royal Decree, 33/2002); and the Governorates and Municipal Affairs System (Royal Decree, 101/2020).

Some laws that concern cultural heritage do not contain any reference to cultural heritage in itself, such as: The Land Law (Royal Decree, 5/1980); the Maritime Law (Royal Decree, 35/1981); the Trade Law (Royal Decree, 55/1990); the *Awqaf* [Endowments] Law (Royal Decree, 65/2000); the Regional Municipalities Law (Royal Decree, 87/1986); the Law of Muscat Municipality (Royal Decree, 8/1992); and the Agriculture Law (Royal Decree, 48/2006).

The absence and faint presence of cultural heritage under these laws has affected its management, protection, and preservation negatively.

### **One law to protect all kinds of cultural heritage**

The NHPL and the CHL are similar in that they concern the preservation and management of (all) types of cultural heritage. This cannot be accomplished easily, given the diversity in the forms of cultural heritage. The challenge lies in the adequacy, aptness, and accuracy of this law to protect all these types of cultural heritage, especially considering that each of these has both a distinctive nature and challenges in terms of protection and management. This extensive scope leads to another area of concern; the adequacy of its executive regulations for the management of all forms of heritage, both tangible and intangible.

### **Tangible vs intangible**

The CHL clarifies that the MHT is responsible for all forms of tangible and intangible cultural heritage. However, with the promulgation of Royal Decree 87/2020, the MCSY was established and made responsible for managing the cultural sector in Oman. The task of protection and management of intangible cultural heritage was entrusted to it and was no longer the responsibility of the MHT. The overlap between both types of cultural heritage is inevitable. Separating them administratively, can affect their management negatively. Tangible heritage cannot be dealt with in isolation from the meanings and values that are associated with it. For example, the Omani forts include an interwoven fabric of architectural physical construction and values linked to history and living cultural heritage. Therefore, administrative separation will rob these sites of their meaning and significance, and limit their management to the preservation of their physical attributes.

### Community participation

The CHL does not include provisions on the role of the community in protecting national cultural heritage. This explains the limited role played by the public to protect this heritage and confirms that the burden of protection—since the establishment of the modern Omani state—is still undertaken by the government.

The absence of a social role to protect cultural heritage also existed under the NHPL, which did not include specific provisions dedicated to this area (Al-Belushi, 2014). This contributed to the scarcity of community-led initiatives to preserve, protect, and exploit the heritage of the Sultanate. Initiatives of individuals and non-governmental institutions such as the private sector, and civil society institutions such as non-governmental organisations (NGOs) are still few in number and have limited impact (Benkari, 2021).

Community participation contributes to the preservation of heritage and reduce the burden placed on the government. Also, it contributes to people's awareness of the significance of their heritage, and strengthens their connection and association with it. Additionally, involvement in making strategies, laws and decisions for the preservation, conservation and promotion of cultural heritage will deepen people's sense of ownership.

### *Omani and non-Omani cultural heritage*

The CHL protects both Omani and non-Omani cultural heritage within the territory of the Sultanate (Article 2). It also protects public and private Omani movable cultural heritage that has been illegally exported. The CHL states that the Ministry must provide the necessary assistance to the owners of private cultural heritage in order to recover the ownership of that heritage (Article 59). Article 7 states that:

'The following are considered part of the Omani cultural heritage:

- 1) All cultural heritage existing on the territory of the Sultanate, unless ownership of another country is proven.
- 2) Cultural heritage that Omanis created outside the territory of the Sultanate.
- 3) Cultural heritage created by non-Omanis permanently residing in the Sultanate, according to what the Minister decides on its importance to the Sultanate.

4) Movable cultural heritage discovered within the territory of the Sultanate and transferred abroad.

5) Everything that the Minister decides is cultural heritage of importance to the Sultanate'.

The underwater and intangible cultural heritage present in the Sultanate are considered public property of the state; it is not acceptable to claim otherwise (Article 11). The CHL protects non-Omani cultural heritage in that 'non-Omani cultural heritage may not be borrowed for display in the Sultanate except after obtaining a licence to do so from the Ministry' (Article 24). It also states that 'non-Omani cultural heritage may be exported outside the Sultanate, after verifying that it is non-Omani cultural heritage, and ascertaining the legality of its possession' (Article 27), and that 'the Ministry may licence the import of cultural heritage' (Article 28).

The CHL is the first Omani law to protect the non-Omani cultural heritage present in the territory of the Sultanate. The NHPL contained only two articles. One prohibited the export of any movable cultural property without prior written permission from the Ministry (Article 28). The other prohibited the export of registered movable cultural properties excluding those that the Ministry agreed to loan for a period not exceeding six months to countries or cultural institutions or foreign museums with the intention of displaying them to the public, for educational purposes, or purposes related to scientific research (Article 33).

### Conclusions and suggestions

The threats to Omani cultural heritage after the establishment of the modern state in 1970 led to the promulgation of a number of laws. The first of these was the NHPL, which was later replaced by the CHL, in addition to several legal provisions that were contained within other laws that were indirectly related to cultural heritage. Some of these laws did not include provisions concerning the protection and management of cultural heritage despite their close relation with the areas they were concerned with. This paper provided an overview of the most important of these laws, namely the NHPL and CHL, and presented a number of aspects pertaining to them. The most significant among them are as follows.

The CHL provides for quasi-absolute state ownership over cultural heritage, and in some cases allows the

possibility of private ownership over the heritage when such ownership is legally established. Any practice relating to cultural heritage must be licensed by the MHT even if ownership over that heritage is private and not public.

The CHL provides for the creation of a 'list' of intangible heritage covering a number of domains, which correspond to the domains defined by the 2003 UNESCO Convention on the Intangible Heritage. It also provided for the creation of a registry and three-category classification for all elements of the national cultural heritage, unlike the NHPL, which treated these elements as one single entity. The CHL neither indicates the purpose of the classification nor the differences among the three classes.

Both laws are similar in terms of their extensive scope. They are dedicated to the preservation and management of all types of cultural heritage, tangible and intangible, movable and immovable. This undoubtedly leads to many practical and legal challenges. Omani cultural heritage is currently managed by the MHT (tangible heritage) and MCSY (intangible heritage). Owing to the inevitable overlap between both types of heritage, this administrative separation creates some legal, practical, and administrative challenges.

The CHL is the first Omani law to include provisions protecting the non-Omani cultural heritage existing on the territory of the Sultanate, which reflects the Sultanate's commitment to international conventions for the protection and preservation of cultural heritage. The paper illustrated that the CHL protects illegally exported Omani cultural heritage (public and private) and defines the path to the recovery of such cultural heritage. Neither law addresses the role of the community in the protection and management of cultural heritage. Thus, civilian and community-led initiatives and contributions toward the conservation of cultural heritage are few in number.

This paper highlighted the need to re-evaluate some aspects of Omani cultural heritage protection laws. It suggested the reconsideration of the CHL's extensive scope to avoid legal and practical challenges that may emerge from having a single law for all types of cultural heritage. The practicability of the institutional separation of tangible and intangible heritage management must be assessed. Several legal, administrative,

and application-related complications can arise as a result of the management of both types of heritage by two different institutions. There is also a need to consider coordination requirements to overcome the challenges that may arise from this separation. The CHL and its executive regulations should include provisions regulating community participation in heritage protection, and offer room for greater public participation in cultural heritage management, exploitation, and visibility.

This study is limited in that it was difficult to exemplify the degree of the effectiveness of the provisions of the CHL, as the CHL has not been applied and tested for extended and sufficient periods of time, given that it was adopted shortly before the outbreak of the COVID-19 pandemic. The failure to issue executive regulations describing the CHL led to uncertainty regarding the comprehension of many of its provisions.

### Notes

1. Both the NHPL and CHL were issued in Arabic. The researcher used an unofficial English translation of the NHPL. There has been no official English translation of the CHL thus far.
2. Exception to this is the extra attention paid to a limited number of cultural properties such as forts, castles, and sites inscribed on the UNESCO World Heritage List (Al-Belushi, 2014)
3. The term 'Ministry' refers to the MHT or MHC, whereas the word 'Minister' refers to the Minister of Heritage and Tourism or his predecessor.
4. Before its abolition, the OHMSACA managed some aspects of cultural heritage (specifically archaeological heritage) in the Governorate of Dhofar in southern Oman. The most important of these are the sites of the Land of Frankincense (AlBalid, Khor Ruri, and Wadi Dawkah), in addition to other sites in northern parts of Oman like Salut in Ad Dakhliya Governorate.
5. *Aflaj* is a traditional gravity-based irrigation system that extracts water from the ground and springs and distributes it through canals for agricultural and domestic use.

### Disclosure statement

The authors report there are no competing interests to declare.

## Funding

The authors did not receive any funding toward conducting this study

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