



THE RIGHTS OF THE ACCUSED IN THE CRIMINAL JUSTICE SYSTEM OF OMAN

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PREFACE

This report represents new research into the rights of the accused under Omani law. It follows the format and style of the previous version of a similar report. The research concerns the “fair trial” safeguards or guarantees that are considered applicable to U.S. court criminal proceedings by virtue of the 14th Amendment to the U.S. Constitution as interpreted by the Supreme Court of the United States.

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INTRODUCTION

This report examines the rights of the accused in the Omani criminal justice system. On November 6th, 1996, the Omanis passed a Basic Law outlining the Constitutional guarantee of the rights of an Omani citizen. These rights include the right to a fair, public, and speedy trial; the right to legal assistance; the right against self-incrimination; the right to information; and the right to call and examine witnesses, among others. The report will examine those rights, their implementation, and enforcement. Since the Omani population is made up of approximately 17 percent non-nationals, the report also will examine the status of foreigners in Oman. In addition, the report will focus on specific demographics, such as women and children, and workers' rights and victims of crime.

The report is divided into four parts: the first section deals with the state, providing a brief history of Oman, its Constitution and government; its court system; the Omani right to litigation, arbitration, and justice; and the transference of power; the second section focuses on the law, including Islamic Shari'a as the basis of legislation; the modern movement towards codification; and the legal profession and legal education; the third section centers on the rights of the citizen, the rights and participation of women, the rights of foreign and Omani workers, the rule of law, and the rights of the accused in accordance with international human rights standards; the fourth section examines human rights practices in Oman from the perspective of the United Nations and the United States, and it concludes with a summary of the findings.

Information provided in this report will rely on a reading of the various texts, in particular the Basic Law, the Penal Code, the Code of Criminal Procedure, and related laws and regulations. The report also will refer to UN and United States reports that covered the criminal justice system in Oman. Very few reports of cases and scholarly work analyze human rights practices in Oman.

PART ONE: THE STATE

History of the Modern State of Oman

The Sultanate of Oman has been an independent state since the expulsion of the Portuguese in 1650. Its government is a hereditary monarchy that has been ruled by the Al Bu Said family since the middle of the 18th century.

Starting in the mid 17th century, Oman grew with sea power in the Indian Ocean, and its capital, Muscat, became an important trading post between Arabia and India. The Sultanate experienced the height of its power in the first half of the 19th century, although Britain had reinforced its dominance in the Gulf region since the 1798 treaty between the British government and the Sultan.¹ However, the economic decline of the country started soon after the loss of Zanzibar in 1856 and was exacerbated by the conservative policy of the sultans. Although always formally independent, Oman fell into de facto dependence on Britain by the end of the 19th century. British supremacy ended gradually after the announced 1968 "East of Suez" withdrawal of British forces.

In the 1960s, a period of civil unrest shook the country: The Dhofar Rebellion was launched in the province of Dhofar against the Sultanate of Muscat, Oman, and Britain from 1962 to 1975. As the radical-leaning rebellion threatened to overthrow the Sultan's rule in Dhofar and produced disorder in other parts of Oman, Sultan Said bin Taimur, who had ruled for nearly four decades, was deposed by his son, Qaboos bin Said.

In 1980, out of concern for the safety of the country after the Iranian revolution and the conquest of Afghanistan by Soviet troops in 1979, Sultan Qaboos signed a military assistance pact with the United States, which in return granted the Americans

¹ The success of the trade that the Portuguese experienced with Oman as a landing stage for the Indies spice route attracted other European powers, such as the British. Once the Portuguese were expelled, the British East India Company found favorable trading rights and had no need to formalize relations until the French under Napoleon challenged British commercial and political activities in the Indian sub-continent. The British government then saw the value of formalized relations and signed two treaties, one in 1798 and the other in 1800. *Available at:* <http://www.britishempire.co.uk/maproom/oman.htm>

military bases in Oman.² In 1981 the Gulf Cooperation Council with the neighboring Arab states was established.³

With the reign of Sultan Qaboos⁴ major social and economic reforms were introduced. The Sultan reformed health care, abolished slavery, modernized the educational system, and lifted travel restrictions. Economic reforms to liberalize and diversify Oman's oil-dependent economy took place in the late 1990s. The government lifted restrictions on foreign investment and ownership of enterprises in preparation to join the WTO in 2000. Revenues from the oil production were used to improve the infrastructure in Oman.⁵

The Constitution and the Government

In 1996 Sultan Qaboos issued a royal decree promulgating a constitutional order ("Basic Law of the State").⁶ Oman was the last Arab country to implement a constitution.⁷ The Basic Law confirms the monarchical system and the prominent position of the Sultan. At the same time it submits to the monarch a documented set of rules; clarifies the royal succession; obligates the government to political, economic, social, cultural, and security principles; provides for a prime minister; bars ministers from

² The 1980 pact gave U.S. military personnel and ships access to Omani's military/naval bases in exchange for U.S. funding assistance in administrating economic assistance programs in Oman. *Available at:* <http://countrystudies.us/persian-gulf-states/67.htm>

³ An agreement signed on May 25, 1981 in Riyadh, Saudi Arabia between Bahrain, Kuwait, UAE, Oman, Qatar, and Saudi Arabia established a regional common market with a defense planning council in light of their "similar political systems based on Islamic beliefs, joint destiny and common objectives." *Available at:* <http://www.globalsecurity.org/military/world/gulf/gcc.htm>

⁴ *See generally:* Joseph A. Kechichian, "A Vision of Oman: State of the Sultanate Speeches by Qaboos Bin Said, 1970-2006," *Middle East Policy* 15, no. 3, Fall 2008:112.

⁵ Petroleum Development Oman (PDO) accounts for more than 90 percent of the country's oil reserves and 85 percent of production. The Omani Government owns 60 percent of PDO, and foreign interests own 40 per cent (34 percent of the 40 percent being owned by Royal Dutch Shell). <http://www.eia.doe.gov/cabs/Oman/Oil.html>

⁶ Oman, The Basic Law of the Sultanate of Oman; Adopted by Royal Decree No. 101/96 issued on 6 November 1996; *Available at:* <http://www.omanet.om/english/government/basiclaw/overview.asp?cat=gov&subcat=blaw> [hereinafter: Oman, Basic Law, Article].

⁷ Nikolaus A. Siegfried, "Legislation and Legitimization in Oman: The Basic Law," *Islamic Law and Society*, no. 3 (2000): 359. The first constitution in the Arab world was the Tunisian Constitution, adopted in 1861. Mshari Al-Zaydi, *The Saudi Constitution: Planting the Seeds of a New Paradigm*. Asharq Alawsat, <http://www.aawsat.com/english/news.asp?section=2&id=6847>. In 1992 Saudi Arabia adopted its Basic Law as its constitutional document. *Available at:* http://www.servat.unibe.ch/icl/sa00000_.html.

holding interests in companies doing business with the government; establishes a bicameral consultative council; and guarantees basic civil liberties for Omani citizens.⁸

Sultan Qaboos serves as head of state and prime minister.⁹ Like many Arab leaders, the Sultan has absolute power and decides on all matters of national importance. He was the first Arab leader annually to address to his people to account for his decisions and actions.¹⁰ These speeches were made available in print and electronically on the Internet for evaluation by all Omanis.¹¹ He authorizes and approves all laws and treaties and issues them by royal decree. His other functions include: preserving the country's independence and territorial integrity and assuring its internal and external security; maintaining the rights and freedoms of its citizens; guaranteeing the rule of law and guiding the general policy of the State; taking prompt measures to counter any threat to the safety of the State or its territorial integrity, security, and interests of its people or the smooth running of its institutions; representing the State both internally and externally in all international relations; appointing and dismissing senior judges, political representatives to other states, and international organizations, deputy prime ministers, ministers, under-secretaries, general secretaries and those of their rank; declaring a state of emergency, general mobilization, or war, and making peace in accordance with the provisions of the Law; waiving or commuting punishments; and conferring honors, decorations and military ranks.¹²

Council of Ministers

The Council of Ministers assists the Sultan in the drawing and implementation of general state policies.¹³ The Council submits recommendations to the Sultan on

⁸ The guarantee of religious freedom, the prohibition of discrimination on grounds of gender, origin, color, religion, language, place of residence, and social belonging, the right to political asylum and the protection of life and property of foreigners are important provisions of the new 'constitution.'

⁹ Oman, Basic Law, Article 41 [Head of State, Commander-In-Chief].

¹⁰ Joseph A. Kechichian, "A Vision of Oman: State of the Sultanate Speeches by Qaboos Bin Said, 1970-2006," *Middle East Policy* 15, no. 3, Fall 2008: 112.

¹¹ Joseph A. Kechichian, "A Vision of Oman: State of the Sultanate Speeches by Qaboos Bin Said, 1970-2006," *Middle East Policy* 15, no. 3, Fall 2008: 112.

¹² Oman, Basic Law, Article 42 [Functions].

¹³ Oman, Basic Law, Article 43 [Assisting Functions of Council of Ministers].

economic, political, social, executive, and administrative matters and proposes draft laws and decrees.¹⁴

As listed in Article 44, the Council of Ministers is responsible for discussing developmental plans prepared by the relevant departments, submitting them to the Sultan for approval, and following up their implementation; discussing proposals by Ministries in their fields of executive jurisdiction and making appropriate recommendations and decisions in this regard; overseeing the smooth running of the State's administrative apparatus, following up the performance of its duties, and co-coordinating the activities of its different departments; and monitoring the implementation of all laws, decrees, ordinances, and decisions, as well as treaties and agreements and court judgments, in a manner that will ensure that they are complied with.¹⁵

As of 2008, the Council of Ministers has 32 members, three of whom are women.¹⁶ According to Leila Rahbani, for much of the Arab world, “[g]overning remains an overwhelmingly male prerogative.”¹⁷ Countries such as Egypt, Jordan, and Morocco have made measured progress in allowing women to participate in government, with Oman, Bahrain, Qatar, and Kuwait reluctantly pursuing further involvement by women. She identifies Saudi Arabia as the most restrictive Arab country with regard to women in government.

The Council of Oman

The Council of Oman (*Majlis Oman*), is a bicameral body. Article 58 of the Basic Law of the State identifies the two chambers as (1) the Shura/Consultation Council (*Majlis A'Shura*) and (2) the Council of State (*Majlis A'Dawla*).¹⁸ “Though the Consultative Council or the State Council may recommend changes to new laws

¹⁴ Oman, Basic Law, Article 44 [Functions].

¹⁵ Oman, Basic Law, Article 44 [Functions].

¹⁶ U.S. Department of State, *2008 Country Reports on Human Rights Practices: Oman*. (Washington, DC, February 25, 2009). Available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119124.htm>.

¹⁷ Leila Nicolas Rahbani, “Women in Arab Media: Present but not Heard,” February 16, 2010. Available at: http://www.aswat.com/files/WomeninArabMedia_0.pdf.

¹⁸ Oman, Basic Law, Article 58 [Composition].

proposed by ministries and government departments, neither body has legislative powers.”¹⁹

The members of the *Shura* Council are elected by Omani citizens for a four-year term.²⁰ According to Article 21 of the Royal Decree No. 86/97, “On the Formation of the Council of Oman,” the number of representatives for each district (*Wilayat*) depends on its population: a *wilayat* with a population of 30,000 or more elects two representatives; a *wilayat* with fewer than 30,000 inhabitants elects just one delegate. One important instrument of the Council is the question hour, where its members can question and interview Omani ministers. These meetings are televised live and communicated in press articles. The Council of State members are appointed by the Sultan.²¹

The *Majlis al-Dawla* was established in 1997.²² It has advisory powers only. Its main responsibilities are: presenting proposals and preparing studies that help in executing development plans; finding solutions to financial, social, economic problems; and reviewing draft laws proposed by government, presenting its opinions to Sultan and ministers in cooperation with the Consultative Council. Its members are appointed by the Sultan for a three-year renewable term.²³ According to Article 12 of the Royal Decree No. 86/97 members shall be former ministers, under secretaries or those of similar status, former ambassadors, senior judges, retired senior officers, people of competence and expertise in the fields of science, literature and culture, in addition to academicians, notable figures and businessmen, persons who have accomplished notable service for the country, or whoever is deemed fit by the Sultan.

¹⁹ Charles O. Cecil, “Oman’s Progress toward Participatory Government,” *Middle East Policy*, no. 1, Spring 2006: 64.

²⁰ *Election Guide*, International Foundation for Electoral Systems, Available at: <http://www.electionguide.org/country.php?ID=163>.

²¹ United States. Department Of State, Bureau Of Democracy, Human Rights, And Labor, *Oman: 2009 Human Rights Report* (2010), Available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

²² *Oman*, The Carnegie Endowment for Peace, Available at: http://www.carnegieendowment.org/files/oman_APS.doc.

²³ Oman, Royal Decree No. 86/97 – On the Formation of the Council of Oman, Article 11. Oman, The Basic Law of the Sultanate of Oman; Adopted by Royal Decree No. 101/96 issued on 6 November 1996; Available at:

The Sultan's aim in establishing two separate chambers was to "enrich the process of development and construction through the expression of views and ideas that serve the public interest and help promote further progress and a decent life for all citizens."²⁴

In Oman, no meaningful organized political opposition exists and political parties are neither (explicitly) provided for in the Basic Law, nor permitted through decree.²⁵ Nevertheless, the Basic Law stipulates that citizens shall have the right to partake in public affairs as defined by law.²⁶

Court System: Divisions of the Courts and Independence of the Judiciary

Oman's judicial system traditionally has been based on the Islamic Law (*Sharia*) traditions of the *Ibadi* school.²⁷ Although a growing body of codified laws now exists, judicial decision-making is still guided by custom, tradition, and *Sharia*. Thus, although Oman is considered to have a civil law system,²⁸ its legal system is actually mixed between Islamic tradition and secular law.²⁹

"Royal Decree 90 of 1999 was issued to harmonize the court system with the requirements proposed in the Basic Law. These reforms greatly simplified the judicial system and consolidated the jurisdictions of the special courts into one regular system."³⁰

Three levels constitute the courts. At the first level are chambers of first instance formed of three judges each and chambers of a single judge. At the next level are the

²⁴Ministry of Information, Sultanate of Oman, *Available at*: <http://www.omanet.om/english/government/shura.asp>.

²⁵*Freedom in the World – Oman (2009)*, Freedom House, *Available at*: <http://www.freedomhouse.org/template.cfm?page=22&country=7677&year=2009>.

²⁶Oman, Basic Law, Article 9 [Substantive State Principles]; *Freedom in the World – Oman (2009)*, Freedom House, *Available at*: <http://www.freedomhouse.org/template.cfm?page=22&country=7677&year=2009>. (Universal suffrage for all Omanis, male and female, over the age of 21 was established through royal decree in 2003. Before that order, in 1994, when the first Consultative Council was elected, only a limited number of citizens selected by tribal leaders were allowed to vote.)

²⁷Valerie J. Hoffman, "The Articulation of Ibadi Identification in Modern Oman and Zanzibar," *The Muslim World* 94, April 2004: 201–16.

²⁸Dr. Abdullah Alsaïdi Law Office, *Available at*: <http://www.omanlawyers.com/Omanlegalsystem.html>.

²⁹Civil law Systems and Mixed Systems with a Civil law Tradition, University of Ottawa, JuriGlobe-World Legal Systems, *Available at*: <http://www.juriglobe.ca/eng/sys-juri/class-poli/droit-civil.php>. (Last updated December 15, 2009).

³⁰UNDP-POGAR, Program on Governance in the Arab Region, *Available at*: <http://www.undp-pogar.org/countries/theme.aspx?cid=13&t=9>

Courts of Appeals. At the top of the system is the Supreme Court.³¹ All courts hear criminal, civil, and commercial cases.

The Law of Criminal Procedure allows for appeal. Infraction and misdemeanor cases are tried directly before the chambers of single judges and may be appealed to the chambers of first instance. However, felony cases are tried directly before the criminal chambers of the appellate courts. Final judgments issued by the chambers of first instance acting in their appellate capacity and by the courts of appeal may be reviewed by the Supreme Court. The resulting irony is that decisions rendered in infraction and misdemeanor cases have more access to legal review than decisions rendered in felony cases. The Courts of Appeal are composed of three judges each. According to the Law of the Judicial Authority No. 90 of 1999,³² Courts of Appeal shall be established in Muscat, Suhar, Nazwa, Salalah, Ibra, and Ibri. Other Appellate Courts also may be established by Sultani Decree based on a recommendation from the Supreme Judicial Council.

It was Royal Decree 90/99 that established the judicial authority and formed the Supreme Court that exercises review jurisdiction over all other courts in the country. The Supreme Court consists of a president and a sufficient number of vice-presidents and judges. In certain circumstances the court has jurisdiction to hear appeals from the courts of appeals and the chambers of first instance when acting in their appellate capacity, such as if the contested decision was based on a violation of law or an error in its application or interpretation.

In civil matters, the chambers of single judge, also called summary courts, have jurisdiction to settle claims of up to R.O. 15,000 only. Claims exceeding this amount are to be decided by the Chambers of First Instance.

Rather than having a separate *Sharia* court system, every level of the Omani courts has a chamber called *Sharia* Department.³³ Personal matter cases are referred to the *Sharia* Department. Appeals to decisions of *Sharia* courts are brought before the Courts of Appeal.

The fact that the Basic Law does not mention *Shari'a* courts suggests that they are becoming less important. As instances and a final decision become binding, the legal

³¹ See discussion on powers of the Sultan and the Supreme Judicial Council below.

³² Article 5 as amended by Law No. 14 of 2001.

³³ Article 1 of Law 90 of 1999.

framework becomes increasingly predictable. Such a fact may be seen as a tribute to internationalization. The differentiation into various disciplines of courts permits judicial specialization, which has become necessary as international investors and international commercial law intrude into Oman.³⁴

The Basic Law, Royal Decree 101/96, deals with the judiciary in thirteen articles.³⁵ Most notably, Article 60 of the Basic Law guarantees the independence of the courts.³⁶ Article 63 of the Basic Law states that all court hearings are to be open to the public unless privacy is required for the purposes of keeping the peace.³⁷

Judges

The Basic Law allocates the power to make judicial appointments to the Sultan.³⁸ The Basic Law specifies in Article 61 the independence of judges: “There is not power over the judges in their rulings except the Law. Judges can only be dismissed in cases specified by the Law. [...]”³⁹ A dismissal is also made by the Sultan. The duties and obligations and a code of conduct for judges are stipulated through Royal Decree 90/99.⁴⁰

³⁴ Nikolaus A. Siegfried, “Legislation and Legitimation in Oman: The Basic Law,” *Islamic Law and Society* 7, no. 3 (2000): 378. As opposed to the Saudi Arabia Basic Law, which states that Sharia courts shall have general jurisdiction.

³⁵ Oman, *Basic Law*, Article 59, guarantees respect for the rule of law and is followed by provisions respecting the independence of the courts and the judges, in Articles 60 and 61, respectively. Rules on the organization of military courts and the martial law are found in Article 62, whereas the Higher Council and Administrative Courts are referred to in Articles 66 and 67. Article 63 guarantees public access to court hearings. Article 64 contains the functions of the public prosecution. Article 65 refers to the regulations of the legal profession. Article 68 provides that the law shall govern jurisdictional disputes, as well as ministerial opinions, referred to in Article 69. Article 70 determines the process for judicial review. Finally, Article 71 states the rules associated with judgments.

³⁶ Oman, *Basic Law*, Article 60 [Independence of the Courts], Article 61 [Independence of Judges].

³⁷ Oman, *Basic Law*, Article 63 [Publicity].

³⁸ Oman, *Basic Law*, Article 42 [Functions]: “The Sultan discharges the following functions: [...] appointing and dismissing senior judges [...]”

³⁹ Oman, *Basic Law*, Article 61 [Independence of Judges].

⁴⁰ Amjad A. Khan and Charles S. Laubach, “Oman: Recent Developments,” *Arab Law Quarterly* 15, no. 1 (2000): 112–114. (“A judge is not permitted to carry on commercial activities or any work which is inconsistent with the independence of the judiciary.” It also states that, “the courts are not permitted to express political opinions and judges are not permitted to engage in any political activities. Provisions facilitating the inspection of the judiciary and allowing for the assessment of competence of judges are included”).

Specialized Court

The Administrative Court was established by Royal Decree 91/99. The Administrative Court is an independent judicial body with jurisdiction to review disputes in which the government is a party.⁴¹ The purpose of the Court is to prevent the misinterpretation or misuse of authority.

State Security Court

The Omani Penal Code allows charges against national security to be prosecuted before the State Security Court.⁴² Those proceedings are frequently closed to the public.⁴³

The Public Prosecutor's Office

Royal Decree 92/99, promulgated in November 1999, established an independent Prosecution Service in accordance with the Basic Law. The Public Prosecution Authority is an independent body under the supervision of the Inspector General of Police and Customs.⁴⁴ Its functions are to act in criminal cases on behalf of the public, to monitor the enforcement of the penal code, the surveillance of suspects, and the enforcement of judges.⁴⁵ In particular, Article 1 of the Public Prosecution Law of 1999 provides that, “The Public Prosecution shall undertake the public action in the name of the society, supervise the judicial procedures and control and endeavor to implement the penal regulations, prosecute the guilty persons and execute the judgments, in addition to the other competences decided by law.”

Appointment to the Public Prosecution Office is by royal decree only.⁴⁶ Article 9 of the Law provides that the members of the Public Prosecution Office enjoy judicial

⁴¹ Oman: Review of Legal System, *Available at*: <http://www.intute.ac.uk/cgi-bin/browse.pl?id=120978>.

⁴² Law No. 64 of 2003 available in Arabic at http://www.mola.gov.om/legals/ma7kamat_amn_al_dawlah/leg.pdf. Oman, Ministry of Information, <http://www.omanet.om/english/oman2000/sec5/1.asp?cat=oy2k>.

⁴³ Oman, Ministry of Information, *Available at*: <http://www.omanet.om/english/oman2000/sec5/1.asp?cat=oy2k>.

⁴⁴ Oman, Ministry of Information, *Available at*: <http://www.omanet.om/english/oman2000/sec5/1.asp?cat=oy2k>.

⁴⁵ Oman, Ministry of Information, *Available at*: <http://www.omanet.om/english/oman2000/sec5/1.asp?cat=oy2k>.

⁴⁶ Oman, The Public Prosecution Law, Article 7 (adopted by Royal Decree No. 92/99).

immunity, which can only be removed in accordance with the procedures regulated in the Judicial Authorities Law. Article 19 established a Public Prosecution specific for the Supreme Court.

The explanatory note to the Public Prosecution Law emphasizes that “the Public Prosecution’s litigation should remain public, fair, and honest. In conformity with laws and regulations, it is even urged to solicit the innocence of an accused if it has been established during the legal proceedings that the prosecution evidence is collapsing.” It further asserts that this legality principle is “emphasized as far as objection of judgments is concerned. The Public Prosecution has the right to oppose judgments, even when the core objective of this opposition is to protect the interests of the accused.”⁴⁷

Ministry of Legal Affairs

In 1994 the Ministry of Legal Affairs was established to match the legal framework of the State with the development and progress seen throughout the Sultanate.⁴⁸ The Ministry is responsible for the preparation of Royal Decrees and for reviewing all draft laws, regulations, and Ministerial Decisions before they are promulgated and published in the Official Gazette.⁴⁹ The Ministry issues the Official Gazette and gives legal opinion and advice to the Government on the interpretation of Royal Decrees and Laws and any other matter referred to it by His Majesty the Sultan.⁵⁰ Another important responsibility is the scrutiny of any contract committing the government to expenditure of over RO 500,000.⁵¹

The Supreme Court and the Supreme Judicial Council

The Supreme Court is responsible for standardizing legal principles and reviewing decisions of lower courts.⁵² In addition to the Supreme Court, Royal Decree 93/99 sets up the Supreme Judicial Council, the country’s highest legal body. The Supreme Judicial Council is empowered to review all judicial decisions, including appeals beyond the

⁴⁷Oman, *Public Prosecution Law*, Article 1, explanatory note.

⁴⁸*Public Prosecution Law*.

⁴⁹*Public Prosecution Law*.

⁵⁰Oman, Ministry of Information, <http://www.omanet.om/english/oman2000/sec5/1.asp?cat=oy2k>.

⁵¹Ministry of Information.

⁵²UNDP-POGAR, *Program on Governance in the Arab Region*, Available at: <http://www.undp.pogar.org/countries/theme.aspx?cid=13&t=9> (last visited July 1, 2010).

Supreme Court.⁵³ Its function also includes the formulation of judicial policy and the vesting of the independence of the judiciary.⁵⁴ Members of the Supreme Judicial Council included the president of the Supreme Court, the minister of justice, the public prosecutor and the inspector general.⁵⁵ The Sultan serves also as chairman of the Supreme Judicial Council.⁵⁶

Article 70 of the Constitution stipulates that the law shall specify the judicial authority that has jurisdiction in deciding the constitutionality of laws and regulations with the Basic Law of the state and allocates adjudicatory powers to a judicial department, presumably the Supreme Court, which can handle cases involving any incompatibility between the laws and the Basic Law.⁵⁷ Siegfried refers to this judicial department as a constitutional court. Given this check on the constitutionality of the laws, Siegfried notes that Article 70 “marks a change in the distribution of powers since it reduces the Sultan’s unlimited power to issue laws.”⁵⁸ However, because the Supreme Court does not have jurisdiction over *Sharia* issues and the Sultan possesses the final say on Islamic law interpretation, it is possible for the Sultan’s word to be supreme over even the Basic Law.⁵⁹

It is also important to note that Oman has not yet enacted any law providing for the establishment of a constitutional court to decide constitutional claims; consequently, legislation that may conflict with the Basic Law remains unchallenged.

Access to Justice: Right to Litigation and Arbitration

According to the Basic Law, “the right to litigation is sacrosanct and guaranteed to all people. The Law defines the procedures and circumstances required for exercising this right and the State guarantees, as far as possible, that the judicial authorities will reconcile the litigants and settle cases promptly.”⁶⁰

⁵³U.S. Department Of State, Bureau Of Democracy, Human Rights, And Labor. *2009 Human Rights Report for Oman*. 2010. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

⁵⁴*2009 Human Rights Report for Oman*. 2010.

⁵⁵*2009 Human Rights Report for Oman*. 2010.

⁵⁶*2009 Human Rights Report for Oman*. 2010.

⁵⁷Oman, *Basic Law*, Article 70 [Judicial Review].

⁵⁸Siegfried, 378.

⁵⁹Siegfried, 378.

⁶⁰Oman, *Basic Law*, Article 25 [Right to Litigation].

In 1997 Oman put into effect the first law governing arbitration called the Royal Decree 47/97.⁶¹ The Decree was amended in March 2007 and governs civil and commercial proceedings, based on the United Nations Commission on International Trade Law (UNCITRAL).⁶² Oman is also a signatory to the New York Convention,⁶³ which typically leads to a greater enforcement record of arbitral decisions.

Under Omani law, parties have the right to determine which rules and procedures will be applied.⁶⁴ Because there is no domestic arbitration body in the country, Oman recognizes the Gulf Cooperation Council's Commercial Arbitration Centre (GCAC) as the principal arbitration body.⁶⁵ Omani courts have powers to address any party's failure to comply with the agreed procedures.⁶⁶ Awards cannot be appealed, but either party may ask the tribunal to interpret any ambiguity in the text of the award or to correct any material errors.⁶⁷

⁶¹Sean Angle, *Oman: A Guide to Legislation in Oman*, 2005, 681–84, Available at: [http://www.iflr1000.com/pdfs/Directories/5/Oman%20\(681-684\)%20i.pdf](http://www.iflr1000.com/pdfs/Directories/5/Oman%20(681-684)%20i.pdf)

⁶²Norton Rose International Legal Practice: The Middle East by country, Available at: <http://www.nortonrose.com/knowledge/publications/2007/pub13850.aspx?page=070810111509&lang=en-gb>

⁶³Norton Rose International Legal Practice: The Middle East by country.

⁶⁴Norton Rose International Legal Practice: The Middle East by country.

⁶⁵The proceedings must be in Arabic. No interim measures are made by Omani law to the Centre's proceedings, but the arbitral body may order provisional awards to part of the claims before a final award. Arbitral awards are binding; though they may be challenged within 90 days, given that they are in line with the UNCITRAL model law.

⁶⁶The GCAC's hearings are not public; copies of the awards are handed to only the parties themselves. Nullity of the award may be brought if the tribunal has exceeded its power. For the award to be nullified, one of the following must apply: the arbitration agreement must be inexistent, null, rescindable, or have lapsed by limitation; one of the parties must be incapacitated or incompetent; it is impossible for one of the parties to present its case by no reason of which it is responsible; the procedures agreed upon in the arbitration agreement are not followed or are exceeded. The court does have the right to continue proceedings and render an award based on the evidence given when/if a party stops participating. These arbitral awards are conclusive and enforceable; the president of the competent court of first instance issues the writ of execution of an award. The plaintiff may request a stay of execution if for valid reasons. However, filing an action for nullity does not ensure an automatic stay of execution of the award; the courts must determine whether the award conflicts with a judgment on the dispute already announced in an Omani court; nor can it contain any provision contrary to public order; and the aggrieved party must have been properly notified. The GCAC rules provide a cost to be charged for the regulation of arbitration. Up to two per cent of the amount in dispute may be charged. Norton Rose International Legal Practice: The Middle East by Country. Available at: <http://www.nortonrose.com/knowledge/publications/2007/pub13850.aspx?page=070810111509&lang=en-gb>

⁶⁷ However, filing an action for nullity does not ensure an automatic stay of execution of the award; the courts must determine whether the award conflicts with a judgment on the dispute already announced in an Omani court; nor can it contain any provision contrary to public order; and the aggrieved party must have been properly notified. Norton Rose International Legal Practice: The Middle East by Country. Available at:

Article 39 of the Omani law holds that whatever rules are agreed upon will be applied; if no substantive legal rules of law are agreed upon, the court will elect the most relevant to the dispute.⁶⁸

As noted above, awards cannot be appealed, but either party may ask the tribunal to interpret any ambiguity in the text of the award or to correct any material errors.⁶⁹ Arbitration is considered an expensive dispute resolution mechanism for Omani citizens.⁷⁰

Political Stability: Transfer of Power

With no designated successor, fears of an internal struggle over the royal succession has caused some to foresee great political instability, but others view the

<http://www.nortonrose.com/knowledge/publications/2007/pub13850.aspx?page=070810111509&lang=en-gb>

⁶⁸ If the parties allow, the tribunal may settle the dispute by the rules of equity. The parties may also choose the mechanism and time frame for appointing arbitrators according to Article 17 of the Law, so speed in which a tribunal is set up depends on the agreement of the parties. If composed of three arbitrators, both parties are able to choose one arbitrator, and the third, who will chair the arbitration panel, will be appointed by these first two arbitrators; if the parties fail to appoint an arbitrator or the first two neglect to appoint a third within 30 days, the president of the court of first instance will then make the unchallengeable appointment. Arbitrators cannot be discharged and no party can discharge the arbitrator it has appointed unless a newly found reason gives a basis to challenge their neutrality or independence. Norton Rose International Legal Practice: The Middle East by Country. Available at:

<http://www.nortonrose.com/knowledge/publications/2007/pub13850.aspx?page=070810111509&lang=en-gb>

⁶⁹ Nullity of the award may be brought if the tribunal has exceeded its power. For the award to be nullified, one of the following must apply: the arbitration agreement must be inexistent, null, rescindable or have lapsed by limitation; one of the parties must be incapacitated or incompetent; it is impossible for one of the parties to present its case by no reason of which it is responsible; the procedures agreed upon in the arbitration agreement are not followed or are exceeded. The court does have the right to continue proceedings and render an award based on the evidence given when/if a party stops participating. These arbitral awards are conclusive and enforceable; the president of the competent court of first instance issues the writ of execution of an award. The plaintiff may request a stay of execution if for valid reasons. However, filing an action for nullity does not ensure an automatic stay of execution of the award; the courts must determine whether the award conflicts with a judgment on the dispute already announced in an Omani court; nor can it contain any provision contrary to public order; and the aggrieved party must have been properly notified. Norton Rose International Legal Practice: The Middle East by Country. Available at:

<http://www.nortonrose.com/knowledge/publications/2007/pub13850.aspx?page=070810111509&lang=en-gb>

⁷⁰ The cost burden is often the same or higher than the legal costs of commercial litigation, for which scale fees are typically utilized. The GCAC rules provide a cost to be charged for the regulation of arbitration. Up to two per cent of the amount in dispute may be charged. Norton Rose International Legal Practice: The Middle East by Country Available at:

<http://www.nortonrose.com/knowledge/publications/2007/pub13850.aspx?page=070810111509&lang=en-gb>.

country's stability as sufficient enough to endure the insecurity of who will be the next ruling monarch.⁷¹

Sultan Qaboos has concentrated most of the power in his own hands and this may be the source of Qaboos' greatest instability.⁷² Gulf monarchs typically delegate administrative positions to members of the ruling family; Sultan Qaboos, on the other hand, has not allowed anyone else in the al-Said family to acquire such experience.⁷³ Unlike the other Gulf monarchies, therefore, Oman is considered a sole proprietorship, not a family enterprise.⁷⁴ This lack of experience amongst the royal family will make ruling for the future successor difficult, regardless of who is chosen. Qaboos's refusal to name his successor may be an enormous point of contention among the royal family and the Defense Council after his death; it could lead to unrest and jeopardize the legitimacy of the sultanate.⁷⁵

However, Qaboos's own rule may determine Oman's future stability. Although for the majority of his reign, which began in 1970, Oman has been stable, cause for concern exists.⁷⁶ In the absence of a free press the sultan may not be alerted to growing problems that need to be dealt with before they worsen.⁷⁷ Additionally, the authority of the *Majlis al-Shura*, which is Oman's version of Parliament, is severely limited; they are restricted from addressing questions of national security, foreign relations, and social issues; and are only permitted to deal with economic issues.⁷⁸

A dormant question also exists concerning whether the country's traditional Ibadī leader will remain if, as some research indicates, the Ibadīs form a smaller percentage of

⁷¹ *Crime and Society: A Comparative Criminology Tour of the World: Oman*. Available at: http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/oman.html.

⁷² See Mark N. Katz, "Assessing the Political Stability of Oman," *Middle East Review of International Affairs* 8, no. 3, (September 2004): 3–4. (See also: Michael Herb, *All in the Family: Absolutism, Revolution, and Democracy in the Middle Eastern Monarchies*. (Albany, NY: University of New York Press, 1999).

⁷³ Katz, 3.

⁷⁴ Katz, 4.

⁷⁵ The issue would only prove problematic if the Sultan's family cannot agree on a successor or even among themselves who should be part of making the decision. Katz, 5.

⁷⁶ Katz, 5.

⁷⁷ Katz, 4. In 2004 *The Economist* described Oman's press freedom as "dismal," receiving a 1 on a 1-10 scale, which made them worse with respect to freedom than Saudi Arabia.

⁷⁸ Katz, 4.

the population and not the majority community.⁷⁹ At the present time, however, it seems that Qaboos's status is safe, despite past reported assassination attempts,⁸⁰ in part because of strong police intolerance towards his opposition and in part because the current economy is allowing a sufficiently comfortable standard of living such that people may be more willing to tolerate his perceived illegitimacy.⁸¹ However, Oman's economy will face a grave crisis if petroleum reserves are depleted or if the price of oil falls significantly.⁸² Either possibility would undoubtedly cause discontent, which could then increase political opposition and provoke them to action, creating enormous civil unrest in Oman. Although Oman is currently stable, its future is dangerously uncertain.⁸³

PART TWO: THE LAW

Islamic Sharia as the Basis of Legislation

In 1876 Ottoman reformers produced *Majellat al-Ahkam al-Adlia* (Journal of the Rules of Justice) or simply *The Majella*, codifying a part of Islamic law as elaborated by the Hanafi School of Islamic legal thought. It was the first time in Islamic history that a state attempted to codify parts of the *Sharia*. The *Majella* (The Book of Rules on Justice) covered contracts and torts, and contained some civil procedure principles.⁸⁴

On November 6, 1996, Sultan Qaboos issued Royal Decree No. 101/96 promulgating "The White Book: The Basic Law of the Sultanate of Oman."⁸⁵ The Omani

⁷⁹ Ibadhism is the only extant branch of Islam's earliest schism, Kharijism, and Qaboos is the only Arab leader that is Ibadhi. Katz, 4.

⁸⁰ Oman Penal Code, from the Royal Decree N. 7/74, Article 123: "Any person premeditatedly committing assault against His Majesty the Sultan's life, or causes him serious harm or attacks his safety or freedom, or deliberately exposes his life or freedom to danger shall be sentenced to death. The same sentence shall be pronounced if the assault is committed against the Sultan's wife, children, crown prince or crown prince's tutors. If the assault committed against the above named persons does not threaten their lives, the sentence shall be life imprisonment."

⁸¹ Katz, 8.

⁸² Katz, 8.

⁸³ Katz, 8.

⁸⁴ Hanson, 279. The laws did not cover non-contractual obligations such as private law at that time. (See also *The Oxford Dictionary of Islam* on 'Mecelle', Available at: <http://www.oxfordislamicstudies.com/article/opr/t125/e1492>)

⁸⁵ A. Siegfried, "Legislation and Legitimation in Oman: The Basic Law," *Islamic Law and Society* 7, no. 3, 2000: 359. "Constitutional thought in the Muslim world draws heavily on *fiqh*, or Islamic law. According to *fiqh*, God is the only lawgiver (*shari*). The verb *sha-ra-'a* appears twice in the Qur'an, an in both cases God is the subject (q. 7:163 and 42:13). Hence, any constitutional text has to refer to the *shari'a* (Nabhan 1986; 558). Consequently, all Gulf countries subordinate their laws to the *Shari'a* in the first two articles of

government considers the Basic Law as its constitution. “Islam plays a central role in the Basic Law of Oman, not just as a religion in the Western sense [...] but also as the basis for the State. Since Oman is an Islamic state (*dawla islamiya*), according to Article 1,⁸⁶ one may conclude that Islam is *din wa dawla* (“religion and state”). A first significant reference to the *Sharia* can be found in Article 2, which declares Islam the official religion of the state and provides that the Islamic *Sharia* is “the basis of legislation.”⁸⁷

Article 5 establishes the form of government for the Sultanate and demand that “succession passes to a male descendant of Sayyid Turki bin Said bin Sultan.”⁸⁸ The Article further requires “that the male who is chosen to rule should be an adult Muslim of sound mind and a legitimate son of Omani Muslim parents.”⁸⁹ The new Sultan has to take an oath by Allah before exercising his authority. He appoints ministers who do not necessarily have to be Muslims and he is responsible only to Allah regarding his choice. “Article 10 [...] states that a political principle of the state is *shura* based on the Islamic *shari’a*.”^{90,91}

their respective constitutions. The human side of the lawgiving process is captured in the term *fiqh*. Since law is the dominion of God alone, humans can only try to understand (*fa-qi-ha*) these laws, they cannot write new ones. However, since the Qur’an gives few explicit rules, the leader of the community may set guidelines (*qanun* or *nizam*) that do not interfere with the *Shari’a*.”

⁸⁶ Oman, Basic Law, Article 1 [Sovereignty]: “The Sultanate of Oman is an independent, Arab, Islamic, fully sovereign state with Muscat as its capital.”

⁸⁷ Oman, Basic Law, Article 2 [Religion]: “The religion of the State is Islam and the Islamic Sharia is the basis of legislation.”

⁸⁸ Oman, Basic Law, Article 5 [Form of Government].

⁸⁹ Oman, Basic Law, Article 5 [Form of Government].

⁹⁰ Siegfried, 359. Oman, Basic Law, Article 5 [Political principles]:

- Preserving the State’s independence and sovereignty, protecting its security and stability, and defending it against all forms of aggression.
- Reinforcing co-operation and reaffirming ties of friendship with all States and peoples on a basis of mutual respect, common interest, non-interference in internal affairs, compliance with international and regional charters and treaties, and the generally recognised principles of international law, in a manner conducive to the promotion of peace and security between States and Peoples.
- Laying suitable foundations for the establishment of the pillars of genuine Shura Consultation, based on the national heritage, its values and its Islamic Shariah, and on pride in its history, while incorporating such contemporary manifestations as are appropriate.
- Establishing a sound administrative system that guarantees justice, tranquility and equality for citizens, ensures respect for public order and safeguards the higher interests of the country.

⁹¹ Charles O. Cecil, “Oman’s Progress toward Participatory Government,” *Middle East Policy* 13, no. 1, Spring 2006: 63. Shura Consultation is regarded as one of the three State principles, besides justice and equality (Basic Law, Article 9). The establishment of the pillars of genuine Shura Consultations, based on the national heritage, its values and its Islamic Sharia, and on pride in its history, was named a political principle in Article 10 of the Basic Law. In addition, Article 10 stated that the Shura Consultations shall incorporate contemporary manifestations as are appropriate. “The concept of *shura*, “consultation” in

Article 11 states that “inheritance is governed by [the *Sharia* of Islam], and the state helps to preserve the family’s legal (*shar’i*) structure according to Article 12 [...]. Hence, the *Shari’a* is reduced to personal law.”⁹² Since even the highest judicial authority has no right to give a legal opinion (*fatwa*) in the Islamic sense but only within the man-made law *ra’y qanuni*, (art. 69),⁹³ the Sultan is the highest interpreter of the *Shari’a*. Hence, according to Siegfried, the “Islamicity” of the government is dependent on him alone.”⁹⁴

The State of the Sultanate speeches⁹⁵ implore God to help the ruler and illuminate his people. In his texts, Qaboos includes quotations from scripture, beseeches assistance, gives thanks, and seeks solace from God.⁹⁶ Also, in the message to the nation on Eid al-Fitr (end of Ramadan) 2001, Qaboos turned to the Quran to say, ‘Plurality in nations is one of God’s ways in creation,’ then cited the Quranic verse, ‘If thy Lord had so willed, He could have made mankind one people’.”⁹⁷

Codification: A Modern Legislative Movement

“At the same time, as Oman’s laws—with the exception of personal status law (especially domestic relations and inheritance)—are adapted to international standards, particularly commercial, procedural, company, banking and arbitration law, the Islamic *Sharia* is marginalized.”⁹⁸

Since the 1970s, Oman has adopted a number of codes relating to commercial, criminal, labor, and tax laws. The Labor Law was initially codified in 1973 and has been

Arabic, has Quranic roots. Islamic scholars do not agree on whether consultation with those affected is obligatory or merely desirable.”

⁹²Siegfried, 374.

⁹³Oman Basic Law, Article 69. The Law shall define the competencies of the department which expresses legal opinions to Ministries and other Government departments and formulates and revises draft laws, regulations and decisions. The Law shall also specify the mode of representation of the State and other public bodies and organizations before the Departments of Justice.

⁹⁴Siegfried, 373.

⁹⁵Thirty-five in total.

⁹⁶Joseph A. Kechichian, “A Vision of Oman: State of the Sultanate Speeches by Qaboos Bin Said, 1970-2006,” *Middle East Policy* 15, no. 3, Fall 2008: 130.

⁹⁷Charles O. Cecil, “Oman’s Progress toward Participatory Government,” *Middle East Policy* 13, no. 1, Spring 2006: 66.

⁹⁸Siegfried, 360.

amended several times since; the current law was passed in 2003.⁹⁹ Royal Decree No. 7 of 1974 established the Penal Code¹⁰⁰ and the Banking Law of 1974 is considered to be one of the most advanced in the Gulf region.¹⁰¹ In 1990 a broad Commercial Law came into effect by virtue of Royal Decree No. 55 of 1990.¹⁰²

A Personal Status Law was introduced by Royal Decree 32 of 1997, which addresses some aspects of family law, including marriage contracts, divorce, the rights and obligations of spouses, maintenance obligations, child custody, guardianship, and inheritance provisions.¹⁰³ Oman's Personal Law is based on Sharia law in all aspects.¹⁰⁴

⁹⁹“Amendments to the 2003 Labour Law, introduced in July by decree 74/2006, established legal rights to form trade unions, engage in collective bargaining, and carry out union duties free from official pressure or interference. It also prohibited forced or coerced labor. However, domestic workers, many of whom were foreign migrants and women, were not covered by the law.” Amnesty International USA, 2007 *Annual Report on Oman*. Available at: <http://www.amnestyusa.org/annualreport.php?id=ar&yr=2007&c=OMN>

¹⁰⁰ UNDP-POGAR, *Program on Governance in the Arab Region*. Available at: <http://www.undp-pogar.org/countries/theme.aspx?cid=13&t=9>

¹⁰¹Ibadi, the school of Islam established in Oman, is a form of Islam whose followers subscribe to the belief that most people sin because they have rejected God's grace, not because they do not believe in God, and they include non-Ibadi Muslims in this category. They are exclusionists in the sense that they believe in salvation *only* for Ibadis and see themselves as the only true Muslims. Still, they worship with other Muslims and openly associate with peoples of all faiths, reserving their hostility only for the unjust ruler. Ibadis believe that they have an obligation (called *bara'a*) to dissociate with unbelievers, those who have turned from God, non-Ibadi Muslims and anyone who sins habitually; meanwhile, they are instructed to draw nearer to the true believers (*wilaya*). There is a great deal of dense and difficult legal literature on these two concepts. Valerie J. Hoffman, “The Articulation of Ibadi Identification in Modern Oman and Zanzibar,” *The Muslim World* 94, (April 2004): 201–16.

¹⁰¹ UNDP-POGAR, *Program on Governance in the Arab Region*. Available at: <http://www.undp-pogar.org/countries/theme.aspx?cid=13&t=9>

¹⁰²The principles of this corpus of laws draw on the Kuwaiti commercial code of 1981, French Civil Code, and Egyptian Law. UNDP-POGAR, *Program on Governance in the Arab Region*. Available at: <http://www.undp-pogar.org/countries/theme.aspx?cid=13&t=9>

¹⁰³Royal Decree 32/97. Royal Decree 32/97 aimed at unifying judgments on matters like marriage and divorce, which had been open to differing interpretations under the existing customary laws. The Personal Status Law stipulates that no man or woman under the age of 18 shall be forced to marry without his or her consent and that having reached that age there is freedom of choice in marriage subject to certain conditions.

¹⁰⁴ Rafiah al-Talei, *Freedom house, Women's Rights in The Middle East and North Africa: Oman*, 2010, 6. Available at: http://freedomhouse.org/uploads/special_report/section/261.pdf

The Legal Profession and Legal Education

Two institutions provide legal education in Oman.¹⁰⁵ One is the Oman College of Law,¹⁰⁶ where programs are taught in Arabic for full-time and part-time students and applicants must have a bachelor's degree in Law or the equivalent from a Law College or *Sharia* Colleges.¹⁰⁷ The second is the College of *Sharia* and Law, established in 1997 in accordance with Royal Decree 37/97, but was then renamed College of Law and affiliated with the Sultan Qaboos University, which opened in 1986 as the country's first university and remains the country's only major public university.¹⁰⁸

Article 65 of the Constitution states that, "the legal profession shall be regulated by law."¹⁰⁹ A sense of legal fraternity among Omani nationals and Arab lawyers from abroad is experienced in Oman.¹¹⁰ Arab lawyers registered as members of their respective Bar Councils are licensed to represent and plead cases in Omani courts.¹¹¹ Non-Arabic speaking lawyers also are found in the Sultanate, often as legal consultants or in-house lawyers in Omani law firms.¹¹² Royal Decree had stipulated that there was to be a change in 2008 with a cut off for non-Omani lawyers to be able to register themselves to practice in Oman; however, no new reports were found of this change.¹¹³

¹⁰⁵For information on Legal Education in Oman, *See generally*: Salma M. Al-Lamki, "Higher Education in the Sultanate of Oman: the Challenge of Access, Equity and Privatization," *Journal of Higher Education Policy and Management* 24, no. 1, (2002): 75.

¹⁰⁶In 2007 the ABA Rule of Law Initiative conducted a workshop concerning the importance of legal education to professors at the Oman College of Law. Teaching techniques and interactive teaching methods were covered in accordance with the College's reported effort to develop new curriculum, advance practical skills, and establish legal clinics. (*Available at*: www.abanet.org/rol/news/news_oman_legal_workshop.html)

¹⁰⁷Sultan Qaboos University. *Available at*: <http://www.squ.edu.om/ps/tabid/8192/language/en-US/Default.aspx>

¹⁰⁸U.S. Department of State, Bureau of Near Eastern Affairs. *Background Note: Oman*. *Available at*: <http://www.state.gov/r/pa/ei/bgn/35834.htm>. The Oman College of Law offers a Master of Law degree in the following four disciplines: public law, private law, commercial law, and criminal law. Each discipline has its own guide to courses, but all require 132 hours for completion of the eight semesters. *See also* Sultan Qaboos University, *Available at*: <http://squ.edu.om/ps/tabid/8192/language/en-US/Default.aspx>

¹⁰⁹Oman, Basic Law, Article 65.

¹¹⁰Dr. Abdullah Alsaidi Law Office. *Available at*: <http://www.omanlawyers.com/Omanlegalsystem.html>

¹¹¹Dr. Abdullah Alsaidi Law Office.

¹¹²Dr. Abdullah Alsaidi Law Office.

¹¹³Dr. Abdullah Alsaidi Law Office.

PART THREE: THE CITIZEN

Constitutional Guarantee of the Rights of the Omani Citizen

Part Three of the Basic Law stipulates a number of public rights, which comprise a constitutional guarantee of the rights of the Omani citizen.¹¹⁴ The stated principles of the constitution echo the government's intent to respect these fundamental rights.

The political principles of the Basic Law call for the establishment of an “administrative system” that not only protects the country's interests and provides public stability, but also “guarantees justice, tranquility and equality for citizens.”¹¹⁵ Provisions referencing individual rights illustrate the specific means by which the government will uphold the thrust of these aims.

For example, the first protections for an Omani citizen are the safeguarding of his/her nationality status¹¹⁶ and the right of a citizen's physical presence in the country.¹¹⁷ Citizens are guaranteed a number of essential freedoms that allow them to engage in the political sphere, these include: freedom of opinion and expression,¹¹⁸ freedom of communication and the guarantee of its confidentiality,¹¹⁹ freedom of the press,¹²⁰ freedom of assembly,¹²¹ and freedom of association.¹²² It is notable that a clause

¹¹⁴Oman, Basic Law, Part III: Public Rights and Duties.

¹¹⁵Oman, Basic Law, Article 10 [Political Principles].

¹¹⁶Oman, Basic Law, Article 15 [Citizenship]: “Nationality is regulated by the Law. It may not be forfeited or withdrawn except within the limits of the Law.”

¹¹⁷Oman, Basic Law, Article 16 [Citizenship]: “It is not permitted to deport or exile citizens, or prevent them from returning to the Sultanate.” In relation to physical presence of noncitizens, Article 36 protects against the extradition of political refugees, and the extradition of criminals must be in accordance with international laws and agreements.

¹¹⁸Oman, Basic Law, Article 29 [Expression]: “Freedom of opinion and expression, whether spoken, written or in other forms, is guaranteed within the limits of the Law.”

¹¹⁹Oman, Basic Law, Article 30 [Communication]: “Freedom of postal, telegraphic, telephonic and other forms of communication is sacrosanct and their confidentiality is guaranteed. Hence, it is not permitted to monitor or inspect them, reveal their contents, or delay or confiscate them except in circumstances defined by the Law and in accordance with the procedures laid down therein.”

¹²⁰Oman, Basic Law, Article 31 [Press]: “Freedom of the press, printing and publication is guaranteed in accordance with the conditions and circumstances defined by the Law. It is prohibited to print or publish material that leads to public discord, violates the security of the State or abuses a person's dignity and his rights.”

¹²¹Oman, Basic Law, Article 32 [Assembly]: “Citizens have the right of assembly within the limits of the Law.”

¹²²Oman, Basic Law, Article 33 [Association]: “The freedom to form associations on a national basis for legitimate objectives and in a proper manner, in a way that does not conflict with the stipulations and aims of this Basic Law, is guaranteed under the conditions and in the circumstances defined by the Law. It is forbidden to establish associations whose activities are inimical to social order, or are secret, or of a military nature. It is not permitted to force anyone to join any association.”

with the words, “within the limits of the Law,” or a similarly worded clause, appears in each provision granting these freedoms, thereby allowing for potential limitations. The generality of terms in which the qualifying clause is phrased, however, suggests the government has broad discretion in determining when a certain act is not protected by the constitution.

It is noted that although Article 29 grants freedom of opinion and expression and Article 31 allows freedom of the press (granted it does not lead to public discord (*fitna*), civil rights in Oman remain restricted. For example, Article 41 excludes comments about the Sultan.¹²³

Furthermore, laws relating to the establishment of associations exemplify how extensive restrictions to the freedom of association may be without strictly contradicting the constitution. However, in assessing the relevancy and legitimacy of an NGO law, one must consider the following: (1) the licensing process and to what extent the law facilitates the establishment/entry of an NGO, including whether licensing is mandatory; (2) legal rights and permissible activities, including whether an NGO may be engaged in political activities, whether they are allowed to receive foreign funds; (3) incentives and benefits granted for NGOs, including tax exemption status, reduction in electricity/water/utility fees, exemptions for customs duties on supplies and materials; (4) whether the law provides for an NGO’s non-compliance with the law, whether there are criminal sanctions that may be imposed on members of an NGO, whether termination or suspension of NGOs may only be ordered by a court decision. The Ministry also must grant permission for an association to present any public event and the association is prohibited from “interfer[ing] in religious issues.”¹²⁴ The Ministry of Social Affairs and Labor in Oman can reject an association’s application to register if it deems the services unnecessary or redundant or for “any other reason.”¹²⁵ As observed, “these formulations are vague and do not correspond to the rise in legal certainty granted in the private sphere. Public authorities remain the prerogative of the state.”¹²⁶

¹²³Siegfried, 372.

¹²⁴Oman, Law No. 14 of 2000, Article 5.

¹²⁵Oman, Law No. 14 of 2000, Article 11. (Quoting the Sultanate)

¹²⁶Siegfried, 372.

Citizens also have the right to engage public authorities on private and public issues of interest or concern to them.¹²⁷ As a corollary to these rights and freedoms, Omani citizens and all other residents of the Sultanate have a solemn duty to “[r]espect ... the Basic Law of the State and the laws and ordinances issued by the public authorities, as well as [to observe] ... public order and public morals.”¹²⁸

The economic principles outlined in the Basic Law provide the underpinnings of a just and free economy designed to propel the country’s social development and improve citizens’ standard of living.¹²⁹ A fundamental precept supporting this economic framework is the basic respect for the right to private property. This right is emphasized in Part Two of the Basic Law, with the added requirement of providing compensation to any citizen whose property is expropriated in limited, justified circumstances.¹³⁰ The right to inheritance of private property is also guaranteed.¹³¹

Notably, just as the State respects the individual’s right to private property, it expects its citizens and others in Oman to safeguard public property.¹³² Citizens also are expected to contribute to public resources by duly paying taxes to the State.¹³³ The duty to pay taxes is administered based on the principles of justice and development as well as in accordance with the Law.¹³⁴

¹²⁷Oman, Basic Law, Article 34 [Petition, Public Affairs]: “Citizens have the right to address the public authorities on personal matters or on matters related to public affairs, in the manner and on the conditions laid down by the Law.”

¹²⁸Oman, Basic Law, Article 40 [Observance of the Law].

¹²⁹Oman, Basic Law, Article 11(1) [Economic Principles].

¹³⁰Oman, Basic Law, Article 11(1) [Economic Principles]. “Private property is protected. No-one shall be prevented from disposing of his property within the limits of the Law. Nor shall anyone’s property be expropriated, except for the public benefit in those cases defined by the Law and in the manner stipulated by the Law, and on condition that the person whose property is expropriated receives just compensation for it. . . . Confiscation of property is prohibited and the penalty of specific confiscation shall only be imposed by judicial order in circumstances defined by the Law.”

¹³¹Oman, Basic Law, Article 11(1) [Economic Principles]: “Inheritance is a right governed by the Shariah of Islam.”

¹³²Oman, Basic Law, Article 11(1) [Economic Principles]: “Public property is inviolable. The State shall protect it, and citizens and all other persons shall preserve it.”

¹³³Oman, Basic Law, Article 39 [Taxation]: “Payment of taxes and public dues is a duty in accordance with the Law.”

¹³⁴Oman, Basic Law, Article 11(1) [Economic Principles]: “The basis of taxes and public dues shall be justice and the development of the national economy... . The institution, adjustment and cancellation of public taxes shall be by virtue of the Law. No one may be exempted from payment or all or part of such taxes except in circumstances defined in the Law. ... No tax, fee or other entitlement of any kind may be applied retrospectively.”

As with the economic framework, the social structure of Omani society is founded upon the precepts of justice and equality.¹³⁵ Bringing together the diverse peoples within Oman is regarded as essential for the ultimate strengthening of a cohesive Omani population.¹³⁶ With this aim, the Basic Law strictly prohibits the unequal treatment of citizens: “All citizens are equal before the Law, and they are equal in public rights and duties. There shall be no discrimination between them on the grounds of gender, origin, colour, language, religion, sect, domicile or social status.”¹³⁷

Social principles in the Basic Law further profess that the State assumes partial responsibility for assisting Omani citizens on an individual¹³⁸ and a societal¹³⁹ basis, in terms of the health and well-being of its population. In this vein, the State decisively protects against using any human being for medical or scientific experimentation without his/her free consent.¹⁴⁰ Part Three further offers specific protections for the sanctity and privacy of citizens’ homes.¹⁴¹ A number of constitutional provisions govern the

¹³⁵Oman, Basic Law, Article 12 [Social Principles]: “Justice, equality and equality of opportunity between Omanis are the pillars of society, guaranteed by the State.”

¹³⁶Oman, Basic Law, Article 12 [Social Principles]: “Co-operation, compassion, strong ties between citizens, and the reinforcement of national unity are a duty. The State shall prevent anything that could lead to division, discord, or the disruption of national unity.” In Article 12, the government places a strong emphasis on the role of the family in maintaining overall stability in society: “The family is the basis of society, and the Law regulates the means of protecting it, safeguarding its legal structure, reinforcing its ties and values, providing care for its members, and creating suitable conditions for the development of their aptitudes and capabilities.”

¹³⁷Oman, Basic Law, Article 17 [Citizen Equality, No Discrimination]. *But see: Crime and Society: A Comparative Criminology Tour of the World: Oman. Available at: http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/oman.html* (Marriage to foreigners requires permission from the Ministry and this hurdle can sometimes be regarded as a form of discrimination by the State which Omani citizens will circumvent in various ways.)

¹³⁸Oman, Basic Law, Article 12 [Social Principles]: “The State guarantees assistance for the citizen and his family in cases of emergency, sickness, incapacity and old age in accordance with the social security system.”

¹³⁹Oman, Basic Law, Article 12 [Social Principles]: “The State cares for public health and for the prevention and treatment of diseases and epidemics. It endeavours to provide health care for every citizen and to encourage the establishment of private hospitals, clinics and other medical institutions under State supervision and in accordance with the rules laid down by Law. It also works to conserve and protect the environment and prevent pollution.”

¹⁴⁰Oman, Basic Law, Article 26 [Personal Integrity Against Experiments]: “It is not permitted to perform any medical or scientific experiment on any person without his freely given consent.” See also: *Crime and Society: A Comparative Criminology Tour of the World: Oman. Available at: http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/oman.html* (The Basic Law does not specify any protection against human trafficking. However, no such incidents were reported.)

¹⁴¹Oman, Basic Law, Article 27 [Home]: “Dwellings are inviolable and it is not permitted to enter them without the permission of the owner or legal occupant, except in the circumstances specified by the Law and in the manner stipulated therein.”

circumstances involving the arrest and detention of citizens, with significant protections, including protection against torture and due process.¹⁴²

The Basic Law does not explicitly make education a right of every Omani citizen, however it does reflect in its enumeration of social principles how central to a citizen's development the government considers good education services to be.¹⁴³

The Basic Law does, on the other hand, expressly protect the freedom of religion of Omani citizens. Importantly, however, it imposes certain restrictions on the practice of one's religion, namely that customs must be "recognized," and must be conducive to Omani society.¹⁴⁴

The Basic Law incorporates a set of duties on every citizen as vital for the stability and sovereignty of the State of Oman. These encourage citizens to defend the State by serving in the Armed Forces,¹⁴⁵ require a strong framework of national unity,¹⁴⁶ and a strict observance of Omani law and public order.¹⁴⁷

Women's Rights and Participation

Women citizens of Oman joined in Sultan Qaboos' modernization plans to become part of the private and public sectors but then dwindled in representation with the

¹⁴²Oman, Basic Law, Article 18 [Personal Freedom], Article 19 [Imprisonment], Article 20 [Personal Integrity], Article 21 [Criminal Punishments], Article 22 [Presumption of Innocence, Due Process, Personal Integrity], Article 23 [Right to Counsel], Article 24 [Arrest], and Article 25 [Right to Litigation].

¹⁴³Oman, Basic Law, Article 13 [Cultural Principles]: "Education is a fundamental element for the progress of society which the State fosters and endeavours to make available to all [...]. Education aims to raise and develop general cultural standards, promote scientific thought, kindle the spirit of enquiry, meet the needs of the economic and social plans, and create a generation strong in body and moral fiber, proud of its nation, country and heritage, and committed to safeguarding their achievements [...]. The State provides public education, combats illiteracy and encourages the establishment of private schools and institutes under State supervision and in accordance with the provisions of the Law."

¹⁴⁴Oman, Basic Law, Article 28 [Religion]. But, further restrictions regarding the freedom of religion of children exist. According to the Oman Legal System Overview, "Oman acceded to the CRC in 1996 with a number of reservations. [...] The reservation to Articles 14 and 30 states that Oman does not consider itself bound by those provisions that grant children the freedom of religion or that "allow a child belonging to a religious minority to profess his or her own religion."

¹⁴⁵Oman, Basic Law, Article 37 [Territorial Integrity, Military Duty]: "Defence of the homeland is a sacred duty, and rendering service in the Armed Forces is an honour for citizens regulated by the Law".

¹⁴⁶Oman, Basic Law, Article 38 [National Unity, Duty of Citizens]: "Preserving national unity and safeguarding State secrets is a duty incumbent upon every citizen."

¹⁴⁷Oman, Basic Law, Article 40 [Observance of the Law]: "Respect for the Basic Law of the State and the laws and ordinances issued by the public authorities, as well as observance of public order and public morals, is a duty incumbent upon all residents of the Sultanate."

saturated labor market of the 1980s.¹⁴⁸ In mid-1990s, however, the government recruited national women and men in lieu of hiring expatriates for jobs during a policy of “Omanization.”¹⁴⁹ Poor and less educated women took advantage of the opportunities and female university graduates also increased; by 2003, women’s visibility in the workforce again surged to 17.2 percent, near identical to what it had been in 1980 and, according to some reports, is now 19.1 percent.¹⁵⁰

The patriarchal culture and the conservative religious norms have an enormous impact on women, and despite progress, women are still discriminated against in nearly all areas of life.¹⁵¹ Women are underrepresented in the judiciary and governmental bodies, and men both legally and traditionally hold the position of head of the household.¹⁵² In fact, women are not able to have full freedom in making decisions regarding their health and reproductive rights; unequal rights are afforded them under the personal status law, which governs inheritance, marriage, divorce, and child custody.¹⁵³ Being one of the first Gulf countries to offer political rights to women, Oman has allowed women to vote and stand in elections for the Consultative Council since 1994.¹⁵⁴ It is important to remember that universal adult suffrage was not made available for the first time until 2003; before that, select individuals were chosen by the government leaders. In 2004 the sultan appointed 14 women to the State Council, however, no female candidate won a seat in the Consultative Council in 2007, the first year women were permitted to run.¹⁵⁵

¹⁴⁸ Rafiah al-Talei, *Freedom house, Women’s Rights in The Middle East and North Africa: Oman*, 2010, 1. Available at: http://freedomhouse.org/uploads/special_report/section/261.pdf (For more information on the situation of women in Oman, see generally: Kathleen Dechant and Asya Al Lamky, “Toward an Understanding of Arab Women Entrepreneurs in Bahrain and Oman,” *Journal of Developmental Entrepreneurship* 10, no. 2, (2005): 123.

¹⁴⁹ http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁵⁰ http://freedomhouse.org/uploads/special_report/section/261.pdf (Women constituted 17.1 percent of the workforce in 1980 but only 14.2 percent in 1990.)

¹⁵¹ http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁵² Women are underrepresented in the judicial system in general, meaning lawyers, etc. Available at: http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁵³ http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁵⁴ Majlis al-Shura is the lower house of parliament. Available at: http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁵⁵ Roles however may be changing, as visibility of those in office is now a possibility. Available at: http://freedomhouse.org/uploads/special_report/section/261.pdf

The overarching restrictions and denial to basic civil liberties hinder any advocacy for women's rights and no NGOs for human rights or women's rights exist.¹⁵⁶ Although women are permitted to drive cars and work in the workplace alongside men, Omani laws and policies, for example, require a husband's permission for a woman to obtain a passport and keep Omani women in a gender-based society.¹⁵⁷ Furthermore, the under-representation of women in the legal field and the customary and traditional forbidding any woman to act as judges curbs many women from seeking justice, especially rural women who will not discuss their legal injustice with a male attorney.¹⁵⁸ While female rape victims are often criminalized as well, a man who "catches his wife in the act of adultery" and purports a violent crime against her, even the act of murder, is, according to Article 109 of the Penal Code, able to have his sentence reduced to "at least one year."¹⁵⁹

Royal Decree No. 63 of 2008 stipulated adult women to be considered full persons before the law, deeming the testimony of men and women equal in court proceedings.¹⁶⁰ In February 2006, Oman ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women.¹⁶¹ The Ministry of Social Development is responsible for its implementation and, along with the Ministry of Legal Affairs, the Ministry of National Economy, and the Ministry of Justice, currently is reviewing existing domestic laws to determine their compliance with CEDAW principles.¹⁶²

http://freedomhouse.org/uploads/special_report/section/261.pdf (See also the section on 'Human Rights Practices in Oman: An American Perspective').

¹⁵⁷http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁵⁸http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁵⁹http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁶⁰ The Principle of Equality is based on progressive interpretation of the Quranic verse that provides for the double witness role. It states that: "O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing Let a scribe write down faithfully as between the parties: let not the scribe refuse to write: as Allah Has taught him, so let him write. Let him who incurs the liability dictate, but let him fear His Lord Allah, and not diminish aught of what he owes. If they party liable is mentally deficient, or weak, or unable Himself to dictate, Let his guardian dictate faithfully, and get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her."

¹⁶¹ U.N. Doc Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature, ratification and accession by United Nations General Assembly on December 18, 1979; entry into force September 3, 1981; *available at*: <http://www2.ohchr.org/english/law/cedaw.htm>

¹⁶² http://freedomhouse.org/uploads/special_report/section/261.pdf

Royal Decree No. 32 of 1997, also known as Oman’s Personal Status Law, is based on *Shari‘a*, which allocates different rights and responsibilities to men and women¹⁶³ and tends to favor the rights of men in dealings of marriage, divorce, inheritance, and child custody. For example, men generally retain custody of children, except when the mother is still breastfeeding. Also, men may divorce their wives for any reason, whereas women are only allowed to initiate a divorce in a small number of specific circumstances or if they return their entire dowry. Further, men inherit twice what their wives inherit, unless specifically stated in the will.

Muslim women are only permitted to marry Muslim men¹⁶⁴ but they are allowed to choose their own husbands. Likewise, a guardian’s presence is not required in order for a woman to sign her own marriage contract. Both men and women must attain government permission in order to marry a noncitizen. However, this permission is not always granted, hence a violation of the right to marry.¹⁶⁵

Although slavery and slavery-like conditions are prohibited by law, many female foreign domestic workers fall victim to exploitation and are either unaware of their rights or too fearful of losing their jobs or being deported to report their employers’ illegal practices.¹⁶⁶

Oman issued its first major anti-trafficking law in 2008, making all forms of trafficking illegal.¹⁶⁷ In the 2008 law, the human trafficking crime is defined as: “To carry out any of the acts mentioned in Article 2 of this Law.”¹⁶⁸ Domestic violence, however, still is not criminalized; in the Arab world, it has been criminalized only in

¹⁶³For example, it holds men financially responsible for the family. However, under Article 282 of this law, non-Muslims are permitted to follow their own rules in the family context.

¹⁶⁴Although Muslim men are free to marry non-Muslim women.

¹⁶⁵http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁶⁶http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁶⁷http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁶⁸Royal Decree No 126/2008 Anti-Trafficking Law, Article 2, Available at:

www.ncchtoman.gov.om/download.asp?filename=ncchtLaw_e.pdf. [Article 2]: Any person shall be deemed committing a human trafficking crime if they intentionally or for the purpose of exploitation:

- a. Use, transfer, shelter, or receive a person by coercion, under threat, trick, exploitation of position or power, exploitation of weakness, by use of authority over that person, or by any other illegal means directly or indirectly.
- b. Use, transfer, shelter or receive a minor, even if the means mentioned in the preceding paragraph are not used.

Jordan.¹⁶⁹ It is not reported in the media and it exists at various levels of Omani society.¹⁷⁰ Furthermore, women who fall victim to domestic violence have nowhere to go for long-term refuge.¹⁷¹ Instead, they are encouraged to go to their families for help. Although there is no way to report violence anonymously, recently a number of cases have been filed by female victims of domestic abuse.¹⁷²

Women's role in the labor force has increased in recent years¹⁷³ and with increased economic autonomy comes more decision-making power within the family. Furthermore, under Article 11 of the Basic Law, women are granted the right to own and use property independently. Nevertheless, in spite of laws that explicitly prohibit gender-based discrimination in the labor sector, women still face occupational discrimination and fewer opportunities to access post-secondary education.¹⁷⁴ The government has made an effort to abide by this policy of non-discrimination, with one-third of their employees being women.¹⁷⁵ With some exceptions,¹⁷⁶ Article 81 of the Oman Labor Law makes it illegal for women to work between the hours of 7 p.m. and 8 a.m. without permission from the minister of labor. Women are frequently given fewer benefits than their male counterparts and Oman does not have a law that forbids sexual harassment in the workplace. Additionally, traditional male and female roles may prevent men from promoting women and women from pursuing promotions.¹⁷⁷

Although opposition to the government and political parties is prohibited in Oman and citizens cannot change their government democratically,¹⁷⁸ the Omani political field is becoming more liberal as women in Oman are beginning to play more important roles

¹⁶⁹*Domestic Violence Laws of the World*. Harvard University. Available at: <http://www.hsph.harvard.edu/population/domesticviolence/domesticviolence.htm> (last updated Feb. 2, 2010).

¹⁷⁰http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁷¹The OWA provides only temporary aid and does not advocate on the victims' behalf.

¹⁷²http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁷³Approximately 26 percent of adult females participated in the workforce in 2007 and that number is expected to rise as increasingly women delay marriage in pursuit of higher education.

¹⁷⁴Although university enrollment increased from 21 to 36 percent in 2004 and 2006, respectively, gender-based disparities exist in the grades required to gain access to education and a "gender-based quota system limits the number of women in certain disciplines such as agriculture, medicine, and engineering."

Available at: http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁷⁵Nevertheless, very few occupy high-level posts.

¹⁷⁶Such as health care professionals who are needed overnight

¹⁷⁷http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁷⁸http://freedomhouse.org/uploads/special_report/section/261.pdf

in the upper levels of government, are registering to vote¹⁷⁹ in larger numbers, and are increasingly running as parliamentary candidates.¹⁸⁰ However, their overall level of political and civic participation remains low.¹⁸¹ Currently, 14 women serve in the 70-member State Council and only four are ministers. Although no free press exists in Oman, women have begun using the Internet as a way to exchange information and this activity has empowered younger women to become involved in civic work.¹⁸²

The Omani Women's Association (OWA) was founded in 1971 by a group of educated women and is considered the first women's organization in Oman. It is estimated that 3,550 women are members of one of its 47 branches, and its activities¹⁸³ are supervised by the MSD. In 2005 it sought to address a more diverse set of issues concerning women, but the government approved no voter education courses or political issues of any kind. No international woman's rights NGOs exist in Oman and foreign organizations are rarely permitted to conduct human or women's rights studies.¹⁸⁴

Worker's Rights and Foreign Workers

Oman has made a great deal of progress towards the protection of foreign and domestic laborers in recent years. The 2001 U.S. Department of State Country Report on Human Rights Practices declares that in Oman, at that time, workers were prohibited from forming or joining unions. The law also stated that "it [was] absolutely forbidden to provoke a strike for any reason."¹⁸⁵ Oman's 2003 labor law, which was enacted in 2006, officially granted workers the right to unionize, with the exception of members of the armed forces, public security institutions, government employees, and domestic

¹⁷⁹Universal suffrage has only been offered to women since the 2003 elections.

¹⁸⁰"Women's Rights Gain Traction in Gulf Arab States, but Inequality Persists," Press Release. Freedom House, (February 11, 2009), *Available at*: <http://www.freedomhouse.org/template.cfm?page=70&release=770>

¹⁸¹"Women's Rights Gain Traction in Gulf Arab States, but Inequality Persists," Press Release. Freedom House, (February 11, 2009), *Available at*: http://www.freedomhouse.org/uploads/special_report/section/261.pdf

¹⁸²http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁸³Including offering "informational lectures on health practices, childcare, crafts training, and support for women seeking legal action or subjected to domestic abuse or forced marriages." *Available at*: http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁸⁴http://freedomhouse.org/uploads/special_report/section/261.pdf

¹⁸⁵U.S. Department of State. Bureau of Democracy, Human Rights, and Labor. *Country Reports on Human Rights Practices 2001: Oman*. *Available at*: <http://www.state.gov/g/drl/rls/hrrpt/2001/nea/8286.htm>

workers.¹⁸⁶ Other labor reforms enacted the same year improved workers' conditions by granting workers the right to bargain collectively and to strike on the condition that union workers give their employers three weeks notice of their intent to strike.¹⁸⁷ These reforms also set a minimum wage for workers and increased penalties for violators of child labor laws.¹⁸⁸

According to Article 35 of the Oman Constitution, "every foreigner who is legally resident in the Sultanate shall have the right to protection of his person and his property in accordance with the Law. Foreigners shall have regard for society's values and respect its traditions and customs."¹⁸⁹ Unfortunately for many foreign workers, there is a lack of sufficient protection and enforcement to secure their rights. Further, many challenges for foreigners arise from exceptions in the labor laws which exclude foreigners from enjoying the same rights as Omani citizens. For example, employers are not required to provide the country's minimum wage to foreign workers. Although foreigners would be well paid if they were highly skilled, the fact that there is no minimum wage for them has led to cases of laborers working 12-hour days for 30 rials (\$78) a month.¹⁹⁰ Another obstacle facing foreigners is the fact that discrimination is not prohibited by law.¹⁹¹ In addition, the government of Oman does not permit foreign workers with HIV/AIDS to work in the country.¹⁹²

The reality for foreign workers was further exacerbated by a law that required all foreign workers who wanted to change employers to obtain a letter of release from their current employer. Since this letter was often withheld and noncitizens faced unemployment and deportation if they left without permission, foreign workers were rendered vulnerable to exploitation by their employers. Despite the fact that they had the right to take a dispute of this nature to court, few were aware of their rights and many feared retribution. For these reasons, foreigners often found themselves victims of forced

¹⁸⁶U.S. Department of State. Bureau of Democracy, Human Rights, and Labor. *Country Reports on Human Rights Practices 2008: Oman*. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119124.htm>

¹⁸⁷<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

¹⁸⁸<http://www.freedomhouse.org/template.cfm?page=22&country=7677&year=2009>

¹⁸⁹Oman, Basic Law, Article 35 [Rights of Foreigners].

¹⁹⁰<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

¹⁹¹<http://www.freedomhouse.org/template.cfm?page=22&country=7677&year=2009>

¹⁹²<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

labor, although it was forbidden by law.¹⁹³ Fortunately for these workers, this law was overturned by a Supreme Court ruling in 2006 and noncitizens are no longer required to obtain permission in order to change employers.¹⁹⁴ Even with that law repealed, however, the U.S. Department of State 2009 Country Reports on Human Rights states that according to some accounts, immigrants from South and Southeast Asia often found themselves in involuntary servitude, facing restrictions on movement, physical and sexual abuse, and long hours without food, rest, or compensation. Some foreign women were lured into prostitution in hopes of higher wages and illegal immigrants were often exploited by their employers.¹⁹⁵

Trafficking of humans for any purpose is illegal in Oman, and this extends to trafficking for the purpose of labor. Although this prohibition existed in 2001, no cases of trafficking were mentioned in the report from that year, which suggests that the law was not being enforced.¹⁹⁶ In fact, the U.S. State Department's annual *Trafficking in Persons Report* (TiP) ranked Oman as a Tier 3 country as recently as 2008, noting that almost all grievances from laborers were settled out of court and employers were not penalized for criminal activities committed against their employees.¹⁹⁷ The 2009 Report notes that cases of trafficking were reported and Oman was the destination country for trafficked persons from a number of countries.¹⁹⁸ Although the problem persists in Oman, improvements have undoubtedly been made and the 2010 TiP Report lists Oman as a Tier 2 country.¹⁹⁹ Most of these victims willingly migrate to serve as domestic servants or low-skilled workers in agriculture, construction, and service sectors but then face conditions indicative of involuntary servitude.²⁰⁰

Male laborers in transit to the UAE, from countries such as Pakistan, India, Bangladesh, Sri Lanka, and countries of East Asia, are sometimes exploited with forced labor while en route through Oman.²⁰¹ Although the Government of Oman does not fully

¹⁹³<http://www.state.gov/g/drl/rls/hrrpt/2001/nea/8286.htm>

¹⁹⁴<http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119124.htm>

¹⁹⁵<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

¹⁹⁶<http://www.state.gov/g/drl/rls/hrrpt/2001/nea/8286.htm>

¹⁹⁷<http://www.freedomhouse.org/template.cfm?page=22&country=7677&year=2009>

¹⁹⁸<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

¹⁹⁹<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

²⁰⁰<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

²⁰¹ <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

comply with the minimum standards for the elimination of trafficking,²⁰² the enactment of anti-trafficking legislation and the nation's first prosecution under these provisions shows an increased commitment to combat trafficking.²⁰³ Royal Decree No. 126/2008 prohibits all human trafficking and prescribes punishment of three to 15 years' imprisonment in addition to financial penalties.²⁰⁴ In the first prosecuted case, noted above, sex traffickers were prosecuted and the government confiscated the Omani defendants' commercial establishments and forbade them from sponsoring any future expatriate workers.²⁰⁵ The Ministry of Manpower in December 2008 developed a system for identifying trafficking victims among migrant workers at private businesses; this system involves reviewing bank statements, employment contracts, and salary slips, as well as speaking privately with randomly selected workers on site.²⁰⁶ A lack of concern seems to exist for the absence of identifying victims of trafficking among other vulnerable groups; a limited number of NGO-run facilities for such trafficked victims exist in Oman.²⁰⁷ Because victims are encouraged to participate in the system, under the new statute, a victim may remain in Oman if an investigation or trial finds cause. Victims who have fled employers and have no new employment sponsorship are allowed to remain in country one month in order to locate a new sponsor.²⁰⁸

With regard to prevention measures, Oman has launched a public campaign aimed at educating workers, employers, and the general public on laws and potential abuses but misses addressing the nature of human trafficking as a local and global phenomenon.²⁰⁹ Ninety-four additional male and female labor inspectors were hired to help prevent enforcement of certain trafficking acts related to labor laws.²¹⁰

²⁰² According to Section 108 of the trafficking in victims protection act, seven criteria exist to measure a country's serious and sustained efforts to eliminate trafficking in persons. Those criteria are: (1) investigations, prosecutions, convictions and sentences, (2) protection: legal status and decriminalization, (3) cooperation with other governments, (4) prevention, (5) extradition, (6) monitoring immigration, and (7) measures against public corruption, including prosecutions, convictions and sentences.

²⁰³ U.S. Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report 2010*. 2010, 258–60. Available at: <http://www.state.gov/documents/organization/142979.pdf>

²⁰⁴ <http://www.state.gov/documents/organization/142979.pdf>

²⁰⁵ <http://www.state.gov/documents/organization/142979.pdf>

²⁰⁶ <http://www.state.gov/documents/organization/142979.pdf>

²⁰⁷ <http://www.state.gov/documents/organization/142979.pdf>

²⁰⁸ <http://www.state.gov/documents/organization/142979.pdf>

²⁰⁹ <http://www.state.gov/documents/organization/142979.pdf> (This campaign also avoided raising awareness of sex trafficking.)

²¹⁰ <http://www.state.gov/documents/organization/142979.pdf>

The government's National Committee for Combating Trafficking in Persons convened for the first time in April 2009.²¹¹ In 2008 Oman signed a memorandum of understanding with the Government of India to strengthen cooperation regarding the employment of Indian workers in Oman, committing the countries to share information concerning illegal recruitment and trafficking of Indian workers.²¹² During that reporting period, seminars were conducted for workers employed by private companies and 180,000 brochures were distributed in eleven languages regarding the rights and services to which workers are entitled legally.²¹³ A broad public campaign on labor issues also was undertaken, which included weekly television and radio spots, articles in government-owned newspapers, and presentations were given by government officials in all major towns at schools, colleges, chambers of commerce, and women's associations.²¹⁴

It is significant that the newly enacted Omani anti-trafficking law provides for various rights for victims of trafficking. The law addresses vulnerabilities of victims. Provisions of article 5 state that, "While investigating or trying a crime of human trafficking, the following procedures should be taken: A) Make the victim understand his/her legal rights in a language understandable to him/her and allow him/her to explain his/her legal, physical, psychological, and social status. B) Refer the victim, in case he/she needs special care or lodging, to the concerned party, and he/she must be taken, as appropriate, to one of the medical or psychological rehabilitation centers, one of the shelters, or one of the accommodation centers. C) Provide security protection to the victim or the witness, whenever deemed necessary. D) If the investigation or trial finds cause, and it is ordered by Public Prosecution or the Court, the victim or the witness shall be permitted to stay in the Sultanate, on a case-by-case basis."²¹⁵

²¹¹<http://www.state.gov/documents/organization/142979.pdf>

²¹²<http://www.state.gov/documents/organization/142979.pdf>

²¹³<http://www.state.gov/documents/organization/142979.pdf>

²¹⁴<http://www.state.gov/documents/organization/142979.pdf>

²¹⁵ Royal Decree 126/2008: Promulgating the Law Combating Trafficking In Persons Law Combating Trafficking in Persons, 2008, art. 8, (Oman), *Available at*: <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/81766/88931/F1239239215/OMN81766.pdf>

Rule of Law: Transparency and Crime Rate

It is reported that Oman has a comparably low crime rate for an industrialized country.²¹⁶ INTERPOL's data places Oman with rates more similar to Japan, which is a nation known for its low crime rate.²¹⁷ In fact, in 2000 Oman had a much lower index than Japan for crimes like robbery, murder, and larceny.²¹⁸ However, records indicate an increase in the rate of total index offenses from 1995 to 2000.²¹⁹

Transparency International ranked 39 out of 180 countries surveyed in 2009. With a ranking of 10 representing low levels of corruption, Oman was given a 4.7 rating in 2007 but rose to a 5.5 in 2009.²²⁰

Article 34 of the Basic Law affords citizens the right to address public authorities on all matters, personal and public in nature, as long as the method is consistent with Omani law. However, a New York Times article on May 15, 2009 pointed out that although young Omanis desire “more political change, rule of law, freedom of speech, institutions, a voice,” all citizen organizations are government-affiliated and thus a civil society does not exist; even the university lacks a political science department.²²¹ The sultan maintains the only power to approve laws, and a recently amended law states that persons may be prosecuted by the government for any objectionable website or blog.²²² One political analyst even pointed out that where top government positions were once full of academics and prominent members of society, former security officials are taking the seats at an alarming rate.²²³

²¹⁶*Crime and Society: A Comparative Criminology Tour of the World: Oman*. Available at:

http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/oman.html.

²¹⁷http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/oman.html.

²¹⁸http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/oman.html.

²¹⁹http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/oman.html.

²²⁰*Transparency International – The Global Coalition against Corruption, Corruption Perception Index 2009*. Available at:

http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table; *Corruption Perception Index 2007* Available at:

http://www.transparency.org/policy_research/surveys_indices/cpi/2007.

²²¹ *Country Information – Oman*. *The New York Times*. Available at:

<http://topics.nytimes.com/top/news/international/countriesandterritories/oman/index.html> (last visited July 1, 2010)

²²²<http://topics.nytimes.com/top/news/international/countriesandterritories/oman/index.html>

²²³<http://topics.nytimes.com/top/news/international/countriesandterritories/oman/index.html>

Rights of the Accused in Accordance with the International/Human Rights Standards

Rights of a person accused of a crime must be fully, adequately, and effectively protected from the point at which he is arrested and charged to when he is convicted or acquitted.²²⁴ Such rights generally include the right to due process, protections from illegal searches and seizures, protection against double jeopardy and self-incrimination, right to a fair and speedy public trial, right to information and to council, right to information on the nature and cause of the accusation, and right to confront one's accuser and witnesses. These rights are international standards and can be found in international and regional treaties and conventions:

The Presumption of Innocence. The presumption of innocence is one of the basic principles of criminal law and now recognized by most countries of the world, at least in principle. The presumption of innocence requires that throughout the criminal proceedings any crime suspect or defendant is treated as innocent. It also provides that the suspect does not have to prove his innocence, but that law enforcement agencies must prove guilt. The presumption of innocence ends with the conviction. Its most important recognition can be found in Article 11 (1) of the United Nations Universal Declaration of Human Rights: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."²²⁵ The presumption of innocence can also be found in Article 14 (2) of the International Covenant on Civil and Political Rights (ICCPR)²²⁶ and in Article 16 of the Arab Charter on Human Rights.²²⁷

Right against Self-Incrimination. Article 14 of the ICCPR establishes the right against self-incrimination. No person who is charged with a criminal offense shall be "compelled

²²⁴Oman Penal Code, from the Royal Decree N. 7/74, Article 1. "No act shall be considered a crime unless stipulated in a specific legislation at the time when it is committed. Furthermore, no penalty shall be pronounced if it is not determined in a law in force when the crime is committed. A crime is deemed committed as soon as its constituting act is executed, without regard to the time of its results."

²²⁵ United Nations. *Universal Declaration of Human Rights*, G.A. Res. 217 A, U.N. GAOR, 3rd Session, 1st plenary meeting, U.N. Doc. A/810 (Dec. 12, 1948).

²²⁶ United Nations. *International Covenant on Civil and Political Rights*, G.A. Res. 2200A, U.N. GAOR, U.N. Doc A/6316 (Dec. 16, 1966); entry into force March 23, 1976, *Available at*: <http://www.hrweb.org/legal/cpr.html> [hereinafter: International Covenant on Civil and Political Rights].

²²⁷ Arab Charter on Human Rights, adopted by the Council of the League of Arab States on 22 May 2004, entry into force: March 15, 2008, *Available at*: <http://www1.umn.edu/humanrts/instree/loas2005.html?msource=UNWDEC19001&tr=y&auid=3337655>

to testify against himself or to confess guilt.” This right, which is applicable at both the pre-trial and trial stages, must be understood “in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused.” The right to remain silent, although not expressly guaranteed in international human rights treaties, is an important safeguard of the right not to be compelled to confess guilt.

The Arab Charter addresses the right against self-incrimination in Article 16 (6).

Fair Trial and Public Trial. The right to a fair and public trial is a basic human right, designed to protect individuals from unlawful and arbitrary restriction of their right to life and liberty. In addition, public trials ensure the independence and fairness of the judicial proceedings. The right to a fair and public trial is one of the universally applicable principles recognized in Article 10 of the Universal Declaration of Human Rights. It affirms that every person is entitled to a “fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” The principle is reaffirmed in the ICCPR, which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent tribunal established by law.” The Arab Charter makes reference to a “fair” and “public” trial in Article 13.

Speedy Trial. The right to a speedy trial is established in Article 14 (3) (c) of the ICCPR and Article 14 (5) of the Arab Charter for Human Rights. It requires that criminal proceedings be started and completed within a reasonable time. The right aims at two things: first, at ensuring that a person's defense is not undermined by the passage of inordinate amounts of time, during which witnesses' memories may fade or become distorted, witnesses may become unavailable, and other evidence may be destroyed or disappear; and second, at ensuring that the uncertainty which an accused person faces and the stigma which attaches to a person charged with a criminal offence, despite the presumption of innocence, are not protracted. The right to trial without reasonable delay must be placed in balance with the right of the accused to adequate time and facilities to prepare the defense.

Judgments made Public. The ICCPR provides that “any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile

persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”²²⁸ The primary aim of the right to a public judgment is to ensure that the administration of justice open to public scrutiny.

The Right to Call and Examine Witnesses. The right to call and examine witnesses is to ensure that the accused may challenge evidence against him. It guarantees to the accused the same legal powers of compelling the attendance of witnesses and of (cross-examining) them as the prosecution has done. The right is specified in Article 14 (3) (e) of the ICCPR (“[...] to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him [...]”), in the Universal Declaration of Human Rights (“...”) and in the Arab Charter (Article 16 (5)).

Right to Information. The right to information, as stipulated in the ICCPR (Article 14 (3) (a) and Article 9 (2)) and the Arab Charter (Articles 14 (3) and 16 (1)), ensures the accused/detained be informed of the charges against him.²²⁹ Such information is essential for the accused/detained to challenge the lawfulness of the arrest and to prepare for his defense.

Right to Legal Assistance. Everyone charged with a criminal offence has the right to defend himself against the charges. The right to be assisted by counsel includes the right to choose counsel. Article 14 (3) (d) of the ICCPR specifies that everyone charged with a criminal offence shall be entitled “to defend himself in person or through legal assistance of his own choosing; to be informed of this right, if he does not have legal assistance; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.” The Arab Charter on Human Rights requires that, “Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights.”²³⁰ In Article 16 (4), the Charter states that every person accused of

²²⁸International Covenant on Civil and Political Rights, Article 24(1).

²²⁹Omani Penal Code, from the Royal Decree N. 7/74, Article 29: “The legal description of crimes shall be determined depending on the penalty stipulated in legislation. Therefore, crimes shall be divided, according to the division of penalties, into three categories: (1) Felonies, which penalties are described as coercive; (2) Misdemeanors, which penalties are described as disciplinary; (3) Contraventions, which penalties are described as penalizing.

²³⁰Arab Charter on Human Rights, Article 13 (1).

a criminal offense shall have “the right to the free assistance of a lawyer who will defend him if he cannot defend himself or if the interests of justice so require.”

No Detention. According to the Arab Charter on Human rights, “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. His release may be subject to guarantees to appear for trial. Pre-trial detention shall in no case be the general rule.”²³¹

The ICCPR provides that, “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”²³² The principle is based on the presumption of innocence and the right to personal liberty, which requires that anyone held in pre-trial detention is entitled to have their case given priority and to have the proceedings conducted with particular expedition.

Rights of the Accused in the Omani Basic Law

The Omani Basic Law addresses some of the rights of the accused in its ‘Part Three on Public Rights and Duties’. Article 18 of the Basic Law guarantees personal freedom:

“[...] No person may be arrested, searched, detained or imprisoned, or have his residence or movement curtailed, except in accordance with the provisions of the Law.”

It also is stipulated that any arrested person shall immediately “be notified of the causes of his arrest.”²³³ The arrested person and his counsel have the right to challenge

²³¹ Arab Charter on Human Rights, Article 14 (5).

²³² International Covenant on Civil and Political Rights, Article 9 (3).

²³³ Oman, Basic Law, Article 24 [Arrest]: “Anyone who is arrested shall be notified of the causes of his arrest immediately and he shall have the right to contact whomever he sees fit, to inform them of what has taken place or seek their assistance, in the manner regulated by the Law. He must be informed promptly of the charges against him, and he and his representative shall have the right to appeal before the judicial authorities against the measure which has restricted his personal freedom. The Law regulates his right of appeal in a manner which ensures that a judgment will be issued on it within a specified period, failing which he must be released.”

the arrest before a court, and the Basic law provides that this petition be heard and decided within a specific period as determined by law.²³⁴

The right of an accused to legal counsel is recognized in Article 23, which provides that, “The accused has the right to appoint a person who has the ability to defend him during the trial. The Law defines the circumstances which require the presence of a lawyer on behalf of the accused and guarantees those without the financial capacity, the means to resort to justice and the defense of their rights.”

Principles of due process and the presumption of innocence are covered in Article 22. It provides that the accused is “innocent until proven guilty in a legal trial which ensures him the essential guarantee to exercise his right to defense according to the Law.”²³⁵ The article further provides for the protection of the personal integrity of the accused by prohibiting “harm to the accused either bodily or mentally.”²³⁶ Article 20 excludes the use of any statements obtained through illegal actions such as “torture, enticement or humiliating treatment, or threats of such measures.”²³⁷

The legal principle that one cannot be punished for doing something that is not prohibited by law (“*Nulla poena sine lege*”) is stipulated in Article 21 of the Basic Law, which states, “[...] there shall be no punishment except for actions cognizable in Law.”

The inviolability of the home and the correspondence/communication is established in Articles 27 and 30, but the Basic Law allows for exception to be made for situations/circumstances specified in the law.

The Basic Law provides for a public trial in Article 63 for all situations, but for situations where it is “in the interest of public order or public morals.”

However, the Basic Law does not make references to the right to confront one’s accused and examine witnesses.

²³⁴ Oman, Basic Law, Article 24 [Arrest].

²³⁵ Oman, Basic Law, Article 22 [Presumption of Innocence, Due Process, Personal Integrity].

²³⁶ Oman, Basic Law, Article 22 [Presumption of Innocence, Due Process, Personal Integrity].

²³⁷ Oman, Basic Law, Article 20 [Personal Integrity]: “[...] No statement shall be valid if it has been obtained as a result of torture, enticement or humiliating treatment, or threats of such measures.”

Rights of the Accused as Codified in the Omani Code of Criminal Procedure

Data Collection, Investigation, and Arrest

The law of criminal procedure ensures that any means of investigation or evidence gathering used by a public official should not cause injury to any person nor should it limit their freedoms. A person may not be arrested except in accordance with a decision made by the competent authority.²³⁸ The arrested person “shall be treated in a way to preserve his dignity.”²³⁹ A policeman or any official may not “resort to torture, coercion, enticement, or a treatment which may degrade the arrested person in order to obtain a statement” during investigation or evidence gathering or trial.²⁴⁰ In the event of arrest, a public official may only use force to the extent necessary for the arrest or to avoid resistance or escape.²⁴¹

Rules of Search and Seizure

Although the public official has the authority to search the accused, he may do so only in accordance with the law.²⁴² If the accused is a female, only a female officer may conduct the search.²⁴³ The public official may not enter a home to conduct such search except in cases specified in the law, or as a response to a request of assistance from the home itself, or in situations of necessity.²⁴⁴ In all cases, search of a home is only permitted if the public officer obtained a written permit from the general prosecutor.²⁴⁵ The search is to be conducted in the presence of the accused or his representative if this is possible, otherwise, the search must be conducted in the presence of two witnesses, such as relatives or those who are living with him or his neighbors.²⁴⁶ If there are females in the home, the officer must “observe established traditions”²⁴⁷ and allow them to leave if

²³⁸ Oman, Code of Criminal Procedure, Article 41.

²³⁹ Oman, Code of Criminal Procedure, Article 41.

²⁴⁰ Oman, Code of Criminal Procedure, Article 41.

²⁴¹ Oman, Code of Criminal Procedure, Article 44.

²⁴² Oman, Code of Criminal Procedure, Article 77.

²⁴³ Oman, Code of Criminal Procedure, Article 78.

²⁴⁴ Oman, Code of Criminal Procedure, Article 79.

²⁴⁵ Oman, Code of Criminal Procedure, Article 80.

²⁴⁶ Oman, Code of Criminal Procedure, Article 84.

²⁴⁷ Oman, Code of Criminal Procedure, Article 86.

they are not subject to the arrest and their leaving does not affect the interest of the search.²⁴⁸

Similarly, the law prohibits any interception of communication or correspondence or recording of conversations or phone calls except after obtaining a permit from the general prosecutor.²⁴⁹

Right to Consult with Legal Counsel

A lawyer is allowed access to the investigation²⁵⁰ and in all cases the law prohibits any act that may separate the accused from his lawyer.²⁵¹

Execution of a Criminal Judgment

As to the execution of a criminal judgment, the Code of Criminal Procedures provides that a penalty specified for a crime shall not be executed except in accordance with a judgment issued by a competent court²⁵² and only when such judgment is final.²⁵³ If the court judgment proved the innocence of the accused who is being temporarily detained he must be released immediately.²⁵⁴ The same rule applies where the judgment provides for a penalty other than imprisonment, the imprisonment is suspended, or the offender spent in temporary detention a period of time equivalent to the penalty imposed.²⁵⁵

Restriction on the Imposition of the Death Penalty

When the death penalty is the sanction for the crime, the law requires approval of the death sentence by the Sultan himself.²⁵⁶ The law allows relatives of the accused to see him during the three days prior to the execution of the death sentence.²⁵⁷ The accused may request a meeting with a religious figure and the prison authorities must facilitate

²⁴⁸ Oman, Code of Criminal Procedure, Article 86.

²⁴⁹ Oman, Code of Criminal Procedure, Article 90.

²⁵⁰ Oman, Code of Criminal Procedure, Article 115.

²⁵¹ Oman, Code of Criminal Procedure, Article 115.

²⁵² Oman, Code of Criminal Procedure, Article 283.

²⁵³ Oman, Code of Criminal Procedure, Article 284.

²⁵⁴ Oman, Code of Criminal Procedure, Article 286.

²⁵⁵ Oman, Code of Criminal Procedure, Article 286.

²⁵⁶ Oman, Code of Criminal Procedure, Article 288.

²⁵⁷ Oman, Code of Criminal Procedure, Article 289.

such request.²⁵⁸ In all cases, a death sentence shall not be executed during a religious holiday.²⁵⁹ If the accused is a pregnant woman the death sentence shall be postponed until she delivers.²⁶⁰ When she delivers, execution of the sentence shall be postponed for two years to enable her to breastfeed the child.²⁶¹ When the accused is sentenced to any term of imprisonment and one of his descendants/ancestors/relatives dies, execution shall be postponed for a period not exceeding three days to enable him to participate in the mourning ceremony.²⁶² If the death sentence was a ‘*Qysas*’²⁶³ and the relevant heir of the victim (*Sahib al-Dam*) pardoned the accused, then life sentence shall substitute the death penalty.²⁶⁴

However, the Omani Penal Code of 1974 does not follow Islamic law of crime and punishment. Instead, the Penal Code provides for the following description of crimes: (1) Felonies, the penalties for which are described as coercive; (2) Misdemeanors, the penalties for which are described as disciplinary; (3) Contraventions, the penalties for which are described as penalizing.”²⁶⁵ Similarly, penalties under the code are not in conformity with Islamic law. Instead, Article 39 provides for the penalties of: “(1) Coercive penalties: death sentence, life imprisonment, and temporary imprisonment from three to fifteen years; (2) Disciplinary penalties: imprisonment from ten days to three years and fine from ten to five hundred Omani Rials, or either of the two penalties; (3) Penalizing penalties: imprisonment from twenty-four hours to ten days and fine from one to ten Rials, or either of the two penalties.”

²⁵⁸ Oman, Code of Criminal Procedure, Article 290.

²⁵⁹ Oman, Code of Criminal Procedure, Article 292.

²⁶⁰ The same rule is provided in Article 41 of the Penal Code which states that “The execution of death sentence against a pregnant woman shall be postponed until her delivery. If the baby is born alive, the capital sentence shall be substituted by life imprisonment, by virtue of a special Royal Decree.”

²⁶¹ Oman, Code of Criminal Procedure, Article 293.

²⁶² Oman, Code of Criminal Procedure, Article 205.

²⁶³ ‘*Qysas*’ means ‘retaliation’. According to Islamic criminal law, crimes are divided into Hudood, Tazin, and Qysas. For a discussion of Islamic criminal law, see: Cherif Bassiouni, “Crimes and the Criminal Process,” *Arab Law Quarterly*, no. 12, (1997): 269.

²⁶⁴ Oman, Code of Criminal Procedure, Article 291. For a discussion of death penalty in Islam, see: Belinda Wells, *When Cultures Collide: An Australian Citizen’s Power to Demand the Death Penalty under Islamic Law*.

²⁶⁵ Omani Penal Code, Article 29.

PART FOUR: THE PRACTICE

Human Rights in Oman: View of the United Nations

The Sultan is responsible for signing international treaties and agreements and issuing royal decrees ratifying them.²⁶⁶ Article 72 of the Basic Law states that its application shall not infringe upon treaties and agreements concluded between the Sultanate of Oman and other States and international bodies and organizations.²⁶⁷

Oman is neither a party to the United Nations Covenant on Civil and Political Rights²⁶⁸ nor to the Covenant on Social, Economic and Cultural Rights.²⁶⁹ Oman also is not a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).²⁷⁰

The first UN convention signed and ratified by Oman was the Convention on the Rights of the Child²⁷¹ in 1996.²⁷² At the same time, Oman recorded a number of reservations to the CRC Convention.²⁷³ A general reservation was submitted to any

²⁶⁶ Oman, Basic Law, Article 42 [Functions]: “The Sultan discharges the following functions: [...] signing international treaties and agreements in accordance with the provisions of the Law (or authorizing a signatory to sign them) and issuing decrees ratifying them.”

²⁶⁷ Oman, Basic Law, Article 72 [Treaties].

²⁶⁸ United Nations. *International Covenant on Civil and Political Rights*, U.N. Doc A/6316 (Dec. 16, 1966), adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force March 23, 1976, *Available at*: <http://www.hrweb.org/legal/cpr.html>

²⁶⁹ United Nations. *International Covenant on Economic, Social and Cultural Rights*, adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976 ; *Available at*: <http://www2.ohchr.org/english/law/cescr.htm>

²⁷⁰ United Nations. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 39/46 of 10 December 1984; entry into force 26 June 1987; *Available at*: <http://www2.ohchr.org/english/law/cat.htm>

²⁷¹ United Nations. *Convention on the Rights of the Child*, adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 44/25 of 20 November 1989; entry into force 2 September 1990; *Available at*: <http://www2.ohchr.org/english/law/crc.htm>

²⁷² The Sultanate of Oman signed and ratified the *Convention on the Rights of the Child* (CRC) on December 9, 1996.

²⁷³ Oman’s Reservations to the Convention on the Rights of the Child: “1. The words ‘or to public safety’ should be added in article 9 [, paragraph 4,] after the words ‘unless the provision of the information would be detrimental to the well-being of the child.’

2. A reservation is entered to all the provisions of the Convention that do not accord with Islamic law or the legislation in force in the Sultanate and, in particular, to the provisions relating to adoption set forth in its article 21.

3. The provisions of the Convention should be applied within the limits imposed by the material resources available.

4. The Sultanate considers that article 7 of the Convention as it relates to the nationality of a child shall be

provisions of the CRC that do not accord with Islamic law or the Sultanate's state legislation. In particular, the Omani reservations highlighted that Article 21²⁷⁴ does not conform to Islamic principles. Other reservations made to Article 14²⁷⁵ and 30²⁷⁶ are concerned with the religious freedom of children. These reservations state that Oman does not consider itself bound by those provisions that grant children the freedom of religion or that "allow a child belonging to a religious minority to profess his or her own religion."

Both Optional Protocols to the CRC were accessioned on September 17, 2004.²⁷⁷

understood to mean that a child born in the Sultanate of unknown parents shall acquire Omani nationality, as stipulated in the Sultanate's Nationality Law.

5. The Sultanate does not consider itself to be bound by those provisions of article 14 of the Convention that accord a child the right to choose his or her religion or those of its article 30 that allow a child belonging to a religious minority to profess his or her own religion." Available at:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

²⁷⁴ United Nations Convention on the Rights of the Child, Article 21: "States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall: (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary; (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption; (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it; (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs."

²⁷⁵ United Nations. *Convention on the Rights of the Child*, Article 14: "1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."

²⁷⁶ United Nations. *Convention on the Rights of the Child*, Article 30: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language."

²⁷⁷ In addition to the Convention on the Rights of the Child, the United Nations adopted two optional protocols:

(1) Optional Protocol on the sale of children, child prostitution and child pornography; adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000; entered into force on 18 January 2002; Available at: <http://www2.ohchr.org/english/law/crc-sale.htm>; (2) Optional Protocol on the involvement of children in armed conflict; adopted and opened for signature,

Since the ratification of the CRC, Oman acceded to the United Nations Convention on the Elimination of All Forms of Racial Discrimination²⁷⁸ on January 2, 2003 and became party to the Convention on the Elimination of All Forms of Discrimination against Women²⁷⁹ on February 7, 2006. Again, CEDAW was signed with the general reservation to all provisions not in accordance with the Islamic Sharia or Omani legislation. Those contested provisions include Article 9 (Nationality); Article 15 (Equality before the Law); and Article 16 (Marriage and Family Life).²⁸⁰ An additional reservation was made to Article 29 regarding arbitration and the referral to the International Court of Justice.

The youngest UN Convention on the Rights of Persons with Disabilities²⁸¹ was signed by Oman on March 17, 2008 and ratified on January 6, 2009.

In addition, Oman has ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children²⁸² on May 13, 2005, and

ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000; entry into force 12 February 2002; *Available at:* <http://www2.ohchr.org/english/law/crc-conflict.htm>

²⁷⁸ United Nations. *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted and opened for signature and ratification by United Nations General Assembly resolution 2106 (XX) of 21 December 1965; entry into force 4 January 1969; *Available at:* <http://www2.ohchr.org/english/law/cerd.htm>

²⁷⁹ United Nations. *Convention on the Elimination of All Forms of Discrimination against Women*, adopted and opened for signature, ratification and accession by United Nations General Assembly on 18 December 1979; entry into force 3 September 1981; *Available at:* <http://www2.ohchr.org/english/law/cedaw.htm>

²⁸⁰ Reservations made by Oman to Convention on the Elimination of all Forms of Discriminations Against Women (CEDAW): (1) All provisions of the Convention not in accordance with the provisions of the Islamic sharia and legislation in force in the Sultanate of Oman; (2) Article 9, paragraph 2, which provides that State Parties shall grant women equal rights with men with respect to the nationality of their children; (3) Article 15, paragraph 4, which provides that States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile; (4) Article 16, regarding the equality of men and women, and in particular subparagraphs (a), (c), and (f) (regarding adoption); (5) The Sultanate is not bound by article 29, paragraph 1, regarding arbitration and the referral to the International Court of Justice of any dispute between two or more States which is not settled by negotiation.” *Available at:*

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec

²⁸¹ United Nations. *Convention on the Rights of Persons with Disabilities*, adopted and opened for signature, ratification and accession by the United Nations General Assembly on 13 December 2006; entry into force 3 May 2008; *Available at:* <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Convention.aspx>

²⁸² United Nations. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*; adopted by United Nations General Assembly resolution 55/25 on 15 November 2000; entry into force 25 December 2003; *Available at:* http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

Convention No. 138 concerning Minimum Age for Admission to Employment²⁸³ of the ILO on July 21, 2005.

Human Rights Practices in Oman: An American Perspective

The U.S. Department of State *Country Reports on Human Rights Practices 2009* for Oman evaluates Oman's practices with regard to specific rights and liberties.²⁸⁴

Respect for the Integrity of the Person

The State Department asserts that its investigations revealed no reported arbitrary or unlawful deprivation of life, no reported politically motivated disappearances, and no reports of torture and other cruel, inhuman, or degrading treatment or punishment. International standards of prison and detention center conditions were generally adhered to. This finding was also the case for domestic laws prohibiting arbitrary arrest and detention, although the investigative body dealing with isolated allegations of police abuse did not make any information about internal disciplinary action public.

As detailed above, Oman has extensive laws, both from domestic and international sources, regarding the rights of the accused. In practice, most rights are generally adhered to, although some exceptions occurred. For example, there were isolated incidents relating to suspected illegal immigrants who were held without charge while authorities confirmed their status in the country.

The report includes a detailed summary of the judiciary system and evaluates its achievement in providing fair public trials.²⁸⁵ For example, defendants and their lawyers generally had access to government-held evidence relevant to their cases. Courts provided public attorneys to indigent detainees and offered legal defense for the

²⁸³ International Labour Organisation. Convention concerning Minimum Age for Admission to Employment; adopted on 26 June 1973; entry into force 19 June 1976; Available at: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>

²⁸⁴ This segment is entitled "Respect for Human Rights" and is broken down into several topics: (1) respect for the integrity of the person, (2) respect for civil liberties, (3) respect for political rights: the right of the citizens to change their government, (4) official corruption and government transparency, (5) government attitude regarding international and nongovernmental investigation of alleged violations of human rights, (6) discrimination, social abuses and trafficking in persons, and (7) worker rights.

²⁸⁵ United States. Department of State. Bureau of Democracy, Human Rights, and Labor. *Country Reports on Human Rights Practices 2009: Oman* (2010), Available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>

defendants facing prison terms of three years or more. Those convicted in any court may appeal a jail sentence longer than three months and fines of more than 480 rials (approximately \$1,250).”

The State Department found no political prisoners or detainees. Civil cases adhered to Oman’s civil procedure codes, and citizens and foreign workers alike were able to bring an action against their sponsoring employers.

With regard to arbitrary interference with privacy, family, home, or correspondence, the State Department notes that the government has “broad discretion.” Although the law does not require warrants for searching homes, police officers often obtained warrants. The government monitored private communications through cell phone, Email, and Internet chat rooms. Marriage between foreigners and citizens required permission from the Ministry of Interior.

Respect for Civil Liberties

The government limited the freedom of speech of individuals and the press. No one is allowed to criticize the sultan and the insult of any public official is prohibited.²⁸⁶ Internet use was closely monitored and restricted. The government also restricted the discussion of controversial issues by Academics and at cultural events.

“Limits on the expression of political and social views deemed critical of the government were demonstrated by the detention of two Omanis in the summer of 2005 for overstepping the bounds of expression tolerated by Omani authorities.”²⁸⁷ Ms. Tayba Mawali, a former member of the *Majlis Ash-Shura* was sentenced to 18 months in prison for insulting public officials via telephone and on the Internet.²⁸⁸ According to Amnesty International, Ms. Mawali may to be considered a prisoner of conscience, “held solely for the non-violent expression of her beliefs.”²⁸⁹ In the second incident, Abdullah Ryami, an

²⁸⁶ Oman Penal Code, from the Royal Decree N. 7/74, Article 126. “Any person who commits, publicly or by publication, libel against the Sultan’s rights or authority or criticizes his person shall be sentenced to imprisonment from three months to three years and fined from twenty five to five hundred Omani Rials, or only one of these two sentences.”

²⁸⁷ Charles O. Cecil, “Oman’s Progress toward Participatory Government,” *Middle East Policy* 13, no. 1 (Spring 2006): 67.

²⁸⁸ Cecil, 67.

²⁸⁹ Amnesty International. <http://www.amnesty.org/en/library/info/MDE20/007/2005> (last visited July 2, 2010).

Omani human rights activist, was held without charge and without access to family and legal counsel for a week after publicizing the incident involving Ms. Mawali and also vocally criticizing the government's handling of 31 Omani citizens who were charged with plotting the overthrow of the sultan.²⁹⁰

The government limited freedom of assembly in practice, requiring government approval for all public gatherings. As already noted, all associations must register with the Ministry of Social Development and Labor and the freedom to associate was limited to specific issues that did not disrupt the social order of society.²⁹¹

Islam is the basis of Omani society. With the exception of the prohibition on religious interference with the political order of the country, people living in Oman are allowed to practice their religion.²⁹² Although the State Department reports that no violence or harassment against religious groups was found, including anti-Semitic acts, it does refer to the presence of anti-Semitism in the media.

People were generally free to move within the country, with no reports of forced exile by the government. Despite the laws guaranteeing protections for refugees, in practice, these protections provided little actual support, deporting foreign citizens who had attempted to enter the country illegally.

Respect for Political Rights. The Right of Citizens to Change Their Government

Without the right to change their government, Omani citizens could nevertheless vote for members of the Consultative Council, an entity that provides the public's feedback on laws, although without legislative powers itself. The report noted no indications of fraud or corruption in the voting process, although there was no independent monitoring of elections. However, foreign journalists could observe and report on the process. Furthermore, various elements of society participated in

²⁹⁰ Cecil, 67.

²⁹¹ Amnesty International. <http://www.amnesty.org/en/library/info/MDE20/007/2005> (last visited July 2, 2010).

²⁹² Oman Penal Code, from the Royal Decree N. 7/74, Article 209. "Sentence to imprisonment from ten days to three years and fine from five to five hundred Rials shall be applicable to anyone who:

1. Publicly blasphemes God's Holiness or pronounces a curse at his Prophets.
2. Commits, publicly or by publication, an affront to religions and faiths with a view to contempt them.
3. Commits an act breaching the peace of a lawful religious gathering.

government, including women and people of different races, religions, and general backgrounds. Although royal decrees and ministerial decisions were made public, public officials were not required to disclose financial interests and some government corruption did occur. However, the government did pursue criminal action against corrupt officials.²⁹³

Independent human rights groups were not present in Oman. A human rights commission existed, but this group was sponsored by the government. Rules involving funding of associations from foreign sources were followed strictly, although certain groups, such as the UN Children's Fund and the World Health Organization functioned with little government interference.

Discrimination and Societal Abuses

The government generally protected against discrimination, in accordance with the country's laws. Although the crime of rape had severe criminal penalties, which the government did generally enforce, spousal rape was not considered a crime. Spousal abuse seemed to be a prevalent issue in family law cases. Authorities took allegations of abuse seriously in implementing the laws against assault and battery, but often women who had suffered abuse would seek family assistance, rather than help from the authorities.

There were some reports of foreign nationals who were in the country to work as domestic servants claiming they had been raped. Investigations rarely led to convictions, however, and often the women were repatriated by their sponsors.

Although female genital mutilation (FGM) was not allowed to be performed by doctors in hospitals, no law addressed the prohibition of FGM itself, nor did the Ministry of Health create any plan to combat the phenomenon.

Although prostitution was illegal and culturally unacceptable, women from foreign countries did work in this area.

²⁹³ Oman Penal Code, from the Royal Decree N. 7/74, Article 155. "Any official accepts a bribe for himself or on behalf of another person, be it either money, gift, promise, or any other advantage, in order to accomplish a due act pertaining to his function, to abstain from accomplishing it or postpone its accomplishment shall be sentenced to imprisonment from three months to three years, to fine equaling at least the value of what he was given or promised to get, and to dismissal from function during a period subject to the judge's estimation. If the briber or agent informs the authority of the bribery before the judgment is pronounced, he shall be exempted from punishment."

According to a study on sexual harassment, approximately one in every ten women reported having been harassed. In general, women faced discrimination in the work place, in their families, in terms of inheritance laws, and in terms of their right to pass on their citizenship to their children and foreign spouses. However, women's right to own property was respected, and the government amended land ownership practices to address issues of gender inequality in this area.

Although illiteracy among women restricted their abilities to engage fully in society, government policy afforded them equal opportunity to education. As a result, women who were educated achieved significant successes in their careers. They also received equal pay for equal work.

Persons with disabilities suffered various forms of discrimination. Discrimination included lack of access to older buildings not equipped to accommodate their needs and discrimination in the job market. Homosexual behavior is considered criminal,²⁹⁴ and no prosecutions for it were reported. No foreigner with HIV/AIDS is permitted to work in Oman.

Worker Rights

Although the government permitted the formation of union bodies to represent the interests of workers, significant government restrictions existed. For example, all unions were required to register with the government. Certain members of society, including the armed forces, public security institutions, government employees, domestic workers, and civil servants were prevented from forming any unions. Worker complaints were directed to the MOM, which would investigate the matter and address it.

There is a concern for foreigners entering the country voluntarily to take up work as domestic or low-skilled workers being subjected to conditions constituting involuntary servitude and abuse. The prohibition on child labor was generally adhered to, with the exception of small family businesses in the agricultural and fishing sector, in which children under the permissible working age worked. Minimum wage standards for citizens were insufficient and not universally applicable. Hours of employment during the

²⁹⁴Oman Penal Code, from the Royal Decree N. 7/74, Article 223. "Anyone who commits erotic acts with a person of the same sex shall be sentenced to imprisonment from six months to three years."

week ranged between 35 to 48 hours, although measures regarding hours of work per week were not always adhered to. According to the reports of medical professionals, the requirement to provide certain employees with medical care was not always implemented. However, health and safety standard codes were generally enforced.

CONCLUSION

Oman is not a party to the United Nations Covenant on Civil and Political Rights, to the Covenant on Social, Economic and Cultural Rights, nor is it a party to the Arab Charter on Human Rights.²⁹⁵ Oman also is not a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Citizens and non-citizens are not equal before the law and non-citizens are not protected from discrimination by law. Therefore, many challenges for foreigners arise from exceptions in the labor laws which exclude them from enjoying the same rights as Omani citizens. Reports exist of foreigners entering the country voluntarily to take up work as domestic or low-skilled workers who were subjected to conditions constituting involuntary servitude and abuse. Although slavery and slave-like conditions are prohibited by law, many female foreign domestic workers fall victim to exploitation and are either unaware of their rights or too fearful of losing their jobs or being deported to report their employers' illegal practices. They may face restrictions on movement, physical and sexual abuse and long hours without food, rest or compensation. Despite the fact that prostitution is both illegal and culturally unacceptable, women from foreign countries are sometimes lured into prostitution in hopes of higher wages.

The patriarchal culture and the conservative religious norms have an enormous impact on women. Despite progress, women are still discriminated against in nearly all areas of life. For example, female rape victims are often criminalized, while domestic violence has not yet been given criminal status. Furthermore, although the crime of rape has severe criminal penalties, there is little if any prosecution, and spousal rape is not considered a crime in the state of Oman. Women also face occupational discrimination and fewer opportunities to access post-secondary education, despite laws that explicitly prohibit gender-based discrimination in the labor sector. Women are also under-represented in the legal field and are customarily forbidden to act as judges, curbing many women from seeking justice.

²⁹⁵ Jordan, Algeria, Libya, Syria, Bahrain, Palestine, Yemen, Qatar, Saudi Arabia, and the United Arab Emirates are all member states to the Arab Charter on Human Rights.

In each provision of the Basic Rights to the citizens, a clause is included that allows for potential limitations. The generality of terms in which the qualifying clause is phrased suggests the government has broad discretion in determining when a certain act is not protected by these rights. Furthermore, there is no constitutional court to ensure the applicability of the Basic Law. No meaningful organized political opposition exists in Oman and political parties are not permitted. All citizen organizations are government-affiliated, therefore, strictly speaking, a civil society does not exist. The sultan maintains the only power to approve laws and no one is allowed to criticize the sultan or any public official. The lack of free speech and free press, coupled with Sultan Qaboos' refusal to name a successor, may be the source of Qaboos' greatest instability. If economic discontent ensued due to a drop in oil prices or a depletion of resources, it could increase political opposition and provoke his opponents to action, creating enormous civil unrest in Oman.

“Limits on the expression of political and social views deemed critical of the government were demonstrated by the detention of two Omanis in the summer of 2005 for overstepping the bounds of expression tolerated by Omani authorities.”²⁹⁶ Ms. Tayba Mawali, a former member of the *Majlis Ash-Shura* was sentenced to 18 months in prison for insulting public officials via telephone and on the internet.²⁹⁷ According to Amnesty International, Ms. Mawali may to be considered a prisoner of conscience, “held solely for the non-violent expression of her beliefs.”²⁹⁸ In the second incident, Abdullah Ryami, an Omani human rights activist, was held without charge and without access to family and legal counsel for a week, after publicizing the incident involving Ms. Mawali and also vocally criticizing the government's handling of 31 Omani citizens who were charged with plotting the overthrow of the sultan.²⁹⁹

However, “we in the West must take care not to judge progress in relation to some end point similar to our own and grow impatient when we do not see institutions or actions replicating our own models. The example of Oman shows that, with the benefit of strong and enlightened leadership, the tolerance of diversity required to ensure peace and

²⁹⁶Cecil, 67.

²⁹⁷Cecil, 67.

²⁹⁸Amnesty International, <http://www.amnesty.org/en/library/info/MDE20/007/2005> (last visited July 2, 2010).

²⁹⁹Cecil, 67.

social justice in a modern nation can be cultivated. Participatory, representative government is establishing its roots in Oman, grounded firmly in Islamic tradition. Let us hope that its slow and measured evolution will continue.”³⁰⁰

³⁰⁰ Cecil, 67.

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APPENDIX

Concluding Comment of the Committee on the Elimination of Racial Discrimination (CERD) to the First Omani State Report

In the concluding comment of the CERD Committee to the initial periodic report of Oman (submitted 2004), the committee notes its concern about Article 17 of the Omani Basic Law on equality and non-discrimination, which does not include ‘race,’ ‘descent,’ and ‘national or ethnic origin’ among the prohibited grounds of discrimination.³⁰¹ It also voices its concern with regard to the unequal treatment of citizens and non-citizens in the enjoyment of rights, because article 17 of the Basic Law provides that only “citizens’ are equal before the law and entitled to exercise public rights without any discrimination based on gender, origin, color, language, religion, sect, domicile, or social status.³⁰²

The CERD Committee is concerned that the Omani Nationality Law does not grant citizenship to children of Omani women married to non-nationals, whereas it does where the father is an Omani citizen.³⁰³

In addition, the committee recommends that Oman adopt comprehensive legislation to prevent, prohibit, and punish racial discrimination and that it ban the formation of organizations that promote and incite racial discrimination.³⁰⁴

Concluding Comment of the Committee on the Rights of the Child to the Second Omani State Report

To date, Oman has submitted two periodic reports to the CRC Committee, the first in 1999 and the second in 2006.

Although the Committee applauds the ratification of the Convention on the Rights of the Child, it regrets that the State has not withdrawn its reservations to some of the

³⁰¹United Nations. Committee on the Elimination of Racial Discrimination, Concluding Observations: Oman, UN Doc. CERD/C/OMN/1 (19 October 2006), paragraph 12, *Available at*: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.OMN.CO.1-new.pdf>

³⁰²<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.OMN.CO.1-new.pdf>

³⁰³<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.OMN.CO.1-new.pdf>

³⁰⁴<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.OMN.CO.1-new.pdf>

articles of the Convention.³⁰⁵ Additionally, it is concerned that the Convention has not been adequately implemented in all sectors.³⁰⁶

The Committee approves of the new legislative measures that have been taken and those that have been proposed.³⁰⁷ However, it finds them insufficient with regard to the protection of children, especially the limited rights-based approach to children.³⁰⁸ It also expressed concern over the lack of a national action plan for children, and it recommended that Oman take steps towards adopting one.³⁰⁹ The Committee regrets the lack of a monitoring structure that would receive and address complaints about violations of the rights of the child.³¹⁰

The Committee commends the State party's efforts to collect and disseminate statistical data on children, but notes that the data are often insufficient, especially regarding groups in need of special protection.³¹¹ Furthermore, it would like to see the State party make more of an effort to raise awareness about the rights of children and international human rights standards in general.³¹²

An issue of particular concern to the Committee is discrimination against children born out of wedlock³¹³ and discrimination based on a child's national origin.³¹⁴ Additionally, according to the Nationality Law, children may not be granted citizenship if

³⁰⁵ United Nations. Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraph 7, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³⁰⁶ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³⁰⁷ Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraph 9, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement> (For example, see the draft act on juveniles and a bill for the care and rehabilitation of persons with disabilities.)

³⁰⁸ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³⁰⁹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³¹⁰ United Nations. Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraph 16, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³¹¹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement> (“For example, children affected by violence and abuse, including sexual abuse, children in alternative care, street children, migrant children and working children.”)

³¹² <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³¹³ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement> (“The Committee notes with concern that their right to identity, including nationality, name and family relations, is not fully protected.”)

³¹⁴ United Nations. Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraph 24, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

their Omani mother is married to a non-national;³¹⁵ the Committee has recommended that the law be amended. Another concern of the Committee is the vulnerability of children whose parents are illegal migrant workers who fall victim to human rights violations.³¹⁶

The Committee would like to see more freedom of expression granted to children, with the view that children are subjects with rights, rather than objects.³¹⁷ It would also like to see less corporal punishment in homes and schools, which it notes is quite frequently used as a disciplinary measure.³¹⁸

Furthermore, the Committee has expressed its disapproval over punishment that separates a mother from her children because her pregnancy occurred out of wedlock. It expresses concern over the lack of information regarding the quality of care that children placed in out-of-home care³¹⁹ are receiving and lack of data about the magnitude of violence committed against children. It is also concerned that the system in charge of handling child abuse cases is generally defective.³²⁰

With regard to health care, the Committee appreciates both the quality and the scope of available health care, but remains concerned about malnutrition in children and infants. It believes that measures³²¹ must be taken to improve upon this situation as quickly as possible.³²² The Committee is also concerned that some communities still practice female genital mutilation in Oman;³²³ it urges the State to take measures to end

³¹⁵ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³¹⁶ United Nations. Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraph 59, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³¹⁷ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³¹⁸ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³¹⁹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

Orphaned children, children taken from their mothers because they were born out of wedlock, and others may live in this type of establishment, called a Child Care Home.

³²⁰ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³²¹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>
Including promoting healthy eating and breastfeeding, and allowing mothers in the public sector the opportunity to do so, by reinstating the breastfeeding hour that the State recently abolished.

³²² United Nations. Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraph 45, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³²³ Also, a health survey conducted in 2001 found that 85 percent of women still approved of this practice. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

this practice, including raising awareness to its harmful nature and prohibiting the act by law.³²⁴

Although the Committee applauds recent advancements in education, including availability of free primary school education and the inclusion of human rights education into the curricula, it would prefer that primary education be made compulsory and that efforts be made to increase enrolment rates in secondary education.³²⁵

In spite of positive efforts by the State,³²⁶ the Committee remains concerned that there is an overall lack of information and lack of research on human trafficking, child prostitution, and child pornography. Additionally, it would have the State institute recovery and reintegration services for victims of trafficking as well as victim identification programs.³²⁷

The Committee would have the minimum age of responsibility for criminal activity raised to an internationally acceptable level, because it believes that age nine is too low to hold juveniles responsible for their actions.³²⁸ In light of this deficiency, the Committee also recommends that Oman adopt the Juvenile Law bill, which would establish a juvenile court system and provide for alternative measures to deprivation of liberty.³²⁹

³²⁴ United Nations. Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraph 52, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³²⁵ United Nations. Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraphs 55 and 56, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³²⁶ United Nations. Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraph 65, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement> (Such as domestic legislation prohibiting “forced child prostitution, manufacturing, acquiring, or distributing pornographic materials, bondage, and slave trade.”)

³²⁷ United Nations. Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraph 65, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

³²⁸ Oman Penal Code, from the Royal Decree N. 7/74, Article 104. “Any person having not completed nine years of age when committing a crime shall not be prosecuted. If the suspect’s age is not established, it shall be evaluated by the judge. In all events, the age shall be calculated according to the Christian calendar.”

³²⁹ United Nations. Committee on the Rights of the Child, Concluding Observations: Oman, U.N. Doc. CRC/C/OMN/CO/2 (29 September 2006), paragraph 67, *Available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119.pdf?OpenElement>

Concluding Comment of the Committee on the Rights of the Child in regards to the OP on the Sale of Children, Child Prostitution and Child Pornography

The Committee was not impressed by the lack of data related to the Protocol and regrets that there are no cases, while noting the large numbers of foreign migrant children who are vulnerable to violations of their rights.³³⁰ The Committee recommends a comprehensive systematic mechanism to collect data, analyze, monitor, and assess the impact of all areas included in the Optional Protocol.³³¹ The State's broad reservations to the CRC also led the Committee to urge Oman to withdraw or limit their extent.³³²

The Committee found that the inter-sectoral Follow-up Committee on the implementation of the Protocol should be stronger in ensuring coordination of the Protocol.³³³ Despite the fact that the State was working on national strategy on child welfare, the Committee stressed the importance of adopting a National Plan of Action to combat the crimes under the Protocol.³³⁴ Furthermore, the Committee expressed its concern that especially non-Omani children and relevant professionals in contact with

³³⁰United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), Available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (Specifically the Committee noted the need for the data to be disaggregated by inter alia, age, sex, origin, urban/rural areas, and the most vulnerable groups.)

³³¹ United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 7, Available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (The Committee encouraged Oman to seek technical support from inter alia UNICEF to do so.)

³³² United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraphs 8-9, Available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (Noting that there has been no progress made with the last recommendation to withdraw or limit. This recommendation to withdraw or limit would be in accordance with the Vienna Declaration and Plan of Action adopted by the World Conference on Human Rights on 25 June 1993.)

³³³United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraphs 10-11, Available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (Asserting that to ensure the incorporation of the Protocol and the strength of the Follow-up Committee, adequate human and financial resources are needed at local and regional levels.)

³³⁴United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraphs 12-13, Available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf

them are not sufficiently aware of the provisions of the Protocol.³³⁵ To address this issue, Oman must develop cooperation with civil society organizations and the media and strengthen gender-sensitive education and training on provision of the Protocol for all professional groups working with the child victims.³³⁶ An increase of budget allocations is encouraged for coordination, prevention, promotion, protection, care, investigation and prosecution of acts covered by the Protocol.³³⁷

As far as monitoring is concerned, the Committee acknowledges the establishment of the National Human Rights Committee, although it is not yet operational and urges that it comply with the Paris Principles; essentially, Oman needs to designate a children's unit with "adequate human and financial resources to receive, monitor and investigate complaints from or on behalf of children on violations of their rights as well as recommend remedies."³³⁸ The State's oversight of the tourism industry was commended; however, the Committee finds the preventive measures inadequate considering the large migrant population and insufficient documentation or research on the causes, nature and extent of the sale of children, child prostitution, and child pornography.³³⁹

³³⁵United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraphs 14-15, *Available at*: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf. (Regarding dissemination and training, the Committee also mentioned developing cooperation with civil society organizations and the media to meet the need for raising awareness.)

³³⁶United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 15, *Available at*: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf. (Encouraging Oman to seek technical support from UNICEF and ILO to meet these education and training measures.)

³³⁷United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraphs 16-17, *Available at*: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf. (Concerned with the lack of targeted resources for criminal investigations, legal assistance, and physical and psychological recovery measures.)

³³⁸United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraphs 18-19, *Available at*: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (Referring to the National Human Rights Committee made possible by Royal Decree No. 124/2008.)

³³⁹United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraphs 20-21,

The committee then noted the lack of information on whether the Human Trafficking Act issued by Royal Decree No. 126/2008 has actually been enforced and whether all provisions of the Protocol are met by the legislation.³⁴⁰ The Committee pressed the State Party to adopt the Children's Act and ensure its conformity with the CRC and its Protocols³⁴¹ and to revise and bring its Penal Code in full compliance with articles 2 and 3 of the Protocol.³⁴²

Jurisdiction may be established over offenses regardless of the victim's nationality and the Committee recommended that the State Party pursue all legal and practical measures to be able to establish jurisdiction over offences in accordance with article 4 of the Protocol.³⁴³ The Committee urged the State to make the Protocol its legal basis for extradition.³⁴⁴ The Committee is especially concerned about the insufficient measures to identify children who are victims under the offenses of the Protocol, and the Committee reiterates this concern and points out the risk of re-victimization if treated as offenders instead of victims.³⁴⁵ So again, procedures for early identification of child

Available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf. (Encouraging further documentation and gender-sensitive research in particular.)

³⁴⁰United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 22, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf

³⁴¹United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 25, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (In order to further the protection of children's rights.).

³⁴²United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 23, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf. (Given the concern that not all offenses of the Protocol's provision are addressed in the Penal Code.)

³⁴³United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 26, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf

³⁴⁴United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 28, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (Recommending the Protocol's article 5 to play as basis for the State's extradition law.).

³⁴⁵United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 31, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (The Committee goes

victims, take all means necessary, including legislative, to guard against criminalizing the child victims, allocate adequate financial and human resources, and presume sexually exploited victims are children and ensure that all judges and prosecutors are adequately trained on the Protocol's provisions.³⁴⁶

To address the inadequate measures for child victims to socially reintegrate and physically and psychosocially recover as well as access compensation, the Committee recommended that the State earmark the resources and to provide interdisciplinary assistance to the child victims to assure access to procedures and compensation for damages without discrimination, as stated in article 9, paragraph 4 of the Optional Protocol.³⁴⁷ Camel racing was separately discussed as the Committee noted that regulations had raised the age of camel jockeys to 18 years, but the Committee felt that children are still at risk since no notice of a monitoring mechanism has been noted; it therefore recommended implementing a monitoring mechanism, regular inspection of relevant venues, sanctions — for those responsible for placing children as camel jockeys, and raising awareness of the negative impacts of camel racing on children's health.³⁴⁸

Finally, the Committee recommended that the State party continue to strengthen international cooperation to aid in the implementation of the Protocol's provisions and to conduct research to examine cross-border protection issues between Oman and its neighbors.³⁴⁹ As for the follow-up, the State should submit all recommendations to

further to mention that with charges of zina and honour crimes, girls who are victims of child prostitution may be criminalized.).

³⁴⁶United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 32, *Available at*: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (The Committee also encouraged the State to use the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20.))

³⁴⁷United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraphs 34-35, *Available at*: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf

³⁴⁸United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 36-37, *Available at*: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf

³⁴⁹United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 38, *Available at*:

members of the cabinet and the bi-cameral Majlis and to the regions and governorates for consideration and action.³⁵⁰

Concluding Comment of the Committee on the Rights of the Child in regards to the OP on the Involvement of Children in Armed Conflicts

The Committee on the Rights of the Child in consideration of the initial report of Oman in 2009 concludes noting the State party's declaration upon ratification of the Protocol declaring 18 years as the minimum age for voluntary recruitment even in situation general mobilization and that there is no conscription as positive aspects.³⁵¹ The Committee reiterates its recommendation that the State review and withdraw its reservations or limit its extent. Concerned about awareness of the Optional Protocol among the general public, the Committee urges in accordance of article 6, paragraph 2, that the principles and provisions be widely disseminated.³⁵² Training on these Protocol provisions is also recommended again for members of the Omani armed forces and education/raising of awareness/training for professional groups working with children.³⁵³ Regretting the lack of peace education in the school curricula as prevention, the

http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (To do so, Oman is encouraged to seek technical support inter alia UNICEF and the ILO.)

³⁵⁰United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 12, 2009), paragraph 41, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.OMN.CO.1_en.pdf (Also, in order to disseminate the information, the Committee recommends that the report, written replies by State party, and related recommendations adopted be made available through the Internet, public at large, civil society, etc., to generate debate and awareness of the Optional Protocol.)

³⁵¹United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, U.N. Doc. CRC/C/OPAC/OMN/CO/1 (June 12, 2009), *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.OMN.CO.1_en.pdf.

³⁵²United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, U.N. Doc. CRC/C/OPAC/OMN/CO/1 (June 12, 2009), paragraphs 7-8, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.OMN.CO.1_en.pdf.

³⁵³United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, U.N. Doc. CRC/C/OPAC/OMN/CO/1 (June 12, 2009), paragraphs 9-10, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.OMN.CO.1_en.pdf (Prosecutors, lawyers, judges, law enforcement officers, social workers, medical professionals, teachers, and local and district officials are all noted as meeting the category of professional groups to be targeted.)

Committee also recommends the State incorporate human rights education and peace education themes in children's education.³⁵⁴

The Committee acknowledged article 14, paragraph 2 of the Basic Law of the State, but points out the lack of specific provisions with regard to child recruitment in the Criminal Code and the lack of defining what exactly entails direct participation in hostilities.³⁵⁵ For better international measures in preventing the recruitment of children and their use in hostilities, the State is urged to revise the penal code, ensure all military codes, manuals, and other directives are in accordance with the provisions and spirit of the Optional Protocol, and to ratify the Rome Statute.³⁵⁶ The Committee pushes for an identification mechanism for asylum-seeking and migrant children, possibly recruited or used in hostilities, noting that the State has no information on such children or means or services to address their physical and psychological recovery and social reintegration.³⁵⁷ Again the Committee encourages the State to follow up in implementation of recommendations and to disseminate these concluding observations to the public at large and children in particular.³⁵⁸

³⁵⁴United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, U.N. Doc. CRC/C/OPAC/OMN/CO/1 (June 12, 2009), paragraphs 11-12, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.OMN.CO.1_en.pdf.

³⁵⁵United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, U.N. Doc. CRC/C/OPAC/OMN/CO/1 (June 12, 2009), paragraph 13, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.OMN.CO.1_en.pdf (The Committee also notes the State's signing of the Rome Statute of the International Criminal Court in 2000.)

³⁵⁶United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, U.N. Doc. CRC/C/OPAC/OMN/CO/1 (June 12, 2009), paragraph 14, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.OMN.CO.1_en.pdf.

³⁵⁷United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, U.N. Doc. CRC/C/OPAC/OMN/CO/1 (June 12, 2009), paragraphs 15-16, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.OMN.CO.1_en.pdf (The Committee further encourages accession to the Status of Refugees 1951 and its 1967 Protocol.).

³⁵⁸United Nations. Committee on the Rights of the Child, Concluding Observations – Oman: on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, U.N. Doc. CRC/C/OPAC/OMN/CO/1 (June 12, 2009), paragraphs 17-18, *Available at:* http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.OMN.CO.1_en.pdf (Transmitting the recommendations to the members of the cabinet and the bicameral Majlis and to the regions and governorates for consideration and further action is the proposed the method to complete the implementation by legislation.).